

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

_____)	
In the Matter of)	
)	
KRISTIN BROOKS HOPE CENTER and)	CC Docket No. 95-155
1-800-SUICIDE)	
)	
Petition for Cease and Desist Order and)	
For Sanctions Against Patriot)	
Communications LLC and McLeodUSA)	
Incorporated)	
)	
_____)	

To: The Commission

**PETITION FOR CEASE AND DESIST ORDER AND FOR SANCTIONS AGAINST
PATRIOT COMMUNICATIONS LLC AND MCLEODUSA INCORPORATED**

Danny Adams
Todd D. Daubert
J. Isaac Himowitz
KELLEY DRYE & WARREN LLP
3050 K. Street, NW Suite 400
Washington, DC 20007
(202) 342-8400
(202) 342-8451 (facsimile)
dadams@kelleydrye.com

Counsel for Petitioner
KRISTIN BROOKS HOPE CENTER

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SUMMARY

The Kristin Brooks Hope Center is a private, non-profit organization committed to suicide prevention. During the past eight years, KBHC has operated numerous toll free crisis and suicide prevention hotline numbers, including 800-SUICIDE, 888-SUICIDE and 877-SUICIDA, and has been the subscriber of record for the numbers since the beginning. To date, the numbers collectively have received over two million calls.

Today, KBHC and callers to the toll free suicide prevention hotlines it operates face a crisis caused entirely by the serious and intentional violations of FCC rules and the SMS/800 Tariff that Patriot Communications LLC and McLeodUSA Incorporated are committing on an ongoing basis. Specifically, Patriot is attempting to appropriate the toll free numbers KBHC operates as the subscriber of record, including 800-SUICIDE, which Patriot can do only with the assistance of Patriot's Resp Org ally, McLeodUSA.

Patriot wants to prevent KBHC from porting the numbers away so that Patriot can continue to be the toll free service provider for the hotlines. In effect, Patriot is trying to commandeer the toll free numbers KBHC ported to Patriot eight months ago and sell them to the Substance Abuse and Mental Health Services Administration ("SAMHSA"), which is the government agency that funds the hotlines KBHC operates. Relying on the flimsiest of pretenses, McLeodUSA repeatedly has denied KBHC's requests to switch Resp Orgs, and Patriot has claimed "subscriber of record" status because KBHC's payments once fell in arrears.

Patriot has artificially created the current crisis in an effort to force KBHC to accept Patriot's theft of KBHC's numbers. Even though SAMHSA has paid for all of Patriot's numbers between August 25, 2006 and December 1, 2006, and has continued to pay for five of KBHC's toll free numbers since December 1, 2006, Patriot is threatening to terminate service to all of the

numbers for which KBHC is the subscriber of record on January 9, 2007, *unless* KBHC acquiesces to their illegal transfer to SAMHSA. Nothing about the January 9 date is critical from Patriot's standpoint: it is merely an arbitrary date upon which Patriot has chosen to end service to the suicide prevention hotlines KBHC operates, which means that the hotlines will go silent on that date unless KBHC capitulates to Patriot's demand since McLeodUSA is preventing KBHC from porting the numbers to a different Resp Org and toll free service provider.

The law governing this dispute is clear. Patriot cannot become the subscriber of record for a toll free number by transferring the number to itself from one of its customers during a collections dispute. The Commission also has repeatedly emphasized that the FCC's rules and the SMS/800 Tariff prohibit the transfer of toll free numbers between end users, particularly over the objection of the subscriber of record. Similarly, the FCC's rules and the SMS/800 Tariff require McLeodUSA to release toll free numbers for which it serves as the Resp Org within two business days of receiving a Resp Org transfer request from the subscriber of record for the numbers.

Patriot and McLeodUSA are willfully and intentionally violating the FCC's rules and the SMS/800 Tariff, because both have persisted in their actions after receiving a full explanation of the applicable law and KBHC's position in a letter on October 23, 2006, from counsel for KBHC. For these reasons, the Commission should *immediately* (1) issue a Cease and Desist Order directing McLeodUSA to release all of KBHC's toll free numbers to the Resp Org of KBHC's choice, (2) issue a Notice of Apparent Liability against Patriot in the amount of \$15.9 million for its willful and intentional violations of FCC rules, and (3) initiate an investigation to determine whether the Resp Org status of McLeodUSA should be revoked for its willful and intentional violations of its obligations as a Resp Org.

