

OCT 21 2011

FCC Mail Room

October 20, 2011

VIA OVERNIGHT DELIVERY

Ms. Marlene H. Dortch
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: *In the Matter of Toll Free Service Access Codes - CC Docket No. 95-155*

Request of Robert Liff for a declaratory ruling and extraordinary relief regarding the actions of Yorkshire Telecom, Inc., involving the unlawful transfer of the toll free number 888-776-4737 directly between unrelated toll free service subscribers

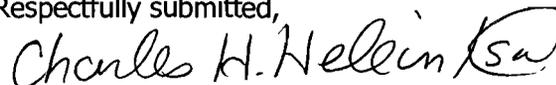
Dear Ms. Dortch:

On behalf of Yorkshire Telecom, Inc. ("Yorkshire"), enclosed for filing are the original and four (4) copies of its response to the above-captioned petition ("Petition") filed on behalf of Robert Liff ("Petitioner") on September 30, 2011.

Please affix and appropriate notation to the copy of this letter provided herewith for that purpose and return same in the enclosed self-addressed envelope.

Please contact the undersigned counsel if you have any questions regarding this matter.

Respectfully submitted,



Charles H. Helein
Counsel for Yorkshire Telecom, Inc.

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HELEIN & MARASHLIAN, LLC

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Toll Free Service Access Codes - CC Docket No. 95-155

Request of Robert Liff for a declaratory ruling and extraordinary relief regarding the actions of Yorkshire Telecom, Inc., involving the unlawful transfer of the toll free number 888-776-4737 directly between unrelated toll free service subscribers

Dear Ms. Dortch:

Yorkshire Telecom, Inc. ("Yorkshire"), submits this response to the above-captioned petition ("Petition") filed on behalf of Robert Liff ("Petitioner") on September 30, 2011.

Since January 24, 2011, Yorkshire has been the RespOrg for the toll free number 888-776-4737 ("Number") pursuant to a Letter of Authorization of that same date executed by a principal of Progress Inc. ("Progress").¹

Yorkshire has reviewed the letter response of PrimeTel to the Petition and incorporates it by reference herein. In addition, Yorkshire has reviewed Exhibit 8 to the Petition, the Declaration of Sylvia Newell ("Declaration"). The Declaration is not only inadmissible hearsay, it is substantively vague and general containing insufficient facts upon which an investigation of the assertions can be made.

The Declaration claims that at some unspecified date, some unidentified person contacted the Declarant, allegedly identifying himself as "an advertising or marketing agent of some sort."² Declarant then states that she was told that the Number had been mistakenly used in some unidentified printed advertising and was requested to release the Number to which Declarant acceded still unaware of who was asking or in anyway attempting to obtain any information about what was requested.³ What is known is that Declarant did complete and sign an LOA to port the Number to Yorkshire. Verizon did port the Number to Yorkshire because it had the authorization to do so. No employee or representative of Yorkshire made this contact with Declarant.

¹ See **Exhibit A**.

² See Petition, Exhibit 8 at para. 4.

³ *Id.*

The vague and unsupported assertions of the Declaration are a perfect example why such hearsay is inadmissible as why application of the hearsay rule has particular importance. In Petitioner's informal complaint against PrimeTel and Verizon,⁴ he states:

I have been trying to get 888-776-4737 for over six months. I have been in contact with Verizon and their reseller and was told I had to wait the proper time until they can get me that number. I even had an outside company tell me the same.

Petitioner admits that he was continuously involved and took numerous actions to have the Number transferred directly to him. His efforts were persistent, extended over a substantial period of time and involved several entities. The inference, therefore, is certainly warranted that Petitioner's persistence ultimately led to his prevailing on the Declarant to make the Declaration and possibly even providing the Declarant with consideration for so doing.

Petitioner's informal complaint then alleges that –

If you check the history of the number you will see that Verizon illegally transferred that number to PrimeTel.

This of course is completely false and only underscores that the Petitioner willingly manufactures assertions having no basis in fact, further underscoring the need for the application of the hearsay rule to the Declaration.

