

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DANNY E. ADAMS

DIRECT LINE: (202) 342-8889

EMAIL: dadams@kelleydrye.com

June 15, 2009

VIA ECFS

The Honorable Michael J. Copps
Acting Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *KBHC Application for Review; Toll Free Service Access Codes, CC Docket No. 95-155; SAMHSA Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers, WC Docket No. 07-271.*

Dear Chairman Copps:

This letter updates the record in the above-captioned matters concerning the three toll-free suicide prevention hotlines (“Suicide Prevention Hotlines”) temporarily taken from the Kristin Brooks Hope Center (“KBHC”) and reassigned to the Substance Abuse and Mental Health Services Administration (“SAMHSA”) for 12 months. This letter and other materials in the record demonstrate KBHC’s financial strength and alleviate any remaining concern the Commission might have about KBHC’s ability to operate the lines.¹ Despite arguments made by SAMHSA for permanent reassignment, the record shows KBHC is financially sound and there is no basis to continue the temporary reassignment. For this reason, the numbers should be promptly reassigned to KBHC so it can continue its suicide prevention mission using its trademarked, signature 800-SUICIDE number.

History and Overview of KBHC Services. KBHC is an 11-year-old, private, non-profit organization dedicated to suicide prevention. KBHC Founder H. Reese Butler created the organization in 1998 as a tribute to his wife, Kristin Brooks, who committed suicide after

¹ Numbers temporarily reassigned by the Commission are 800-SUICIDE; 888-SUICIDE, and 8787-SUICIDA. On May 14, 2009, the Wireline Competition Bureau requested that parties submit more information to the record to better assist the Commission in light of existing time constraints. *Toll Free Service Access Codes, Order, CC Docket No. 95-155 (rel. May 14, 2009).*

The Honorable Michael J. Copps
June 15, 2009
Page Two

struggling with depression. Mr. Butler initially funded KBHC by selling the home he once shared with his late wife and combining that income with her life insurance. As KBHC has expanded over the ensuing years, it has handled more than three million calls from individuals contemplating suicide or from friends and family concerned about their troubled loved-ones.

KBHC utilizes automatic geographical routing services to route incoming calls to crisis counselors working within a caller's community. KBHC currently operates 11 other hotlines, which route calls to hundreds of suicide prevention centers where crisis staff assess how to help the callers. For many of these centers, KBHC's services provide the majority of incoming calls. The combination of 24-hour staffing at these centers and the use of KBHC's advanced routing technology ensure callers have access to counseling at any time of day or night. It should be noted that KBHC operates and publicizes the hotlines, but it does not operate the crisis counseling centers, which are themselves typically private non-profit organizations. This is the same function that is performed by SAMHSA, or rather by the contractor whom SAMHSA funds. Neither SAMHSA nor its hotline operator operate crisis centers to answer calls; in fact, the crisis centers that answer 800-SUICIDE, 800-273-TALK, and the 11 other KBHC hotlines are essentially all the same (with the exception of the Spanish language number 800-SUICIDA). Thus, the assignment of the numbers has nothing to do with the operation or funding of the counseling centers themselves.

KBHC's Dispute with SAMHSA. Prior to December 2004, KBHC received substantial funding from the American Association of Suicidology ("AAS"), which received grant money administered by SAMHSA. After that time, however, SAMHSA entered into a contract with another organization, initiated another hotline using 800-273-TALK, and began to deny reimbursement for AAS claims filed on KBHC's behalf. To recover from that shortfall, KBHC sought financial assistance from the National Mental Health Association and increased its own fundraising efforts. However, the transition in funding sources led to KBHC falling behind in payments to its initial carrier, AT&T. During this period, KBHC switched carriers from AT&T to Patriot Communications ("Patriot") to secure a more favorable rate. In the spring of 2006, KBHC fell behind in its payments to Patriot, again as it sought a way to overcome the funding gap incurred in late-2004. These events prompted negotiations among KBHC, Patriot, and SAMHSA, resulting in SAMHSA agreeing to pay incoming carrier invoices temporarily (but not overdue amounts) on behalf of KBHC beginning August 26, 2006.

On December 12, 2006, SAMHSA submitted a so-called "emergency" request to the Commission, asking the Wireline Competition Bureau ("WCB") to unilaterally order the reassignment of five of KBHC's numbers to SAMHSA. SAMHSA argued that an "emergency" existed by claiming that (i) the carriers in dispute with KBHC might terminate services and (ii) KBHC's financial problems might threaten operation of the Suicide Prevention Hotlines. (KBHC responded that no such termination was possible while SAMHSA was paying the ongoing charges, and thus there was no "emergency" unless SAMHSA precipitated one by

The Honorable Michael J. Copps
June 15, 2009
Page Three

refusing to pay the bills.) At that time, KBHC owed approximately \$67,000 to Patriot and approximately \$650,000 to AT&T,² but remained in an ongoing billing dispute with both carriers when SAMHSA made its request.