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**PETITION FOR CEASE AND DESIST ORDER AND FOR SANCTIONS AGAINST
PATRIOT COMMUNICATIONS LLC AND MCLEODUSA INCORPORATED**

Kristin Brooks Hope Center (“KBHC”), through its attorneys and pursuant to Section 312(b) of the Communications Act, 47 U.S.C. § 312(b), hereby requests the prompt issuance of a cease and desist order enjoining Patriot Communications LLC (“Patriot”) from continuing its knowing and intentionally false claims that it is the “subscriber of record” for any of the fifteen toll free crisis and suicide prevention telephone numbers KBHC has operated for the past eight years. These numbers include 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA, among others.¹

KBHC further requests that the Commission issue a cease and desist order directing McLeodUSA Incorporated (“McLeodUSA”), the Responsible Organization (“Resp

¹ The numbers included in this dispute are: (800) 784-2433 [800.SUICIDE] ; (888) 784-2433 [888.SUICIDE]; (877)784-2432 [877.SUICIDA]; (877) 838-2838 [977.VET2VET]; (800) 442-4673 [800.442.HOPE]; (800) 722-9498; (800) 827-7571; (866) 771-1276; (866) 968-8454 [866.YOUTHLINE]; (877) 968-8454 [877.YOUTHLINE]; (888)861-8460; (877) 495-0009; (800) 472-3457 [800.GRADHLP]; (877) 472-3457 [800.GRADHLP]; (800)773-6667 [800.PPD.MOMS]

Org”) for the KBHC toll free numbers, to end its knowing and intentional refusals to honor KBHC’s request to release the KBHC toll free numbers to another Resp Org. In refusing to honor KBHC requests, McLeodUSA is aiding and abetting Patriot’s unlawful attempts to appropriate the KBHC toll free numbers.

Patriot has stated that it will discontinue routing calls to all but five of KBHC’s toll free numbers immediately, and to *all* the numbers, on January 9, 2007. Absent issuance of the requested cease and desist orders, Patriot’s actions could cause irreparable harm to people who are considering suicide but wish to call 1-800-SUICIDE or one of the other numbers in order to receive suicide prevention and crisis counseling. The only reason Patriot’s threat presents a risk at all is that KBHC is unable to port the numbers to carrier because McLeodUSA, the Resp Org with defacto power to hold KBHC’s numbers hostage, has refused to honor KBHC’s request to port all of KBHC’s toll free numbers to another Resp Org and toll free service provider. Apart from Patriot’s threat as abetted by McLeodUSA, nothing about January 9 is critical.

Finally, KBHC requests, pursuant to Section 503(b)(1)(B) of the Telecommunications Act, that the Commission issue a Notice of Apparent Liability and impose the maximum fine of \$1,325,000 for each of the twelve KBHC toll free numbers Patriot has refused to port in violation of the Commission’s rules. Patriot’s willful and repeated refusals to abide by Commission rules regarding control and transfer of toll free numbers more than justify the magnitude of the fine. KBHC requests that the Commission impose the maximum fine possible due to the blatant disregard for the FCC’s rules Patriot has displayed with its “hostage-taking” approach to toll free numbers KBHC uses to save thousands of lives every year. The

nature of McLeodUSA's participation in these unlawful actions further suggests that the Commission should begin an investigation to revoke McLeodUSA's status as a Resp Org.

BACKGROUND AND INTRODUCTION

The Kristin Brooks Hope Center

The Kristin Brooks Hope Center ("KBHC") is a private, non-profit organization dedicated to suicide prevention. Since 1998, KBHC has operated toll free help lines to provide critical counseling services to people in need. H. Reese Butler founded KBHC with the proceeds from his wife's life insurance and the sale of his home shortly after his wife, Kristin Brooks, committed suicide in 1998. Included among the toll free help lines numbers KBHC now operates and holds as the subscriber of record are 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA, each of which offer counseling to individuals in need of immediate mental health services.² KBHC obtained a trademark for 800-SUICIDE on September 9, 2003.

KBHC uses an automatic number identification system to immediately route callers – who are depressed or suicidal, or who are concerned about someone who is depressed or suicidal – to a trained crisis line worker who can make a lethality assessment and determine what steps to take, up to and including immediate intervention. Constant 24 hour staffing and the use of advanced routing technology ensures that a trained crisis counselor will be on the line within twenty to thirty seconds at all times of day or night. Since KBHC began operating the 888-SUICIDE hotline eight years ago (and 800-SUICIDE seven years ago), the numbers have received more than two million phone calls, or approximately six-hundred-fifty calls per day.