Next, Petitioner stated:

I have proof (e-mails) that I have spoken to Verizon and their reseller months ago. The reseller even told me I could have the number but they no long had control over it and I had to go back to Verizon and they told me talk to the reseller.

Like the Declaration, Petitioner's assertions do not identify the alleged reseller. There is no explanation for the reseller's representation that Petitioner "could have the number," why the reseller no longer had control over the number, or what the basis was for the reseller's assertion that if it still had the number, the reseller would let Petitioner have it.

Petitioner then complains, "All I wanted was an equal and fair opportunity to get this number and that didn't happen." This statement must be read in the context of Petitioner's admitted direct and persistent efforts to have the Number transferred to him directly. Such efforts and persistence to obtain the Number by direct assignment from Verizon's unidentified "reseller" is the antithesis of Petitioner's claims that all he wanted was an equal and fair opportunity to get the Number and further undercuts the credibility of the hearsay Declaration.

Given the foregoing, it is obvious that there are no issues that implicate public interests requiring the solicitation of public comment and that the Petition is a sham attempt to avoid the

⁴ See Informal Complaint File No. IC-11-C00278162-1.

applicable complaint processes of the Commission. In particular, the Commission's rules require that formal complaints be resolved on the basis of a -

... written record consisting of a complaint, answer, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments ... and may require briefs, interrogatories and other supplementary documents or pleadings...⁵

Petitioner has attempted to skirt the Commission's pleading requirements with his Petition. His attempts must fail for several reasons. First, having failed to file a formal complaint as repeatedly threatened within the six-month window provided by section 1.718, his complaint is barred as a matter of law. Failing to file a formal complaint deprives a respondent of significant procedural and substantive rights. Tolerance of such a denial by considering the Petition would violate due process. The Commission's rules do not provide that a petition for declaratory ruling may substitute for filing a formal complaint. Accepting the Petition in these circumstances would violate the APA, due process and equal protection of the laws.

Commission's Authority to Reassign or Transfer the Number

Section 251(e)(1) the Communications Act gives the Commission exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States."⁶ It is clear that toll free numbers are part of the North American Numbering Plan.⁷ It is also clear that neither carriers nor subscribers "own" their telephone numbers.⁸ Courts have found that no one has a property interest in a telephone number⁹ and the Commission has adopted rules that dictate how subscribers obtain toll free numbers.

⁵ 47 C.F.R. § 1.720. Section 1.720(a) and (b) require additional stringent requirements of proof.

⁶ 47 USC § 251(e)(1).

⁷ See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston Ordered by the Public Utilities Commission of Texas, and Administration of the North American Numbering Plan*, CC Docket No. 96-98, Third Order on Reconsideration and Memorandum Report and Order, 14 FCC Rcd 17964, 17968, para.2, n.10 (stating, "[c]urrently, the North American Numbering Plan (NANP) area consists of the United States, Canada, and a number of Caribbean countries. There are geographic NPAs which correspond to discrete geographic areas within the NANP Area and non-geographic NPAs that are instead assigned for services that transcend specific geographic boundaries, such as NPAs in the toll free 800-number format.").

⁸ *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); 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). *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 20 FCC Rcd 15089, 15090-91, para. 4 (2005); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 21 FCC Rcd 9925, 9927, para. 4 (2006); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 651, 653, para. 7 (2007); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 24 FCC Rcd 13022, 13029, para. 12 (2009) (pending on remand).

⁹ See, e.g., *StarNet, Inc.*, 355 F.3d 634, 637 (7th Cir. 2004).

Thus, under the Communications Act, the Commission has exclusive jurisdiction to administer numbering resources and the assignment and transfer of toll free numbers is ultimately subject to the Commission's informed discretion to exercise in the public interest and not the personal interests of any entity or individual. This has been made abundantly clear by the fact that as shown below, the Commission has only twice before directed the assignment of toll-free numbers. And one of these assignments was vacated by the Court of Appeals for the District of Columbia Circuit ("D.C. Circuit").

