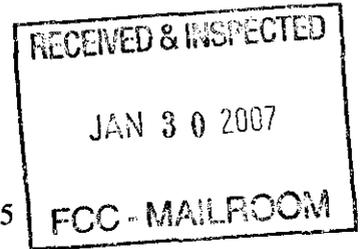


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)

Toll Free Service Access Codes)

CC Docket No. 95-155)

ORDER

Adopted: January 22, 2007

Released: January 22, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants, in part, the emergency request of the Substance Abuse and Mental Health Services Administration (SAMHSA), a component of the United States Department of Health and Human Services (HHS), to reassign five toll-free numbers utilized as suicide prevention hotlines to SAMHSA.¹ Specifically, we direct McLeodUSA Telecommunications Services, Inc. (McLeod), the Responsible Organization (RespOrg), to port the toll-free numbers 1-800-SUICIDE (1-800-784-2433), 1-888-SUICIDE (1-888-784-2433), and 1-877-SUICIDA (1-877-784-2432) (collectively, the suicide prevention hotlines) to a RespOrg of SAMHSA's choice. We grant this reassignment of the suicide prevention hotlines for a period of one year. As explained below, we conclude that temporarily reassigning the suicide prevention hotlines to SAMHSA is critical to minimize the potential loss of life due to callers in need being unable to connect immediately with a crisis center that can dispatch emergency services. During the duration of this temporary reassignment, we will examine the continued utility and effectiveness of our action to determine whether any extension is warranted or whether we should revisit or modify this reassignment.² We do not find the same potential public health crisis exists with respect to the other toll-free numbers for which SAMHSA seeks reassignment and, therefore, we deny SAMHSA's request with respect to those toll-free numbers.³

II. BACKGROUND

2. There are several parties involved in the past and present provision of the suicide prevention hotlines. SAMHSA, a component of HHS, supports efforts to prevent suicide through the Garrett Lee

¹ See Letter from Eric B. Broderick, D.D.S., M.P.H, Acting Deputy Administrator of the Substance Abuse and Mental Health Services Administration, Assistant Surgeon General, to Kevin J. Martin, Chairman, FCC, CC Docket No. 95-155 (filed Dec. 12, 2006) (SAMHSA Dec. 12 Letter). The Commission issued a Public Notice on December 13, 2006 regarding SAMHSA's request. See *Pleading Cycle Established for Comments on the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration Emergency Request for the Permanent Reassignment of Five Toll-Free Suicide Prevention Numbers*, Public Notice, CC Docket No. 95-155, DA 06-2507 (WCB Dec. 13, 2006).

² See, e.g., *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 20 FCC Rcd 15089, 15091, para. 6 (2005) (reassigning temporarily the toll-free number that spells 1-800-RED-CROSS to the national chapter of the American Red Cross) (*Red Cross Order*); *Toll Free Services Access*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925 (WCB 2006) (assigning permanently 1-800-RED-CROSS and 1-888-RED-CROSS).

³ The two other toll-free numbers for which SAMHSA seeks reassignment are: 1-800-442-4673 (1-800-442-HOPE); and 1-800-827-7571 (collectively, the other toll-free numbers). See SAMHSA Dec. 12 Letter at 1. We are hopeful that the parties will negotiate a solution with regard to these additional numbers.

Smith Memorial Act programs for youth suicide prevention, and the National Suicide Prevention Lifeline, which serves as a central switchboard that immediately connects callers to over 120 certified crisis centers around the country.⁴ From September 2001 through March 2005, SAMHSA funded the American Association of Suicidology (AAS) to work on the certification and networking of local crisis centers using a national toll-free number.⁵

3. The Kristin Brooks Hope Center (KBHC), a private, non-profit organization, has operated toll-free hotlines since 1998.⁶ KBHC received funds under AAS's grant to provide toll-free networking services using 1-800-SUICIDE.⁷ According to KBHC, after receiving toll-free services from PacWest, MCI, and AT&T, in April 2006, KBHC ported all of its numbers, including the suicide prevention hotlines, to McLeod and began receiving toll-free services from Patriot Communications, LLC (Patriot), which is not a RespOrg.⁸