On January 22, 2007, the WCB partially granted SAMHSA's request, temporarily reassigning three of the numbers from KBHC to SAMHSA for a period of one year.³ In response to the *Temporary Reassignment Order*, KBHC filed an Application for Review with the Commission on February 21, 2007. The Commission has yet to rule upon KBHC's Application for Review.⁴

Developments Since Temporary Reassignment. Since the WCB temporarily reassigned the Suicide Prevention Hotlines, KBHC has continued to operate its 11 other toll-free lines without incident or financial difficulty. KBHC also entered into a confidential settlement agreement with Patriot in February 2007 that resolved all issues between the parties, including all outstanding debts. Additionally, KBHC entered into confidential settlement agreement with AT&T in May 2008, which created a payment plan that resolved all remaining obligations in August 2008. KBHC currently has \$240,000 cash reserves on hand, no significant debt, and more than a \$1 million in pledged or committed assets from its ongoing fundraising efforts. These have continued to sustain Mr. Butler's decade-long mission of suicide prevention.

Arguments for Returning the Suicide Prevention Hotlines. *Current Financial Status.* The record clearly establishes that KBHC's financials are strong and do not present any threat to its provision of suicide prevention services. Indeed, KBHC's financial status and ready willingness to resume operation over the Suicide Prevention Hotlines make plain that the temporary reassignment's original purpose has been long since fulfilled.⁵

² This amount includes penalty fees for early termination, which totaled approximately \$525,000.

³ *Toll Free Service Access Codes*, CC Docket No. 95.155, Order, 22 FCC Rcd 651 (2007) (*Temporary Reassignment Order*).

⁴ On December 20, 2007, the WCB agreed to refresh the record in KBHC's Application for Review. In addition, the WCB issued an order extending the temporary reassignment of the Suicide Prevention Hotlines for an additional 90 days to provide time for the record to be refreshed and the Commission to evaluate the information collected. The WCB has since extended the temporary reassignment period several times. The current period ends on August 14, 2009. *Toll Free Service Access Codes*, Order, CC Docket No. 95-155 (rel. May 14, 2009).

⁵ *Temporary Reassignment Order* at 654 ("During the duration of this temporary reassignment, [the Commission] will examine the continued utility and effectiveness of [its] action . . . to determine whether . . . [it] should revisit or modify this reassignment.").

The Honorable Michael J. Copps
June 15, 2009
Page Four

First, KBHC resolved all of its prior billing issues with Patriot and AT&T months ago, which eliminated all of its significant outstanding debts. Any current debts or liabilities are merely routine bills. This fact is important to note because SAMHSA cited KBHC's earlier carrier debts as the principal reason why the WCB needed to reassign the Suicide Prevention Hotlines. KBHC still rejects that contention. However, SAMHSA's initial reasoning is irrelevant now because the record shows the total resolution of those matters. Thus, no "emergency" situation exists that would warrant an extension of the temporary reassignment period.

Second, KBHC has since accumulated \$240,000 in cash reserves in addition to fulfilling its obligations to Patriot and AT&T, which will allow for sustained operation of the Suicide Prevention Hotlines and its 11 other hotlines. KBHC's improved fundraising efforts have also provided ever-increasing ballast to KBHC's capabilities since KBHC recovered from its funding gap from AAS and SAMHSA. In fact, KBHC's fundraising efforts have expanded KBHC resources by more than \$1 million in existing and pledged assets. For example, KBHC's recently partnered with a record company for its annual "Pick Up the Phone" music tour where sales of accompanying CDs are expected to raise \$250,000. Additionally, KBHC raised \$30,000 in just five days through several partnerships with groups like PostSecret.

Third, KBHC also has sought ways to reduce its operational costs while maintaining superior crisis services to some of the country's most at-risk populations. Since the WCB reassigned the Suicide Prevention Hotlines, KBHC has entered into a formal cooperative agreement with the Micktel Corporation to retain affordable telecommunications services needed to support the hotlines.⁶ These services entail routing, reporting, real-time call tracing, and access to Micktel's center management tools at the negotiated rate of \$0.057 a minute for all calls. Compared to SAMHSA's estimated rate of \$0.17 a minute for its operation of the Suicide Prevention Hotlines, KBHC's calling rates are significantly cheaper, indicating a more efficient delivery of services to the public. Moreover, KBHC's average monthly bill is expected to be roughly \$9,100, based upon an estimated 20,000 calls per month and an average call length of eight minutes. This means that KBHC is in a position to provide several years of services based on existing cash reserves and pledged donations alone. Of course, KBHC will continue to expand its budget with ongoing fundraising efforts. If anything, to extend or make permanent the temporary reassignment period is contrary to the public interest because KBHC can operate the Suicide Prevention Hotlines far more efficiently than SAMHSA.

