

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

In the Matter of)	
SAMHSA EMERGENCY REQUEST FOR)	CC Docket No. 95-155
THE PERMANENT REASSIGNMENT)	
OF FIVE TOLL FREE SUICIDE)	
PREVENTION NUMBERS)	
)	
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To: The Commission

REPLY TO OPPOSITION TO APPLICATION FOR REVIEW

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March 19, 2007

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The Kristin Brooks Hope Center (KBHC), by its attorneys and pursuant to section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, hereby submits this Reply to the Opposition to Application for Review submitted by the Substance Abuse and Mental Health Services Administration (SAMHSA) in the above-referenced docket.¹ KBHC seeks a review of the Order issued by the Chief of the FCC Wireline Competition Bureau (WCB) on January 22, 2007, reassigning three toll free suicide prevention numbers to SAMHSA.

Petitioner submits this filing to address certain points raised by SAMHSA in its Opposition, and to dispute certain allegations contained in the Opposition.

I. SAMHSA FAILED TO RESPOND TO KBHC’S ARGUMENTS IN ITS APPLICATION FOR REVIEW.

In its Opposition to KBHC’s Application for Review, SAMHSA fails to respond substantively to any of the issues raised by Petitioner. At no point in its Opposition does

¹ In the Matter of Toll Free Service Access Codes, *Order*, DA 07-130 (rel. Jan. 22, 2007) (hereinafter “800-SUICIDE Order” or “Order”).

SAMHSA contradict KBHC's assertion that no "emergency" justifying the WCB's departure from the established numbering rules existed at the time the Bureau issued the Order. Instead, the record in this docket clearly indicates that the continued operation of the suicide prevention hotlines was not threatened at the time the WCB took action. Furthermore, SAMHSA has failed to generate any record concerning KBHC's finances at any stage of this proceeding, yet it predicated its emergency request for number reassignment on the fact that KBHC allegedly could not fund the hotlines on its own. Indeed, SAMHSA has never shown why the finances of KBHC were relevant at all. Rather, the key issue in this dispute is the availability of the hotlines to the American public, and at the time the Bureau issued its ruling, the continued operation of the suicide hotlines was not in doubt. The major arguments in the Application which support Commission reversal of the WCB Order – the absence of record support for the conclusions that an emergency existed or that KBHC's finances were inadequate to continue operating the numbers – remain unrefuted by SAMHSA.

Respondent also fails to address the statutory and constitutional issues raised by KBHC in its Application for Review. SAMHSA remains silent in response to KBHC's argument that the Chief of the Wireline Competition Bureau acted beyond the scope of his delegated authority when he ordered the unprecedented transfer of the toll free numbers outside of the numbering rules in the absence of an emergency. Respondents also neglect KBHC's argument that the transfer of the toll free numbers constitutes a taking without due process in violation of the Fifth Amendment. Furthermore, the WCB Order made no accommodation for compensation to KBHC for the loss of its key assets, also a Fifth Amendment violation. Both the statutory and constitutional issues require review by the Commission.

Most of SAMHSA's Opposition focuses on the agency's own grant-making process, arguing that it never "funded" nor "ceased to fund" KBHC and the suicide prevention hotlines.² However, both parties agree that for significant periods, funds provided by SAMHSA were used to run the suicide prevention hotlines.³ Whether this funding came through grants or through indirect spending is a distinction without a difference. KBHC started 888-SUICIDE in 1998, and 800-SUICIDE in 1999, and operated them continuously until August of 2006, handling over 2 million calls in the process. During much of that time, KBHC was funded indirectly by SAMHSA grants to the American Association of Suicidology (AAS). SAMHSA was aware of this in 2004 when it terminated its support to the AAS and, as a result, to KBHC and 800-SUICIDE. At that time, SAMHSA entered into a cooperative agreement with another entity to initiate a competitive hotline, 1-800-273-TALK. In so doing, SAMHSA made the implicit determination that KBHC's mission of suicide prevention and its operation of the suicide prevention hotlines were not worth funding. Indeed, in the grant announcement to fund the new competitive hotline, SAMHSA stated the line would be owned by the SAMHSA and would be a life affirming number, thereby excluding 1-800-SUICIDE. (In fact, the line is operated by SAMHSA but SAMHSA is not the customer of record, as explained in the Application.) It was only two years later that SAMHSA declared that it was "gravely concerned" that the 800-SUICIDE numbers might become inactive and began proceedings to take over the numbers itself.⁴

² SAMHSA *Opposition to Application for Review* filed March 8, 2007 at 5.

³ *Id.*

⁴ Letter from Eric Broderick, Assistant Surgeon General, to Kevin Martin, Chairman, Federal Communications Commission (Dec. 12, 2006).

Beyond SAMHSA's meaningless distinction with respect to the funding of suicide prevention hotlines, SAMHSA fails to respond to any other of the points raised in the Application for Review.

II. NO OTHER PARTY HAS OPPOSED THE APPLICATION FOR REVIEW.

One further telling fact is that no entity other than SAMHSA has chosen to oppose KBHC's Application for Review. This reflects the broad support KBHC has received from the mental health community, which has largely supported KBHC in the current dispute. This also reflects the fact that the community recognizes that KBHC has the right to have its concerns addressed by the full Commission, and the issues should not be shortstopped at the office of the Chief of the Wireline Competition Bureau.

III. REVIEW BY THE COMMISSION IS NECESSARY TO DETERMINE THE ULTIMATE AFFECT OF THE ORDER.

Neither SAMHSA nor the Wireline Competition Bureau has addressed either of two important procedural matters. First, the WCB failed to state in its Order what conditions KBHC must meet in order to regain the use of its hotlines. Specifically, the Order is silent on what type of financial, organizational, or legal showings must be made to establish to the Bureau's satisfaction that KBHC can operate the phone numbers indefinitely. This omission is the direct by-product of the lack of a record on which to base a decision. Since the WCB had no actual knowledge of either the cost to operate the hotlines or of KBHC's finances, it was not able to establish a benchmark showing for the return of the numbers to KBHC. The only "evidence" cited by the Order is that KBHC had billing disputes with two prior carriers. In fact, one of those disputes has since been resolved and the other is in settlement discussions. Does this mean the numbers should now be returned to KBHC? It should.

Secondly, neither the Order nor Commission precedent establishes what will occur at the end of the one-year temporary reassignment. It is KBHC's position that the numbers should be returned to it upon a showing that it is capable of operating the numbers, and that this should occur at the earliest time upon which such a showing can be made. Since the only requisite finding that was made to support the reassignment was financial ability to operate the numbers, the temporary reassignment should end when KBHC makes that financial showing. Even SAMHSA offered no other reason why KBHC should not have its toll-free numbers back if it demonstrates financial ability to operate them. The Commission should act to ensure that there is a fair process for KBHC to regain the right to operate the suicide prevention numbers it created and has supported since 1998.

IV. CONCLUSION

For the foregoing reasons and the reasons articulated in its Application for Review, KBHC respectfully requests that the Commission reverse the order of the Wireline Competition Bureau and grant its Application for Review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on March 19, 2007, this Reply to Opposition to Application for Review was mailed to the following:

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