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December 21, 2011

VIA U.S. FIRST CLASS MAIL

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 PrimeTel Communications, Inc., involving the unlawful transfer of the toll free number 888-776-4737 directly between unrelated toll free service subscribers

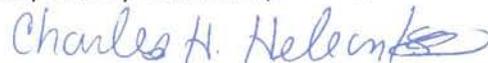
Dear Ms. Dortch:

Enclosed for filing on behalf of PrimeTel Communications, Inc. ("PrimeTel") are the original and four (4) copies of its response to the "Consolidated Reply to Oppositions of Yorkshire Telecom, Inc. and PrimeTel Communications, Inc. ("Reply") filed on behalf of Robert Liff ("Petitioner") on December 12, 2011.

Please affix the 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, noting the new contact information, if there are any questions.

Respectfully submitted,



Charles H. Helein
Counsel for PrimeTel Communications, Inc.

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December 21, 2011

VIA OVERNIGHT MAIL

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 PrimeTel Communications, 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 PrimeTel Communications, Inc. ("PrimeTel"), this responds to the "Consolidated Reply to Oppositions of Yorkshire Telecom, Inc. and PrimeTel Communications, Inc." filed by counsel on behalf of Robert Liff (hereinafter "Liff") on December 12, 2011 (hereinafter the "Reply").¹

The Reply alleges that the Commission's "legal requirements" governing the administration of toll free numbers are clear and undisputed (Reply, 1-2). Mr. Liff then asserts, without factual support, that PrimeTel has 1) violated these clear rules and 2) has not disputed his assertions regarding the violations. To be clear, PrimeTel absolutely denies that it has failed to comply with any FCC rule or regulation. Further, taking all of Mr. Liff's assertions as true, it is clear that PrimeTel had nothing to do with the matters complained of. It never had anything to do with the number Liff is using the Commission's processes to obtain, 888-624-5677 ("Number").

¹ As a matter of procedure, this proceeding has run off the rails. Petitions and replies have been filed without regard to the Commission's rules and without seeking leave to do so. If what the rules require cannot be met, they can't be ignored or simply renamed to skirt the Commission's orderly processes. In addition, there are no facts showing a violation of the Commission's rules or regulations and by failing to adhere to the applicable rules, the rights to invoke the Commission processes have been forfeited. These filings cannot be tolerated by any system of orderly process.

The Reply alleges that the "critical facts are established and unchallenged," that critical facts have been firmly established and not even denied by Respondents." Id. These unfounded assertions are then used to justify the refusal to address "each and every assertion of Respondents as to peripheral, nonessential facts." Id. 3, n.9. The "peripheral, nonessential" facts the Commission is asked to ignore or overlook are Liff's deliberate actions in seeking to force PrimeTel to transfer the Number directly to Liff.

For example, one of the peripheral, nonessential facts cited in the Reply is "that Mr. Hertigan is not an employee of PrimeTel." Id. The Reply considers this fact to be peripheral and nonessential because "Liff reached Mr. Hertigan by dialing a PrimeTel vanity number." Id. But PrimeTel does not use vanity numbers. Its customers do, thereby proving beyond a doubt that having reached Mr. Hertigan at a vanity number, he was working for a PrimeTel customer and not PrimeTel. In any event, anything Mr. Hertigan may or may not have said is irrelevant to this proceeding and inadmissible as unverified hearsay.²

The purpose of course of these assertions is the lame attempt to drag PrimeTel into this bizarre process despite the known fact that statement attributed to PrimeTel would be relevant because PrimeTel has never been the RespOrg for the Number and so never took any action with respect to it.

The Reply makes these assertions for an obvious reason. They are intended to distract from the fact that Liff's contacts with Mr. Hertigan were to effect an unlawful transaction to have the Number assigned directly to Liff.

The Reply also shows that Liff is unconcerned with any fact that interferes with his efforts to obtain a direct assignment of the Number. The Reply acknowledges that Liff was repeatedly told that PrimeTel was not the RespOrg for the Number. It acknowledges that counsel for PrimeTel had informed Liff's counsel of this fact, and that Yorkshire was a completely separate entity. But then the Reply seeks to find some fault with this because it was later disclosed that Yorkshire shared certain common interests with PrimeTel. Id. But there is nothing to be faulted. When PrimeTel's counsel, (the undersigned) first made the representations about no connections between the two companies it was due to the fact that he was totally unaware of any such connection. He had never been requested to do any work for any company other than PrimeTel and was completely unaware that Yorkshire even existed as another RespOrg.

Finally, at this point in the Reply, Liff asserts that "regardless of any dispute as to other peripheral facts," there was a violation. No violations have been shown, other than the violations of Liff himself that were documented in the Opposition filed to the Petition for Declaratory Ruling.

The Reply argues that the suggestion that Liff paid or promised to compensate Sylvia Newell for her declaration is speculative and that Liff never spoke with Ms. Newell all contacts being handled by Liff's counsel. It is asserted that no compensation was offered and she did not seek any. The assertions are not admissible evidence. Surely, having been so accommodating before, Ms. Newell could have been persuaded to provide her own affidavit.

² The Reply asserts that "Hertigan never stated he was not speaking on behalf of PrimeTel." Id. Mr. Hertigan had no obligation to make any representations about who he worked for, let alone one that would correct the erroneous assumption Liff made.

Next, the Reply presents an amusing theory and set of circumstances to avoid the consequences of having failed to comply with the Commission's complaint rules.