Fourth, KBHC does not envision disruptions in the delivery of hotline services should the Commission reassign the Suicide Prevention Hotlines to KBHC. KBHC has continued to operate a host of other hotlines during the temporary reassignment period, and with

⁶ KBHC also entered a similar agreement with Option Line providing redundancy and placing KBHC in a position to choose its vendor.

The Honorable Michael J. Copps
June 15, 2009
Page Five

a decade of experience in providing these services, KBHC is more than capable of ensuring a smooth transition. Besides, the automatic geographic routing system is fail-safe because any disrupted calls are simply rerouted to a working number at another call center. Additionally, SAMHSA overstates the extent to which it has committed resources into the Suicide Prevention Numbers since the temporary reassignment period began. SAMHSA only arranged for calls into the Suicide Prevention Numbers to forward over to the National Suicide Prevention Lifeline, a network supported by SAMHSA grant money. This suggests that SAMHSA is only a passive custodian of the Suicide Prevention Hotlines. Thus, transferring control of the Suicide Prevention Hotlines back to KBHC would be easily done without disrupting the flow of incoming calls or requiring any real commitment of resources in the process.

KBHC's strong financials and years of experience providing reliable suicide prevention services extinguish any conceivable "emergency" that would justify the Commission's extension of the temporary reassignment period. In fact, any continuation at all will allow SAMHSA to expropriate the good will and value created over the course of 10 years by Mr. Butler's efforts to pay tribute to his late wife. That result also will have a chilling effect on future non-profit organizations who might fear that their investment of resources toward a noble cause might be thwarted by the government based on an overly broad interpretation of what constitutes an "emergency." There may be other toll-free numbers which SAMHSA covets, or which some other agency or organization might ask the FCC to reassign for its convenience.

Commission's Scope of Authority. The Commission should reject calls by SAMHSA to judge which entity will be the "better" steward of the Suicide Prevention Hotlines. That question is beyond the Commission's jurisdiction and area of expertise. Section 52.111 of the Rules only allows the Commission to make exceptions to its "first-come, first-served" policy for allocating toll-free numbers when there is a clear emergency.⁷ Again, the issue here is whether emergency circumstances justified the Commission's action. Because the record shows no emergency currently threatens KBHC's ability to operate the Suicide Prevention Hotlines, no remaining justification exists for the temporary reassignment.

The Temporary Reassignment Order Is Unsupported by Law or Fact. Nothing in the record, either at the time or the transfer or now, justifies the Commission's extraordinary decision to reassign the Suicide Prevention Hotlines from KBHC to SAMHSA – an action contrary to precedent and the existing policy of assigning toll-free numbers on a "first-come, first-served" basis.⁸ Furthermore, KBHC also questions the validity of the *Temporary*

⁷ 47 C.F.R. § 52.111.

⁸ The Commission only has ordered the direct transfer of a toll-free number one other time in recent history. In September 2005, the Commission temporarily reassigned 800-Red-Cross (800-733-2627) from 800-IDEAS.com to the American Red Cross "in light of the scale of the

The Honorable Michael J. Copps
June 15, 2009
Page Six

Reassignment Order for reasons stated in the Application for Review.⁹ At all times, KBHC has maintained its capability to operate the Suicide Prevention Hotlines and, despite SAMHSA's unsubstantiated allegations, no "emergency" ever existed that would justify the *Temporary Reassignment Order*.¹⁰

Conclusion. KBHC remains more than able and willing to resume operation of the Suicide Prevention Hotlines if the Commission orders their return. Even if SAMHSA's initial concerns had merit regarding there being an "emergency," which KBHC maintains they did not, SAMHSA's arguments for transferring the Suicide Prevention Hotlines is now irrelevant because of KBHC's substantial cash reserves, successful fundraising efforts, and services agreement with Micktel. KBHC already operates eleven other hotlines, ensuring that it has the means and experience to oversee a smooth transition. Thus, the record clearly supports the return of the Suicide Prevention Hotlines to KBHC so that Mr. Butler may continue to fulfill his nationally acclaimed mission of reducing incidences of suicide.

Sincerely,



Danny E. Adams

Counsel for the Kristin Brooks Hope Center

[Hurricane Katrina] disaster." In contrast, here, the record does not show any evidence demonstrating circumstances rising to the level of national crisis like Hurricane Katrina.

⁹ Application for Review of the Kristin Brooks Hope Center, *Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Feb. 21, 2007).

¹⁰ Comments of the Kristin Brooks Hope Center, *Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Dec. 20, 2006).