² For a complete listing of disputed KBHC telephone numbers, see footnote 1 *infra*.

The Patriot-McLeodUSA Relationship

When KBHC first began operating the 800-SUICIDE hotline in May 1999, it purchased toll free service from Pacific Bell for a brief period of time before porting all of its toll free numbers to MCI. In June 2002, KBHC ported all fourteen of its toll free numbers, including the SUICIDE hotlines, to AT&T.³ Four years later, in April 2006, KBHC moved all its numbers, including the SUICIDE hotlines, to Patriot, a Section 214 certificated common carrier that provides toll free services. Since Patriot is not a Resp Org, Patriot uses another Section 214 certificated common carrier – McLeodUSA – as the Resp Org for the toll free numbers it serves. At Patriot’s suggestion, KBHC authorized McLeodUSA to serve as the Resp Org for KBHC’s toll free numbers in April, 2006. (Att. A – McLeodUSA/KBHC Resp Org Form).

The Current Dispute

Prior to December 2004, KBHC received a substantial portion of its funding for the operation of the SUICIDE hotlines and its other crisis and suicide prevention hotlines through a federal government mental health program administered by the Substance Abuse and Mental Health Services Administration (“SAMHSA”), an agency under the Department of Health and Human Services. When its participation in that program ended, KBHC continued to operate the toll free crisis and suicide prevention hotlines while it searched for other sources of funding. During the summer of 2006, KBHC fell behind in its payments to Patriot. This circumstance led to negotiations between KBHC, Patriot, and SAMHSA. As a result of those negotiations, SAMHSA agreed to pay the Patriot invoices on behalf of KBHC from August 25, 2006 forward until the issues surrounding KBHC’s funding were resolved. In light of this arrangement, Patriot received full payment for the toll free services on all of KBHC’s hotlines

³ Hereinafter, the “SUICIDE hotlines” shall refer to 800.SUICIDE, 888.SUICIDE, and 877.SUICIDA.

until December 1, 2006, and Patriot continues to receive funding for five of KBHC's toll free numbers, which is scheduled to continue indefinitely.⁴ As such, KBHC currently owes Patriot a limited amount for services Patriot provided before August 25, 2006.

During the course of the negotiations between KBHC, Patriot, and SAMHSA, KBHC agreed to permit the SUICIDE hotlines to be operated by SAMHSA. Initially, this agreement was to include the transfer of the numbers to SAMHSA. However, after consultation with counsel, KBHC learned that such direct transfers of toll free numbers between end-users are unlawful. KBHC then sought to revise the arrangement to accomplish the objectives in a lawful manner. However, Patriot refused to cooperate. Rather, Patriot tried to take control of the numbers so it could transfer them to SAMHSA directly. The motive, of course, is profit. In the course of this unlawful effort, Patriot took the legally indefensible position that, due to KBHC's temporary arrears in payments, all of KBHC's toll free numbers, including the SUICIDE hotlines, were legally transferred from KBHC to Patriot. Patriot claimed repeatedly in writing that Patriot, not KBHC, is now the subscriber of record for the SUICIDE hotlines as well as the other toll free crisis number. (Att. B – e-mail from Patriot) (Att. C – Patriot letter of Nov. 28, 2006). Moreover, when KBHC requested McLeodUSA, the common carrier KBHC had authorized to be its Resp Org upon Patriot's recommendation, to transfer the toll free numbers for which KBHC is the subscriber of record to another Resp Org, it appears that Patriot instructed McLeodUSA not to comply with KBHC's request. (Att. C – Resp Org Transfer request). As requested, McLeodUSA denied KBHC's request to transfer the toll free numbers to another Resp Org. (Att. D – McLeodUSA's Denial of Resp Org Transfer Request).

⁴ These five numbers include the three SUICIDE hotlines, 800-442-HOPE, and 800-827-7571.

On October 23, 2006, counsel for KBHC wrote to both Patriot and McLeodUSA to demand that KBHC's request to transfer two of the toll free numbers to another Resp Org be honored immediately. (Att. E – KBHC Letter to Patriot and McLeodUSA of Oct. 23, 2006). In this letter, counsel for KBHC cited FCC rules and orders that prohibit the transfer of toll free numbers from one end user to another, particularly under the circumstances described here. The letter explained that a common carrier cannot seize toll free numbers for which one of its customer is the subscriber of record and transfer the numbers to itself or another customer as a means of collections (or for any other reason). The letter further noted that, because both Patriot and McLeodUSA had been placed on notice of the relevant facts and law, future violations of the FCC's rules and orders by refusing to honor KBHC's request to transfer toll free numbers to a different Resp Org would be knowing and intentional. Subsequently, Patriot and McLeodUSA allowed the transfer of the two toll free numbers at issue to the Resp Org requested by KBHC.

