

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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 PrimeTel Communications, Inc.,)	
Yorkshire Telecom, Inc., and Verizon)	
Communications, Inc., involving the)	
unlawful transfer of the toll free telephone)	
number 888-776-4737 directly between)	
unrelated toll free service subscribers)	

**CONOLIDATED REPLY TO OPPOSITIONS OF YORKSHIRE
TELECOM, INC. AND PRIMTEL COMMUNICAITONS, INC.**

Robert Liff (“Liff”), by his attorney, hereby tenders his reply to October 20, 2011, letters of Yorkshire Telecom, Inc. (“Yorkshire”) and PrimeTel Communications, Inc. (“PrimeTel”) (collectively referred to herein as the “Respondents”) responding to Liff’s September 30, 2011, *Petition for Declaratory Ruling and Request for Special Relief* in the captioned matter.¹

A. The Legal Requirements are Clear and Undisputed.

The regulatory requirements at issue in this matter are perfectly clear. Section 52.111 of the Commission's rules provides: “Toll free numbers shall be made available on a first-come, first-served basis unless the Commission directs otherwise.”² Available numbers are designated as being in SPARE status in the SMS/800 database, i.e., they are in the “spare pool” of numbers

¹ On December 5, 2011, Liff filed a Consolidated Motion for Leave to File Reply Out of Time and Request for Extension of Time, asking for an extension to Friday, December 9, 2011, in which to file this reply. On December 9, 2011, Liff filed a letter seeking an additional extension to Monday, December 12, 2011, on grounds that undersigned counsel had been unexpectedly called out of town.

² 47 C.F.R. § 52.111.

available to subscribers on a first-come, first-served basis.³ The reservation of a number without having an identified subscriber is expressly prohibited.⁴ “RespOrgs ... may *not* transfer toll free numbers directly from one entity to another unrelated subscriber, absent a specific directive by the Commission.⁵ When a subscriber discontinues toll free service, the number is to be placed into DISCONNECT status for a period of 120 days,⁶ a kind of “grace period” during which the subscriber may seek to reclaim the number. Unless the same subscriber resumes toll free service and reclaims the number within that time, however, the number must be released back into the spare pool and once again be available for reservation on behalf of other subscribers on a first-come, first-served basis.⁷ Respondents do not dispute any of these points, nor can they, for this a clear and accurate recitation of the Commission’s policies and regulations on this issue.

B. The Critical Facts are Established and Unchallenged.

The undisputed facts clearly show that the above-described requirements were violated. Progress, Inc. (“Progress”) had been the subscriber to toll free service using the number 888-624-5677 prior to October 6, 2010, when it terminated its toll free service and the number was placed in DISCONNECT status. On January 24, 2011—ten days before the number should have been released to the spare pool—Yorkshire became the RespOrg and the status of the number changed

³ 47 C.F.R. § 52.103(a)(6). *Industry Guidelines for Toll Free Number Administration* (ATIS/OBF, Issue 13, June 2003) at § 2.4.1.

⁴ *Transaction Network Services, Inc.*, 26 FCC Rcd 2109, 2111-2112 (2011); 47 C.F.R. § 52.105(b)(1); *SMS/800 Tariff* at § 2.2.2(A).

⁵ *Transaction Network Services, Inc.*, 26 FCC Rcd at 2109.

⁶ 47 C.F.R. § 52.103(d); *Industry Guidelines for Toll Free Number Administration* at § 2.4.5.

⁷ *Id.* For a more detailed discussion of these provisions, see paragraphs 23-25 of Liff’s petition.

to ACTIVE. Progress is not a customer of Yorkshire.⁸ Progress has not been a toll free service customer at any time since October 6, 2010, with Yorkshire, PrimeTel, or anyone else.

Respondents offer nothing to refute these facts. They may quibble over some of the peripheral facts⁹ or speculate as to others,¹⁰ but they do not deny the foregoing facts, nor can they without making false statements. And these facts lead to the an inescapable conclusion: Without first dropping the number to the SPARE pool, Yorkshire has either reserved it for a customer other than Progress, or it has reserved it without having an identified toll free service subscriber, either of which is a clear violation of the first-come, first-served policy and the regulations and policies implementing it.

⁸ Respondent's point out that the porting of the number from Verizon to Yorkshire was done pursuant to a letter of authorization ("LOA") signed by Sylvia Newell, the principal of Progress But they dispute Ms. Newell's account of how she came to sign that LOA. Respondents insist that no representative of either Yorkshire or PrimeTel contacted Ms. Newell in connection with the LOA. Thus, Respondents would have the Commission believe that Ms. Newell, having cancelled her toll free service months earlier and having no intention of resuming it, nevertheless woke up one morning and unilaterally decided to execute an LOA porting the number to Yorkshire. They would also have the Commission to believe that, although neither of them contacted Ms. Newell, she somehow managed to obtain a Yorkshire's standard form of LOA. Respondents do not, of course, offer any evidence to support this fantastic scenario, but it does not matter. Even if this ridiculous story were true, it does not change the fact that that Progress, never resumed toll free service on the number, and that the number was therefore unlawfully ported without first having been dropped back to the spare pool to be made available to other possible users on a first-come, first-served basis.