4. On August 25, 2006, the Secretary of HHS sent a letter to Chairman Martin expressing concern that 1-800-SUICIDE may be placed on disconnect status as early as August 26, 2006 and, as a result, suicidal callers would be confronted with a non-working line, or be advised that they must dial another number before receiving assistance.⁹ In his letter, Secretary Leavitt requested that 1-800-SUICIDE be temporarily reassigned to SAMHSA to avoid a "public health crisis" that could occur from the disconnection of this national hotline, which receives 30,000 calls per month.¹⁰

5. On August 25, 2006, SAMHSA reached an agreement with Patriot and KBHC to assume financial and operational responsibility for the suicide prevention hotlines.¹¹ Since that time, however, disputes as to the subscriber of record for the suicide prevention hotlines and the other toll-free numbers have abrogated the parties' agreement.¹² These disputes culminated in a November 28, 2006 letter from

⁴ See Letter from Michael O. Leavitt, Secretary, United States Department of Health and Human Services, to Kevin J. Martin, Chairman, FCC at 2 (filed Aug. 25, 2006) (SAMHSA Aug. 25 Letter).

⁵ See Supplemental Petition of the United States Department of Health and Human Services in Support of its Request for Reassignment of Toll Free Suicide Prevention Numbers, CC Docket No. 95-155 (filed Dec. 20, 2006) (SAMHSA Supplement), Declaration of Eric Broderick at 1 (Broderick Decl.).

⁶ See KBHC Comments at 1.

⁷ See SAMHSA Supplement Broderick Decl. at 1.

⁸ See KBHC Comments at 3.

⁹ See SAMHSA Aug. 25 Letter at 1-2 (explaining that due to issues of KBHC's non-payment to Patriot, 1-800-SUICIDE was scheduled to be disconnected by Patriot as early as August 26, 2006); see also KBHC Comments at 4 (stating that "during the summer of 2006, KBHC fell behind in its payments to Patriot"). The record also shows that KBHC was in default of payment for 1-800-SUICIDE with its prior RespOrg and service provider, AT&T. See Letter from Michelle Sclater, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket 95-155 (filed Dec. 29, 2006) (AT&T Dec. 29 *Ex Parte* Letter).

¹⁰ SAMHSA Aug. 25 Letter at 2.

¹¹ See SAMHSA Dec. 12 Letter at 1; see also SAMHSA Supplement Broderick Decl. at 2 ("On August 25, 2006, SAMHSA assumed financial and operational responsibility for 1-800-SUICIDE and twelve other toll free numbers previously maintained by KBHC, who was a customer of Patriot Communications LLC."); KBHC Comments at 5 (stating that in August 2006, KBHC agreed to permit the suicide prevention hotlines to be operated by SAMHSA). KBHC later claims that SAMHSA only assumed operational responsibility for 1-800-SUICIDE. See Letter from Danny E. Adams, Counsel for Kristin Brooks Hope Center, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155 at 2 (filed Dec. 22, 2006) (explaining that KBHC has searched its notes and records and cannot find any reference to SAMHSA assuming operational control of any number other than 1-800-SUICIDE).

¹² See KBHC Comments at 5-8; see also Kristin Brooks Hope Center and 1-800-SUICIDE Petition for Cease and Desist Order and For Sanctions Against Patriot Communications LLC and McLeodUSA Incorporated, CC Docket

(continued....)