On November 17, 2006, KBHC's agent submitted a request to McLeodUSA to transfer the remaining twelve toll free numbers for which KBHC is the subscriber of record, including the SUICIDE hotlines, to another Resp Org. McLeodUSA denied KBHC's request on the pretext that KBHC had "misspelled" its own name on the request form, even though the spelling was identical to the spelling that KBHC used in the previous request form that McLeodUSA had honored. Moreover, KBHC's name was not misspelled. Rather, KBHC's name was abbreviated to fit the limited number of characters permitted by the form. When counsel for KBHC wrote McLeodUSA challenging this denial (Att. F – KBHC Letter to McLeodUSA of Nov. 28, 2006), Patriot's counsel responded with a letter asserting, without explanation, that Patriot, not KBHC, is now the "subscriber of record" for all of KBHC's toll free numbers. (Att. C). In a demonstration of Patriot's complete indifference to the

requirements of the law, Patriot also directed KBHC to move all but three of KBHC's toll free numbers to another carrier by January 9, 2007 *in the same letter* where it claimed to be the "customer of record" for all of KBHC's toll free numbers. *Id.* Obviously, Patriot could not credibly claim to be the "customer of record" for all of KBHC's toll free numbers and then insist that KBHC transfer some of them. The three telephone numbers that Patriot indicated it intended to keep for its own were 800-SUICIDE, 877-SUICIDA, and 888-SUICIDE, all three of which were named in a letter from SAMHSA just thirteen days earlier. (Att. G – SAMHSA Letter to KBHC Counsel of Nov. 15, 2006).

Patriot's actions in response to a letter from SAMHSA to Patriot's counsel dated Nov. 29, 2006 provide further evidence of Patriot's cavalier attitude toward FCC rules. Specifically, upon learning that SAMHSA would also support (*i.e.* pay all associated toll free service fees) two other KBHC numbers, Patriot immediately expanded its claim of control of KBHC's numbers from three to five so as to include those two numbers as well. (Att. H – SAMHSA Letter to Patriot of Nov. 29, 2006) (Att. I – Patriot Letter of Dec. 4, 2006).

Tellingly, throughout this entire period, McLeodUSA assiduously avoided rejecting KBHC's transfer requests on the basis that KBHC is not the customer of record. Instead, McLeodUSA devised ludicrous subterfuges, such as alleged misspellings or lightness of type face to avoid honoring KBHC's requests. These actions confirm that McLeodUSA was supporting Patriot's scheme to take KBHC's numbers forcibly and transfer them to SAMHSA.

As a result of the illegal actions of Patriot and McLeodUSA, the current state of

KBHC's toll free numbers is as follows:

Number	Status	Comment
(877) 968-8454 [877.YOUTHLINE] (800) 773-6667 [800.PPD.MOMS]	Initially held, but McLeodUSA eventually released to another Resp Org.	Now operational with another provider
(877) 838-2838 [877.VET2VET] (800) 722-9498 (866) 771-1276 (866) 968-8454 [866.YOUTHLINE] (888) 861-8460 (877) 495-0009	Still seized by McLeodUSA despite Patriot's statement that KBHC should move or service to be discontinued on December 1, 2006	
(800) 784-2433 [800-SUICIDE] (888) 784-2433 [888-SUICIDE] (877) 784-2432 [877-SUICIDA] (800) 827-7571 (800) 442-4673 [800.442.HOPE]	Still seized by McLeodUSA, and Patriot threatens to terminate service by January 9, 2007 unless KBHC acquiesces to Patriot's claims and agrees to allow transfer to SAMHSA	Operational through agreement with SAMHSA

I. THE FCC HAS AUTHORITY UNDER 47 U.S.C. § 312(b) TO ISSUE A CEASE AND DESIST ORDER FOR VIOLATION OF COMMISSION RULES.

The FCC has authority to issue cease and desist orders under 47 U.S.C. § 312(b) when any person, including common carriers, "has violated or failed to observe any rule or regulation of the Commission" authorized by Chapter 5 of Title 47.⁵ Section 503(b)(1)(B) of the Telecommunications Act further provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.⁶ Section 1.80(b)(2) of the Commission Rules, 47 CFR § 180(b)(2) provides that the maximum amount of any penalty assessed for a single continuing violation by a common carrier is \$1,325,000. In assessing a forfeiture, Section 403(b)(2)(D) of the Act and section 1.80(b)(4) of the

⁵ 47 U.S.C. § 312; *General Tel. Co. of California v. FCC*, 413 F.2d 390, 403-04 (U.S.App.D.C. 1969).