800-RED-CROSS

The first time the Commission formally assigned a toll-free number involved the permanent reassignment of the 800/888-RED-CROSS numbers. Here, the Commission found that in the wake of Hurricanes Katrina and Rita the "permanent assignment of 1-800-RED-CROSS and 1-888-RED-CROSS to the American Red Cross will serve the overwhelming public interest in assisting the disaster recovery efforts of the Red Cross related to hurricanes and other natural disasters."¹⁰ Specifically, the Commission found that "because of the critical need to ensure efficient, effective, and sufficient disaster relief operations, good cause exists for the permanent assignment of 1-800-RED-CROSS and 1-888-RED-CROSS to the national chapter of the American Red Cross."¹¹ In short, the compelling public interest justified the Commission's extraordinary action of assigning the number.

800-SUICIDE

The second instance where the Commission took formal action involving number assignment involved the toll-free number 800-SUICIDE. In this case, the Kristin Brooks Hope Center ("Center"), a nonprofit organization that operated suicide prevention hotlines, was facing financial difficulties that risked causing the hotlines' disconnection. As a result, the federal Substance Abuse and Mental Health Services Administration ("SAMHSA") asked the FCC to reassign the Center's toll-free hotline numbers to SAMHSA arguing that a transfer would prevent disruption to the hotlines and the loss of life that might occur if the Center's service provider disconnected 1-800-SUICIDE. In response, the Wireline Competition Bureau granted a *temporary* reassignment of the three suicide prevention hotlines in January 2007 finding that given the ongoing dispute between the parties and the potentially tragic consequences of disruption, "a deviation from the first-come, first-served rule is warranted in this extraordinary, emergency situation."¹² As a result, the Bureau ordered the requested temporary transfer.¹³

That November, SAMHSA requested that the FCC make the reassignment of numbers

¹⁰ In the Matter of Toll Free Service Access Codes, 21 FCC Rcd. 9925 (2006) ("Red Cross") at para 5.

¹¹ Red Cross at para. 4.

¹² *In the Matter of Toll Free Service Access Codes*, 22 FCC Rcd 651 (2007) ("Suicide Order").

¹³ *Id.* at 8, 11 (In the *800-SUICIDE Order*, the Bureau temporarily reassigned the three Suicide Prevention Hotlines to SAMHSA, concluding that its action was "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.").

permanent. The Center protested, but the FCC granted SAMHSA's request.¹⁴ When explaining its permanent reassignment decision, the FCC said that its "overriding priority [was] the long-term stability of the Hotlines and, in turn, avoidance of another potential public safety crisis in the future."¹⁵ To that end, it would "choose the entity [it] believe[s] is more capable of operating the Hotlines long-term."¹⁶

The Center appealed the permanent assignment to the D.C. Circuit where the court found that in light of its failure to provide a reasonable explanation that connects the "facts found" and the "choice made,"¹⁷ the FCC's decision was arbitrary and capricious. As a result, the court vacated the Commission's Order assigning the numbers and remanded the proceedings to the FCC which remain pending today.¹⁸

In both the Red Cross and Suicide cases the Commission recognized the extraordinary action it was taking in assigning the numbers. In both cases the Commission justified deviating from the first-come, first-served rule and reassigning toll free numbers from one organization to another because there were significant "compelling public interest benefits." The compelling public interest benefits surrounding the Red Cross and suicide prevention numbers is obvious. It is also obvious from the Commission's Orders and the D.C. Circuit's decision that the Commission's transfer of numbers should be done only when needed to avoid an imminent public safety crisis.¹⁹

These two cases underscore that Petitioner's private business interests are not the extraordinary circumstances that justify the exercise of the Commission's discretion to directly assign a number. Petitioner's claims that the Commission should transfer the Number because he was "deprived" of the Number should be an embarrassing demonstration of self-seeking made all the more fanciful because it is based on the unprovable fact that had the number been released into the spare pool, he would have obtained it. In short, there are no facts supporting:

- A public interest in Petitioner's obtaining the Number first;
- That petitioner would have obtained the Number if released to the spare pool at any time in the past or obtain it if released to the spare pool now;
- Petitioners claim that he has been deprived of any right;
- That making a direct assignment in such circumstances would NOT open the flood gates

¹⁴ In the Matter of U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers, 24 FCC Rcd. 103022, 10303 (2009).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Burlington Truck Lines*, 371 U.S. at 168, 83 S.Ct. 239.