Patriot's counsel stating that Patriot will cease routing telephone calls to the suicide prevention hotlines and the other toll-free numbers at 12:01 am on January 9, 2007 if no written agreement is reached between SAMHSA and KBHC.¹³ Accordingly, on December 12, 2006, SAMHSA renewed and updated its emergency request to reassign the suicide prevention hotlines and the other toll-free numbers to SAMHSA.¹⁴ Specifically, SAMHSA requests that the Commission direct McLeod to port these numbers to the RespOrg of SAMHSA's choosing.¹⁵

III. DISCUSSION

6. In order to ensure that individuals at risk for suicide receive the critical assistance they need, the Bureau directs McLeod, as the RespOrg, to port the suicide prevention hotlines to the RespOrg of SAMHSA's choice immediately in accordance with the Commission's porting rules.¹⁶ Moreover, we direct the Database Service Management, Inc. to facilitate the reassignment of the suicide prevention hotlines to SAMHSA to the extent necessary to implement this Order. This temporary reassignment will last for a period of one year. During the duration of this temporary reassignment, we will examine the continued utility and effectiveness of our action, as well as any permanent agreement negotiated among the parties, to determine whether any extension is warranted or whether we should revisit or modify this reassignment.

7. The Communications Act of 1934, as amended (the Act), grants the Commission exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States."¹⁷ The Act requires the Commission to "ensure the efficient, fair, and orderly allocation of toll-free numbers."¹⁸ In addition to exclusive jurisdiction over numbering resources, the Commission also has an obligation to protect public safety¹⁹ and has broad authority to execute its functions.²⁰ Telephone numbers are a public resource and neither carriers nor subscribers "own" their telephone numbers.²¹

(...continued from previous page)

95-155, Attach. E (filed Dec. 15, 2006); SAMHSA Supplement. We are not addressing the merits of, or the relief sought by, KBHC's petition in this Order.

¹³ See KBHC Comments Attach. C; see also SAMHSA Supplement.

¹⁴ SAMHSA Dec. 12 Letter at 1.

¹⁵ SAMHSA Dec. 12 Letter at 1; SAMHSA Supplement at 3.

¹⁶ See 47 C.F.R. §§ 52.20 *et seq.* McLeod has stated in a letter to the Commission that it will "promptly port these toll free [suicide prevention hotlines] to the carrier and/or responsible organization designated by SAMHSA." Letter from William A. Haas, Vice President, Deputy General Counsel McLeodUSA Telecommunications Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155 (filed Dec. 19, 2006).

¹⁷ 47 U.S.C. § 251(e)(1).

¹⁸ *Toll Free Service Access Codes*, CC Docket No. 95-155, Second Report and Order, 12 FCC Rcd 11162, 11176, para. 18 (1997) (*Toll Free Second Report and Order*); see also 47 U.S.C. §§ 151, 251(e).

¹⁹ 47 U.S.C. § 151.

²⁰ 47 U.S.C. § 154(i). Furthermore, section 1.3 of our rules authorizes the Commission to suspend, revoke, amend, or waive a Commission rule for good cause shown. 47 C.F.R. § 1.3. This rule provides that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown." *Id.*

²¹ *Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9061, n.14 (1998) (*Toll Free Fourth Report and Order*); see also *Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, 10 FCC Rcd 13692, 13702, para. 36 (1995); *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591, para. 4 (1995).

Courts have found that no one has a property interest in a telephone number.²² In addition, the Commission has created regulations and emphasized the importance of guarding against warehousing, hoarding, and brokering of toll-free numbers to ensure that numbers are made available on an equitable basis.²³

8. Consistent with this regulatory framework, toll-free numbers are made available to end users on a first-come, first-served basis unless otherwise directed by the Commission.²⁴ However, the plain language of section 52.111 of the Commission's rules authorizes the Commission to direct assignment of toll-free numbers on a basis different than the usual first-come, first-served basis.²⁵ We find that due to the ongoing disputes between the parties involved, the Commission's interest in preserving this public service by ensuring the continuation of the services provided by the suicide prevention hotlines, and the vast number of calls made to them seeking assistance, a deviation from the first-come, first-served rule is warranted in this extraordinary, emergency situation.²⁶ Given the record of discord among the parties involved, as well as KBHC's history of being unable to pay its service providers, our action is warranted regardless of Patriot's deadline to ensure an orderly transition of service without possible interruption that could jeopardize the ability of callers in crisis to reach the assistance they need.²⁷ The fact that a public health crisis will occur if these parties fail to come to an agreement is too great a risk.²⁸

9. We reject KBHC's claim that the Commission need not be worried about KBHC's financial ability to sustain the suicide prevention hotlines.²⁹ As stated in the record, SAMHSA has assumed financial and operational responsibility for the suicide prevention hotlines since August 2006 because of outstanding monies owed by KBHC to Patriot.³⁰ Indeed, KBHC was in default for non-payment to AT&T, its previous RespOrg before porting 1-800-SUICIDE to McLeod.³¹ The financial vulnerability surrounding KBHC's provision of the suicide prevention hotlines poses a significant threat to the continued availability of this critical public service.