⁶ 47 U.S.C. § 403(b)(1)(B); *see also* 47 C.F.R. § 180(a)(2).

Commission's rules require the Commission to consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. In the case of Patriot and McLeodUSA, each refusal to transfer a toll free member should be considered a separate violation, meaning there are 12 violations to be penalized here at the maximum amount.

II. PATRIOT'S ACTIONS ARE IN VIOLATION OF THE COMMISSION'S NUMBER ASSIGNMENT RULES.

Patriot has attempted to usurp KBHC's right to use the SUICIDE hotlines and its other longstanding toll free numbers in violation of the SMS/800 Tariff and FCC regulations. Telephone number assignments, including toll free numbers, are governed by the FCC and its designee, the North American Numbering Plan Administrator (currently Neustar, Inc.).⁷ Toll free numbers may only be assigned and transferred in accordance with the rules and regulations promulgated by the FCC and NANPA. These rules are found at 47 C.F.R. § 52.101 *et seq.*, the tariff is SMS/800 Functions Tariff F.C.C. No. 1 ("SMS/800 Tariff"), and the accompanying industry guidelines may be found at ATIS/OBF-TFG-013, Issue 13 (July 2003)("Toll free Guidelines").

The Commission's toll free number regulations, published in the Code of Federal Regulations at 47 C.F.R. section 52.101 *et seq.*, do not provide for toll free numbers to be transferred directly from one subscriber to another subscriber.⁸ In fact, they affirmatively

⁷ 47 C.F.R. § 52.3 ("The Commission shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.")

⁸ Letter from L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau, to Mr. Michael Wade, President, Database Service Management, Inc, *Re: Modifying SMS/800 Disconnect and Suspend Status functions to preclude transfers of toll-free numbers directly between subscribers*, DA 00-2754 (Dec. . . .Continued

prohibit such transfers and, instead, the regulations provide only for numbers to be returned to Spare Status when subscribers no longer use them.⁹ Therefore, the numbers may not be transferred from one end user to another, but instead must be returned to the numbering pool for a quiet period and then are available on a first come, first served basis.¹⁰ Thus, even if KBHC wanted to transfer its suicide and crisis prevention hotlines to SAMHSA or Patriot, it would be prohibited from doing so without express FCC approval. Patriot's attempt to take control of the KBHC numbers violates these rules, and its interference with KBHC's operations threatens to deny the public access to needed mental health services.

Furthermore, carriers may not seize control of toll free numbers or transfer them to other users as a means of bill collection. The SMS/800 Tariff states that ownership of all telephone numbers rests with the government – “no individual or entity ... has a proprietary interest in any given toll free number; however, subscribers do have a controlling interest in their active numbers.”¹¹ The SMS/800 Tariff does not contain any exceptions to the controlling interest that subscribers have in their active numbers. Thus, the seizure by a common carrier of a toll free number would usurp the controlling interest that the subscriber has in the toll free number and violate the SMS/800 Tariff. Similarly, Section 2.3.1(A)(7) of the SMS/800 Tariff provides that “[a]ll entities (e.g., Resp Orgs, subscribers, service providers) are prohibited from

6, 2000); *See Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-155, 12 F.C.C.Rcd. 11162 (1997).

⁹ 47 C.F.R. § 52.103.

¹⁰ SMS/800 Tariff, § 2.2.1 (“The Resp Org will not perform any functions using the SMS/800 which are not expressly provided for under this tariff . . . Any violation of this paragraph may result in immediate termination of service by the company.”).

¹¹ SMS/800 Tariff, § 2.3.1(A)(7).

selling, brokering, bartering, and releasing for a fee (or otherwise) any toll free 800 number.”¹²

Seizing a toll free number as a means of satisfying a delinquent bill constitutes the “bartering” or “selling” of the toll free number since the number in effect would be transferred in exchange for satisfaction of a debt.