Counsel for Liff early on threatened to file a formal complaint if it was not agreed to make a direct transfer of the Number to his client. On May 2, 2011, counsel sent a certified letter to counsel for PrimeTel and Verizon. The letter was sent with knowledge that PrimeTel had responded to Liff's informal complaint on March 23, 2011 indicating that it had never been the RespOrg for the Number. Liff's counsel attached PrimeTel's response to his certified letter of May 2, 2011. Nonetheless, notice was given that the complaint would be filed on or around May 23, 2011.

Liff's counsel attempts to skirt the consequences of its failure to comply with Commission rules by alleging he "informally discussed the 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." Id. 4.

There are obvious problems here. The staff has no authority to ignore the Commission's rules. There is no indication what the Enforcement Bureau personnel were referring to when it allegedly advised that "this appeared to be a matter of regulatory policy interpretation that would be better presented to the operating bureau."

What policy interpretation one must ask. According to the Reply the "legal requirements are clear and undisputed." Id. 1. Hence by its own assertions, no policy requires interpretation.

Or was the interpretation requested whether having failed to file a formal complaint in compliance with the rules, that violation might be cured by filing for a declaratory ruling, one that seeks the same remedy that a formal complaint would seek? If this is the question, then it is one that is beyond the delegated authority of the operating bureau to address. Bureau staff has no authority to amend the complaint rules, no authority to authorize the use of declaratory rulings to substitute for and seek to obtain the same relief that the formal complaint procedures are intended for.

Another question is whether during the discussion it was revealed to staff that the time for filing a formal complaint had passed.

This scenario moreover smacks of impermissible ex parte contacts. Certainly, PrimeTel had a protectable interest in being protected from the Commission's staff being asked for a ruling that would adversely affect its substantive and procedural rights under the long standing formal complaint rules.

Were this matter to proceed, PrimeTel will file a Freedom of Information request to determine who the staff members were, the exact questions presented to them and on what authority they based their advice.

The Reply fails to indicate whether Liff's counsel followed up by contacting the Wireline Competition Bureau before filing for a declaratory ruling. Presumably no such contact was made. A FOIA request will be made of this Bureau if required.

It is a quaint notion that the language of the Commission's rules and the Act can be so easily twisted to one's own purposes. Section 415 applies to carriers. RespOrgs are not carriers.

On the other hand, the language of 1.718 is clear:

If no formal complaint is filed within the 6-month period, the complainant will be deemed to have abandoned the unsatisfied informal complaint. (Emphasis added.)

Certainly, the public has the right to rely on the plain language of the Commission's rules. One complained of has the right to rely on the fact that if no formal complaint is filed within the designated period, the complaint is extinguished.

The Reply's bootstrapping opens up a procedural, due process, delegated authority, APA can of worms. Rulemakings would be required to amend Rule 1.718 to put the public on notice that the language "has abandoned the complaint" does not mean what it clearly says. Another rulemaking would be required to authorize the filing of a declaratory ruling petition in lieu of a formal complaint and authorizing the pursuit of the same remedy that would have been sought in a properly and timely filed formal complaint. This rulemaking would also have to consider allowing a declaratory ruling after the time for filing a formal complaint had run.

Another rulemaking would be required to determine the scope of delegated authority for the staff to advise how to skirt published procedural rules to the detriment of other parties and whether there would be a need to apply the ex parte rules to contacts with the staff seeking such action.

The Reply next turns to the Commission's authority to "direct a transfer of the [N]umber to Liff as a partial remedy for the violations ... [about which] there can be no dispute ... the Commission has the requisite jurisdiction and discretion to do upon a proper finding." Id.

It is clear that the Commission cannot make a proper finding here. Ignoring the broad public interests involved in the only two cases the Commission has ever exercised its authority to direct the assignment of a number, the Reply relies on the fact that those reassignments were justified because the numbers were being reassigned from "otherwise legitimate holders." Here it is argued that the reassignment be made because it is from a RespOrg who "obtained in [sic] improperly." Id. 5.

Liff not only seeks to turn the Commission's rules, policies and management of numbers inside out so as to obtain a direct assignment of a number for private business reasons having no public interest support, it wants this done without meeting its burdens of proof under the formal complaint procedures. This would deny PrimeTel its rights to due process as guaranteed by the formal complaint procedure and the U.S. Constitution. For one example, it seeks to substitute bald assertions of fact for the type of facts that must be rigorously supported by affidavits and documents. See Rule 1.721.

Moreover, having refused to concede to Liff's illegal demands for a direct assignment, Liff unabashedly seeks to have the Commission do its dirty work. Liff has no right to first-come-first served access over anyone else. This is a general right that Liff seeks to turn into a personal right using the Commission to do so. Because he identified the number, wants it, he should leap frog everyone else and have the Commission agree to make a direct assignment.

The Commission would be most foolhardy to do so because in doing so it would be violating the first-come, first-served rule. PrimeTel was never the RespOrg for the Number. It has no control over it and cannot be ordered to act on something over which it has no and never had any control. Moreover the Commission would be knowingly aiding and abetting a violation of its own rules and policies in taking the action Liff seeks.

It has been shown that the Petition for Declaratory Ruling is improper and does not invoke the Commission's discretion to issue a public notice announcing its filings. Indeed, to do so unfairly impugns the reputation of PrimeTel which never has had anything to do with the Number.

Respectfully submitted,
PrimeTel Communications, Inc.

By Charles H. Helein
Charles H. Helein,
Its Attorney

DEC 29 2011

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Certificate of Service

I, Charles H. Helein, counsel for PrimeTel Communications, Inc. in the above referenced matter, hereby certify that on this 21st day of December, 2011, I caused copies of this letter to be served on the following via first class U.S.P.S., postage prepaid:

Robert J. Keller
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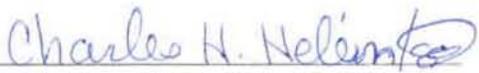
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