⁹ As the critical facts have been firmly establish and are not even denied by Respondents, Liff will not address herein each and every assertion of Respondents as to peripheral, nonessential facts. To point out one just on example, however, PrimeTel asserts that Mr. Hertigan is not an employee of PrimeTel and suggests that Liff's communications with him were therefore somehow improper. But Liff reached Mr. Hertigan by dialing a PrimeTel vanity number. In the course of their discussions, including one personal meeting, Hertigan never stated that he was not speaking on behalf of PrimeTel. Similarly, Respondents complain that Liff persisted in his complaint after being "repeatedly" told that PrimeTel was not the RespOrg for the number. To be sure, counsel for PrimeTel initially informed undersigned counsel for Liff that PrimeTel was not the RespOrg, but he also denied any connection at all between the companies, asserting that Yorkshire was a completely separate entity having no corporate affiliation with PrimeTel. Only after it was pointed out that the two entities has the same SMS/800 contact and apparently also shared common owners and/or officers that these denials were abandoned and counsel started speaking on behalf of both PrimeTel and Yorkshire. Liff is confident that an investigation would establish a more than casual connection between PrimeTel and Yorkshire, but that determination is unnecessary to the matter at hand. Regardless of any common ownership or control, the undisputed, un-denied fact is that Yorkshire became RespOrg for a number in DISCONNECT status, either for a customer other than Progress, or for no customer at all, without the number first going SPARE. That constitutes a violation, regardless of any dispute as to other peripheral facts.

¹⁰ Without any supporting evidence whatsoever, Respondents theorize that Liff paid or promised compensation to Ms. Newell for her declaration. Undersigned counsel, as an officer of the tribunal, hereby states that, Mr. Liff never had any direct communication with Ms. Newell. Undersigned counsel spoke with Ms. Newell, interviewed her as to the facts, and secured her declaration. She did not seek any compensation, and none was offered or promised.

C. Liff's Petition Is Neither Time Barred Nor Otherwise Improper.

Respondents complain that Liff has requested a declaratory ruling from the Wireline Competition Bureau, rather than filing a formal complaint with the Enforcement Bureau. Invoking Section 1.178 of the Rules,¹¹ Respondents suggest that the matter is time barred because it was filed more than six months after the carriers' responses to Liff's prior informal complaints.

As explained in the petition, Liff informally discussed this matter with Enforcement Bureau personnel prior to filing, and was advised that this appeared to be a matter of regulatory policy interpretation that would be better presented to the operating bureau. There is nothing improper in Liff's asking the Wireline Competition Bureau to address an obvious violation of the toll free telephone number first-come, first-served policy. Furthermore, Section 1.178 is not a "statute of limitations." It is rather a provision for the tolling the running of any applicable statute of limitations. Pursuant to Section 415 of the Communications Act, the applicable statute of limitations for a formal complaint on this matter does not expire until at least January 24, 2013—two years after the unlawful porting of the number.¹²

D. Transfer of the Number

Respondents object to the request that the Commission direct a transfer of the number to Liff as a partial remedy for the violations. There can be no dispute that this is something the Commission has the requisite jurisdiction and discretion to do upon a proper finding, but

¹¹ 47 C.F.R. § 1.178. Section 1.178 is not itself a statute of limitations. Rather, it provides that, if an informal complaint is filed prior to the expiration of the limitation period, any subsequently filed formal complaint based on the same cause of action will be deemed to relate back to the filing date of the informal complaint, provided the formal complaint is filed within six months of the carrier's report.

¹² 47 U.S.C. § 415 (specifying a two year limitation period for most formal complaints).

Respondents question the propriety of the relief in this case and contend that Liff has not made a sufficient public interest showing.