That these rules were known to Patriot cannot be in doubt. First, as an authorized Section 214 carrier, Patriot is legally obligated to know and comply with FCC rules, including rules on number assignment and transfer. Second, on October 23, 2006, counsel for KBHC wrote Patriot and McLeodUSA and explained the FCC rules and the facts surrounding the KBHC numbers. In response, Patriot made no challenge to the position stated in the letter, other than the indefensible assertion that Patriot is the “customer of record”. McLeodUSA simply refused to respond at all. When counsel for KBHC wrote again on this topic on November 28, 2006 (Att. F), again McLeodUSA remained silent and counsel for Patriot wrote only to repeat its false and unsupportable assertion that Patriot is the “subscriber of record.” (Att. G) Thereafter, McLeodUSA again refused to honor KBHC’s request for a change of Resp Org on the laughably unclever claim that the typeface on the request form was too light to read. (This response was even more ludicrous than McLeodUSA’s previous refusal based on the claim that KBHC had misspelled its own name on the Resp Org change form.)

These facts show a complete indifference to the FCC’s rules and to the rights of KBHC as the subscriber of record of its toll free numbers. The intentional violations of both Patriot and McLeodUSA are shocking in the context of their indisputably clear knowledge of the relevant Commission regulations and policies

¹² SMS/800 Tariff, § 2.3.1(A)(8) (“All entities (e.g., Resp Orgs, subscribers, service providers) are prohibited from selling, brokering, bartering, and releasing for a fee (or otherwise) any toll-free 800 number.”)

III. MCLEODUSA HAS NO LEGAL BASIS FOR ITS REFUSAL TO TRANSFER ITS RESP ORG RESPONSIBILITIES TO ANOTHER RESP ORG OF KBHC'S CHOOSING.

A. KBHC Has The Absolute Right to Change The Resp Org and Service Provider for Its Toll Free Numbers.

As the subscriber listed in the SMS/800 database, KBHC has a controlling interest in its active numbers.¹³ This interest includes the right to, at will, change the Resp Org and service provider for its toll free numbers. In fact, the tariff explicitly states that subscribers “retain the use of their number assignments, even following changes in their 800 Service Providers and/or Resp Org.”¹⁴ Thus, control over the Resp Org and service providers for any active toll free number remains at all times with the subscriber, here KBHC. Neither the Resp Org nor the service provider has a controlling interest in keeping the number with their particular service. In fact, the SMS/800 Tariff forbids any such an action – under the terms of the Tariff, a Resp Org may only take actions expressly provided for in that document and no provision of the Tariff enables a Resp Org to deny a request for a Resp Org change.¹⁵

Furthermore, as a Resp Org, McLeodUSA *is obligated to honor the request* of a subscriber for a change of Resp Org. Under section 2.3.1(C) of the SMS/800 Tariff, “the current Resp Org *will release* the 800 subscriber’s SMS/800 records to the receiving (new) Resp Org within two (2) days of the receipt of the request.”¹⁶ The language of the tariff makes clear that the release of the 800 subscriber’s records is mandatory, not optional. Each time KBHC

¹³ SMS/800 Tariff, § 2.3.1(A)(7) (“No individual or entity (e.g., subscriber, service provider) has a proprietary interest in any given toll free number; however, subscribers do have a controlling interest in their active numbers.”).

¹⁴ SMS/800 Tariff, § 2.3.1(A)(9).

¹⁵ SMS/800 Tariff, § 2.2.1 (“The Resp Org will not perform any functions using the SMS/800 which are not expressly provided for under this tariff . . . Any violation of this paragraph may result in immediate termination of service by the company.”).

¹⁶ SMS/800 Tariff, § 2.3.1(C)(1) (emphasis added).

asked McLeodUSA to transfer KBHC's toll free number to another Rep Org, McLeodUSA waited beyond the two-day limit and then denied the request based on some ridiculous pretext – once McLeodUSA denied the request claiming that KBHC had incorrectly spelled its own name. As explained above, the spelling was exactly the same as in previous successful requests for transfers of other numbers. Another time, McLeodUSA denied the request because the typeface was too light. Never was the denial said to be based on the veracity of Patriot's claim to be the subscriber of record. As such, these denials were a transparent attempt by Patriot and McLeodUSA to deny KBHC's right to control its toll free numbers. McLeodUSA's refusal to release KBHC's toll free numbers constitutes a breach of the SMS/800 Tariff and the FCC's rules. The Commission should order McLeodUSA to immediately rectify the situation and then begin an investigation to examine whether to revoke McLeodUSA's Resp Org status.