¹⁸ *Kristin Brooks Hope Center v. FCC*, 626 F.3d 586 (D.C. Cir. 2010) (*D.C. Court Remand*). For a complete history of the proceeding, see *Order and Request for Comment*, 26 FCC Rcd at 327-329, paras. 1-4. The proceedings remain pending before the FCC.

¹⁹ As the Commission itself has noted, "[o]ur role as a regulator does not, in the normal course, encompass choosing among parties seeking use of the same number." See *800-SUICIDE* at 14.

to a never ending submission of petitions seeking direct assignments of numbers;²⁰

- Any basis for the Commission to make a direct assignment in these circumstances.

Petitioner's attempt to cloak his self-seeking interest by asserting that "there are sufficient public interest grounds for granting" the transfer of the toll free number,²¹ is "supported" by the equally lame assertion that "[u]nless there is hope for some form of remedy or redress when members of the public have been wrongfully deprived of first-come, first-served access to toll free numbers, they will have no incentive to present complaints to the Commission."²²

The relief sought cannot be granted because the circumstances here do not begin to justify an attempt to have the Commission resort to the extraordinary action of making a direct assignment of a toll free number solely for private business use. Further, the direct assignment remedy should not be subverted for private gain that would result in opening the floodgates to similar self-interest attempts. There is no proof that these facts will discourage meritorious claims from being brought to the Commission, in particular because this is anything but a meritorious claim. Petitioner has brought his complaint to the Commission and then intentionally attempts to circumvent the Commission's rules applicable to complaints.

In conclusion, the Petition must be rejected out-of-hand.

Respectfully submitted,
Yorkshire Telecom, Inc.

By Charles H. Helein (sa)
Charles H. Helein
Its Attorney

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²⁰ Consider Petitioner's statement that, "In the middle to late part of 2010, Liff became interested in obtaining the Number **for use in one of more business ventures.**" *Petition* at 11 (emphasis added). Direct assigning numbers for such private and general interests will eradicate the Commission's authority to manage this resource in the public interest.

²¹ *Petition* at para. 32.

²² *Id.*

Certificate of Service

I, Charles H. Helein, counsel for PrimeTel Communications, Inc. in the above referenced matter, hereby certify that on this 20th day of October, 2011, I caused copies of this letter to be served on the following via first class U.S.P.S., postage prepaid:

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Law Offices of Robert J. Keller, P.C.
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Washington, DC 20033

Kathleen Grillo, Esq.
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1300 I Street NW, Suite 400 West
Washington, DC 20005

PrimeTel Communications, Inc.
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Philadelphia, PA 19106

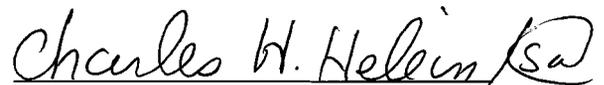
Verizon Communications, Inc.
140 West Street
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New York, NY 10007

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Wireline Competition Bureau
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Federal Communications Commission
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Charles H. Helein

EXHIBIT

A

Yorkshire Telecom

Letter of Authorization

I hereby designate Yorkshire Telecom, Inc., to act as Responsible Organization for the following toll free service numbers ("800/888/877/866" service numbers).

"800/888/877/866" Toll Free Numbers for which Yorkshire is to be Assigned		
RESPORG		
888-776-4737		

*Please Port to
YLC01*

*Please
Expedite
Thanks!*

Name: PROGRESS INC

Address: 101 4th Ave NE

City/State: Pipestone MN 56164

Signature *Sylvia L Newell*
Sylvia L Newell

1-24-11
Date

Phila, PA 19106
Phone: (800) 967-5744
Fax: (888) 967-5744

*V. L. ...
P. ...
YLC01*