Respondents' efforts to distinguish the 800-RED-CROSS and 800-SUICIDE cases¹³ is unavailing. It is true that the public interest basis for the determination in 800-RED-CROSS was an unprecedented natural disaster, that does not lead to the absurd conclusion that no other possible justification may ever suffice. And the court's remand in the 800-SUICIDE matter was in no way a finding that the Commission lacked the authority or discretion for a permanent reassignment, the issue was simply whether there was a sufficient record in that particular case to justify the action. The Commission still has the matter under consideration on remand.¹⁴

There is a crucial distinction between those cases and this matter which Respondents conveniently ignore. Any reluctance to make the reassignments in the RED-CROSS and SUICIDE cases was due in no small part to the fact that the numbers were being reassigned from otherwise legitimate holders. In this case the Commission is being asked to reassign a number away from a RespOrg who obtained in improperly, in clear violation of the most fundamental of the Commission's toll free number regulatory policies, namely, the first-come, first-serve availability of toll free numbers. Thus, Respondents' argument on this score leads to the absurd and illogical conclusion that the public interest requires the Commission to ignore a clear violation of this policy and allow the wrongdoer to benefit from its violation.

¹³ *Toll Free Access Codes*, 20 FCC Rcd 15089 (2005) (800-RED-CROSS temporary reassignment order); *Toll Free Access Codes*, 21 FCC Rcd 9925 (WCB 2006) (800-RED-CROSS permanent reassignment order)" case); *Toll Free Access Codes*, 22 FCC Rcd 651 (WCB 2007) (800/888-SUICIDE temporary reassignment order); *Toll Free Access Codes*, 24 FCC Rcd 13022 (2009) (800/888-SUICIDE permanent reassignment order), *vacated and remanded sub nom. Kristin Brooks Hope Center v. FCC*, 626 F.3d 393 (D.C. Cir. 2010).

¹⁴ The court's remand order in the case of 800/888 SUICIDE was based on insufficiency of the record underlying the factual basis for the determination, but did not disturb the fundamental principle, *i.e.*, that sufficient public interest reasons do justify assignment of a number. Since the remand, the Commission has repeatedly extended the temporary reassignment of the number pending further development and evaluation of the factual record. *Toll Free Access Codes*, 26 FCC Rcd 327 (WCB 2011), 26 FCC Rcd 1395 (WCB 2011), 26 FCC Rcd 8454 (2011), and 2011 FCC Lexis 3661 (DA 11-1512; WCB rel. Sept. 7, 2011).

Both Respondents, near the end of their respective oppositions, plead that:

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;
- Petitioner's claim that he has been deprived of any right;
- That making a direct assignment in such circumstances would NOT open the flood gates to a never ending submission of petitions seeking direct assignments of numbers;
- Any basis for the Commission to make a direct assignment in these circumstances.¹⁵

To respond, the basis for the direct assignment request is precisely that it will served the public interest by depriving the miscreant RespOrg of the benefit of having clearly and blatantly violated the toll free number regulations. This will not "open the flood gates" to reassignment requests as Respondents suggest. To the contrary, it will reduce the need for such filings by establishing a disincentive for violations in the first instance. Making it clear that the Commission will not allow the retention of unlawfully transferred numbers will provide a disincentive to violations

It is absurd to suggest that Liff was not deprived of any right. Respondents apparently believe the Commission established the first-come, first-serve rule for not reason whatsoever, and that it is not intended for the benefit of anyone at all. In point of fact, it was created precisely for people in Liff's situation, to give them a fair opportunity to reserve a desired number on the same basis as everyone else.¹⁶ Admittedly, Liff was not guaranteed that he would have gotten the number had it been dropped to the spare pool, but he at least would have had the opportunity to get the number. That opportunity is a right afforded him by the Commission's toll free number

¹⁵ See Yorkshire response at pages 5-6 and PrimeTel response at pages 6-7 (footnote omitted).

¹⁶ Respondents curiously assert that Liff did something nefarious in contacting Verizon and a reseller in an attempt to obtain the number. See, e.g., PrimeTel response at page 2. But contacting toll free service providers is the usual way that people go about obtaining toll free numbers.

policies, and he was deprived of that opportunity and right by the unlawful actions described in the petition.¹⁷

E. Conclusion

The legal standards are clear, and there is no dispute as to the essential facts. The first-come, first-serve requirement was obviously violated, depriving Liff and other members of the public of the opportunity guaranteed to them by the Commission's toll free number policies. Directing a transfer of the number to Liff would serve the public interest by standing as a disincentive to other would-be violators in the future. It will also deprive Respondents of their ill-gotten benefits from the instant violations.

Respectfully Submitted,

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¹⁷ Even if the Commission were to determine that transfer of the number to Liff is not an appropriate remedy in this case, that does not warrant simply ignoring the clear violation. The Commission should still take steps to divest Respondents of any ill-gotten benefit from the violation. For example, requiring the number to be released to the spare pool and disqualifying Respondents or any of their affiliates from reserving it would be a possible alternative remedy.

Certificate of Service

I, Robert J. Keller, counsel for Robert Liff in the above-captioned matter, hereby certify that on this 12th day of December 2011, I caused copies of this pleading be served by electronic mail on the following, with hard copies to be sent via first class U.S.P.S., postage prepaid:

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