B. McLeodUSA and Patriot Have Illegally Conspired to Deny KBHC the Right to Change its Resp Org.

During the past eight years, the SMS/800 database has listed the Kristin Brooks Hope Center as the sole “Toll Free Service End User Subscriber” for its 14 toll free numbers. The Toll Free Guidelines define the term “Toll Free Service End-User Subscriber” as follows:

The entity which subscribes to Toll Free Service¹⁷ from the Toll Free Service Provider.¹⁸ This entity defines and manages all final termination points for the Toll Free Service, and takes ultimate financial responsibility for tariff usage charges resulting from callers dialing the Toll Free number.¹⁹

¹⁷ See Toll Free Guidelines at 26, § 6 (“Toll Free Service: A telecommunications service for which the dialing party incurs no toll charges.”)

¹⁸ See Toll Free Guidelines at 26, § 6 (“Toll Free Service Provider: Telecommunications company that offers Toll Free Service to its customer.”). Here, Patriot is the Toll Free Service Provider. As discussed above, McLeodUSA provides Resp Org services.

¹⁹ Toll Free Service Guidelines at 28, § 6 (footnotes added).

Of necessity, KBHC had to work closely with its service provider, Patriot, and its Resp Org, McLeodUSA, to ensure that mental health services are delivered to individuals dialing KBHC's phone numbers. At all times, KBHC alone designated the termination points for its toll free numbers, and KBHC has always accepted full responsibility for its debts resulting from the tariff usage charges. Therefore, Patriot has no claim to being an "End-User Subscriber" of any of the disputed numbers.

Similarly, Patriot cannot claim that any of KBHC's toll free numbers are "shared use" numbers.²⁰ The Toll Free Guidelines define "Shared Use Toll Free Service" as "[a] Toll Free Service which terminates traffic to more than one purchaser based upon some unique identification capabilities (e.g., PINs, authorization codes)."²¹ KBHC has always been the sole purchaser of services from Patriot and terminated the traffic itself – usually to a mental health organization near the caller, free of charge to both the caller and to the mental health organization. Moreover, no unique identification capabilities have ever been associated with any of KBHC's numbers.

IV. THE COMMISSION SHOULD ISSUE A NOTICE OF APPARENT LIABILITY AND IMPOSE THE MAXIMUM FINE ON MCLEODUSA AND PATRIOT FOR THEIR WILLFUL AND EGREGIOUS DISREGARD FOR FCC RULES AND INDEFENSIBLE ACTIONS.

Section 503(b)(1)(B) of the Telecommunications Act provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable

²⁰ McLeodUSA has rejected KBHC's requests for a Resp Org change on the following grounds: 1) a "Company Name Mismatch"; 2) an "Address Mismatch"; 3) a "Signature Mismatch"; 4) that the number in question is a "Non Portable / Shared Number." (Att. J – Resp Org Reject Sheet).

²¹ Toll Free Guidelines at 25, § 6.

for a forfeiture penalty.²² Commission Rule § 1.80(b)(2) provides that the maximum amount of any penalty assessed for a continuing violation by a common carrier is \$1,325,000. In assessing a forfeiture, Section 403(b)(2)(D) of the Act and section 1.80(b)(4) of the Commission's rules require the Commission to consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.

Here, Patriot's actions are indefensible. Patriot has acted repeatedly in violation of Commission rules by falsely holding itself out as the subscriber of record for the SUICIDE hotlines as well as KBHC's other numbers, by interfering with KBHC's right to change Resp Org, and by illegally attempting to foreclose on KBHC's crisis and suicide hotlines in satisfaction of the debts owed to it by KBHC. Now, Patriot threatens to cut off unilaterally the public's ability to access vital mental health services through KBHC's toll free-hotlines. Such egregious disregard for the Commission's rules, combined with Patriot's blatant contempt for public safety, more than justifies the imposition of the maximum fine possible. Therefore, KBHC requests that the Commission issue a Notice of Apparent Liability for Patriot's violation of Commission Rules in the amount of \$1,325,000. Since this conduct constitutes a separate violation for each of the 12 toll free numbers, this penalty should be imposed 12 times, for a total forfeiture of \$15,900,000.