10. We do not find that SAMHSA's request for reassignment of the two other toll-free numbers rises to the same level of emergency as the suicide prevention hotlines and therefore, we deny

²² See, e.g., *StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004).

²³ See *Toll Free Second Report and Order*, 12 FCC Rcd at 11179, para. 22; *Toll Free Fourth Report and Order*, 13 FCC Rcd at 9061, para. 6.

²⁴ See 47 C.F.R. § 52.111.

²⁵ Section 52.111 of the Commission's rules states: "Toll free numbers shall be made available on a first-come, first-served basis *unless otherwise directed by the Commission.*" 47 C.F.R. § 52.111 (emphasis added).

²⁶ See, e.g., SAMHSA August 25 Letter at 2 (stating that 1-800-SUICIDE receives 30,000 calls per month); see also American Association of Suicidology Comments at 1 (supporting Commission action to stabilize the operation of 1-800-SUICIDE by transferring the number to SAMHSA); National Association of State Mental Health Program Directors Comments at 1-2 (stating that the Association is "deeply concerned" that any break in hotline availability could result in loss of life and that FCC action is necessary to ensure the continued use of this public service).

²⁷ See *Opposition of Patriot Communications LLC to Kristin Brooks Hope Center's Petition for Cease and Desist and For Sanctions* at 1 (filed Jan. 3, 2007) (stating that Patriot will continue to provide service to the numbers beyond January 9, 2007).

²⁸ We emphasize that we are taking this extraordinary, emergency action in light of the life-threatening situation posed by the potential loss of this critical public service. See, e.g., *Red Cross Order*, 20 FCC Rcd at 15089, para. 1 (reassigning temporarily 1-800-RED CROSS in the wake of Hurricane Katrina).

²⁹ KBHC Comments at 12.

³⁰ See SAMHSA Supplement Broderick Decl. at 2; see also KBHC Comments at 4.

³¹ See AT&T Dec. 29 *Ex Parte* Letter at 1.

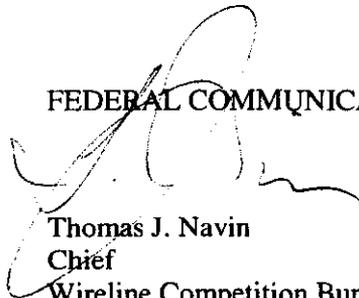
SAMHSA's request with respect to those numbers. 1-800-827-7571 is no longer being promoted as a suicide prevention hotline and 1-800-442-4673 is not explicitly promoted as a suicide prevention hotline.³² Therefore, we do not find that an emergency reassignment is necessary for the other toll-free numbers requested by SAMHSA and deny the request with respect to those numbers.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251(e), sections 1.3 and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.111, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291,³³ that McLeodUSA Telecommunications Services, Inc. port the toll-free numbers 1-800-784-2433 (1-800-SUICIDE), 1-877-784-2432 (1-877-SUICIDA), and 1-888-784-2433 (1-888-SUICIDE), to the Responsible Organization chosen by the Substance Abuse and Mental Health Services Administration, a component of the United States Department of Health and Human Services, as described herein and that the Database Service Management, Inc. facilitate this reassignment to the extent necessary. The request of the Substance Abuse and Mental Health Services Administration otherwise IS DENIED.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 251(e) and 408 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that this action IS EFFECTIVE IMMEDIATELY UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin
Chief
Wireline Competition Bureau

³² See SAMHSA Supplement Broderick Decl. at 2-3.

³³ See 47 U.S.C. § 155(c).