V. **PATRIOT'S DISCONTINUATION OF SERVICE WOULD JEOPARDIZE THE AMERICAN PUBLIC.**

The SUICIDE hotlines collectively receive more than 1,000 calls per day. If, as Patriot has threatened, Patriot ceases to route calls to KBHC on January 9, 2007, and

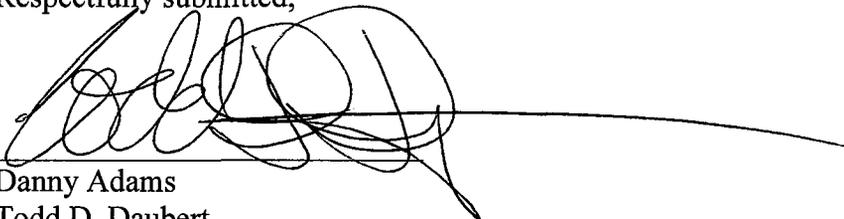
²² 47 U.S.C. § 403(b)(1)(B); *see also* 47 C.F.R. § 180(a)(2).

McLeodUSA continues to refuse to release KBHC's numbers to another Resp Org, people who wish to call the SUICIDE hotlines or the crisis hotlines in order to receive counseling would be irreparably harmed. The only reason Patriot has made this threat is to force KBHC to ratify the unlawful actions of Patriot and McLeodUSA. Patriot is being paid for usage of its services on the KBHC numbers. There is nothing magical about January 9. It is simply a date chosen out of thin air by Patriot as a means to bludgeon KBHC. The threat is only meaningful because KBHC cannot simply move to another carrier because McLeodUSA unlawfully refuses to release the numbers. Thus, there is a real threat to public safety, but the cure is not to take KBHC's numbers and give them to another user. Rather it is to order McLeodUSA to allow the numbers to be moved so that another service provider can continue serving them. Therefore, KBHC asks that the Commission direct McLeodUSA to release the numbers and enjoin Patriot from discontinuing service until they can be moved to another provider. This will alleviate the artificially contrived "emergency" that exists solely by virtue of the ongoing unlawful acts of Patriot and McLeodUSA.

CONCLUSION

For the foregoing reasons, KBHC respectfully requests the Commission to issue, on an expedited basis, a cease and desist order enjoining Patriot and McLeodUSA from refusing to recognize KBHC as the subscriber of record for its toll free numbers, including the SUICIDE hotlines, and ordering McLeodUSA to release the numbers to KBHC's Resp Org of choice. Further, KBHC requests that the Commission issue a Notice of Apparent Liability proposing the maximum financial penalty of \$15,900,000 for the egregious behavior of both Patriot and McLeodUSA in the course of this dispute and, in the case of McLeodUSA, proposing revocation of its Resp Org status.

Respectfully submitted,



Danny Adams
Todd D. Daubert
J. Isaac Himowitz
KELLEY DRYE & WARREN LLP
3050 K. Street, NW Suite 400
Washington, DC 20007
(202) 342-8400
(202) 342-8451 (facsimile)
dadams@kelleydrye.com

Counsel for Petitioner
KRISTIN BROOKS HOPE CENTER

December 15, 2006

CERTIFICATE OF SERVICE

I, Michele A. Depasse, hereby certify that on this 15th day of December, 2006, the foregoing "Petition for Cease and Desist Order and for Sanctions Against Patriot Communications LLC and McLeodUSA Incorporated" was sent via first-class U.S. Mail to the following parties:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
(via ECFS)

Janice Myles
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-C140
Washington, DC 20554
(via Email: Janice.myles@fcc.gov)

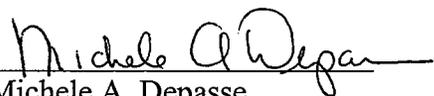
Heather T. Hendrickson
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
(via Email: heather.hendrickson@fcc.gov)

Mr. William A. Haas
Vice President and Deputy General Counsel
McLeodUSA Telecommunications
Services, Inc.
6400 C Street S.W.
Cedar Rapids, IA 52406

Rina Hakimian, Attorney
SAMHSA Team
Office of the General Counsel
Department of Health and Human Services
Public Health Division
Room 4A-53 Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

Lee E. Hejmanowski
Seltzer Caplan McMahon Vitek
2100 Symphony Towers
350 B Street
San Diego, CA 92101
Counsel to Patriot Communications, LLC

Best Copy and Printing, Inc.
Portalls II,
445 12 Street, N.W.
Room CY-A257
Washington, DC 20554
(via email fcc@bcpiweb.com)


Michele A. Depasse