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September 13, 2012

Via Hand Delivery

FILED/ACCEPTED

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

SFP 13 2012

Federal Communications Commission
Office of the Secretary

Re: In the Matter of SMS/800, Inc.

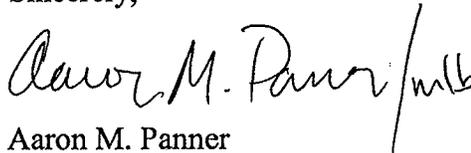
Dear Ms. Dortch:

I write on behalf of SMS/800, Inc., to submit the enclosed Petition to Change the Composition of SMS/800, Inc. Pursuant to 47 C.F.R. § 1.51(c), one original and one copy are being provided.

We are also tendering to you a copy of this filing for date-stamping purposes. Please date-stamp and return this copy.

Please contact me at (202) 326-7921 if you have any questions regarding this filing.

Sincerely,



Aaron M. Panner

Enclosures

cc: William Dever
Ann Stevens
Jodie May Donovan
Michelle Sclater
Heather Hendrickson

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

In the Matter of

SMS/800, Inc.

WC Docket No. _____

PETITION TO CHANGE THE COMPOSITION OF SMS/800, INC.

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September 13, 2012

Counsel for SMS/800, Inc.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of

SMS/800, Inc.

WC Docket No. _____

PETITION TO CHANGE THE COMPOSITION OF SMS/800, INC.

SMS/800, Inc. (“the Company”), respectfully petitions for permission to change the membership and governance of the Company, which generally oversees the 800 Service Management System (“SMS/800”). Specifically, the Company proposes to expand control of the Company from the Bell Operating Companies (“BOCs”)¹ alone to the broader industry served by SMS/800. By opening membership in the Company and representation on the Company’s Board to the industry as a whole, the Company will be better able to serve that industry. At the same time, industry interests will be balanced by a Board of Directors that includes independent, non-industry members as well as the Company’s own CEO. The proposed changes to the Company’s membership and governance will also facilitate the planned transfer of tariffing authority from the BOCs to the Company and will allow the Company to assume the role of neutral administrator of SMS/800. For these reasons, as discussed more fully below, the Bureau should approve this petition.

¹ The BOCs identified as issuing carriers on the current SMS/800 tariff are Verizon Delaware Inc., Verizon Maryland Inc., Verizon New England Inc., Verizon New Jersey Inc., Verizon New York Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington DC Inc., Verizon South Inc., Verizon California Inc., Verizon Florida LLC, Verizon North Retain Co., GTE Southwest Incorporated, Ameritech Operating Companies, Nevada Bell Telephone Company, Pacific Bell Telephone Company, Southwestern Bell Telephone Company, The Southern New England Telephone Company, BellSouth Telecommunications, Inc., and Qwest Corporation d/b/a CenturyLink QC.

BACKGROUND

As described in its tariff, SMS/800 is “an operations and administrative support system used for the creation and maintenance of call processing records for toll-free telephone numbers” as well as “the source of toll-free number availability and reservation status information.”² It is a centralized database containing all customer records and routing instructions for toll-free numbers.³ The database supports two main functions. First, Responsible Organizations (“RespOrgs”) access the database to reserve toll-free numbers and to create or to modify SMS/800 records for toll-free subscribers.⁴ Second, SMS/800 populates (that is, sends up-to-date information to) the regional database systems known as Service Control Points (“SCPs”), which contain routing and other processing instructions for toll-free calls.⁵

This second function is carried out pursuant to contracts between the Company and the SCP Owner/Operators. SMS/800 services to RespOrgs, however, are offered pursuant to the tariff filed jointly by the BOCs.⁶ The tariff sets forth the regulations, rates, and charges applicable to those services. The tariff includes provisions, for example, describing the features and functions of the SMS/800 system, establishing RespOrg responsibilities and eligibility

² 800 Service Management System (SMS/800) Functions Tariff—FCC No. 1 (“Tariff”) § 2.1.

³ See Report & Order ¶ 10, *In re 800 Data Base Access Tariffs and the 800 Service Management System Tariff*, 11 FCC Rcd 15227 (1996).

⁴ See *id.* ¶ 213.

⁵ See *id.*

⁶ See Order ¶ 25, *Provision of Access for 800 Service*, 8 FCC Rcd 1423, 1426 (1993) (“1993 800 Service Order”) (holding that SMS/800 is a Title II common carrier service that must be offered pursuant to tariff); see also Mem. Op. & Order ¶ 32, *Beehive Telephone Inc. v. The Bell Operating Cos.*, 12 FCC Rcd 17930 (1997) (“*Beehive Tel. Order*”) (confirming earlier ruling); Fifth Report and Order in CC Docket No. 95-155, ¶¶ 30-34, *Toll Free Service Access Codes*, 15 FCC Rcd 11939 (2000) (“5th Toll Free Service R&O”) (same).

criteria, and prohibiting unlawful use of the system. It also lists both the monthly and non-recurring charges for database access and other SMS/800 services.

Currently, the BOCs are responsible for jointly filing and maintaining this tariff.⁷ Since 2008, the BOCs have engaged the Company to oversee operation of the SMS/800 database. The Company is a nonprofit membership corporation whose Board of Directors currently consists of one representative from each of the three BOCs. The Company is led by its Chief Executive Officer (“CEO”) and advised by its General Counsel and Chief Technology Officer. The Company, in turn, contracts with third-party providers to facilitate operation of the SMS/800 by providing business management services, running and hosting the SMS/800 database, maintaining the SMS/800 application, and providing customer service. One of these third-party providers, Database Services Management, Inc. (“DSMI”), supports the management of the daily operation of SMS/800 at the direction of the Company’s CEO and executive management team.⁸

As the Commission is aware, the BOCs and the Company have been leading an initiative to significantly increase industry participation in oversight of SMS/800, by (1) transferring responsibility for the governance of the Company (and therefore responsibility for the SMS/800 system and services) from the BOCs to the broader SMS/800 user community and (2) transferring authority for filing and enforcing the tariff from the BOCs to the Company.

Particularly in the past year, the BOCs and the Company have worked with the Commission and

⁷ When the Commission ruled that SMS/800 service must be tariffed, it assigned tariffing responsibility to the BOCs because they “control[led] all fundamental aspects of SMS/800 access.” 1993 800 Service Order ¶ 31.

⁸ The Commission anticipated this arrangement in its 1993 order, noting that the BOCs would transfer operational responsibilities from Bellcore to “an independent third party” in response to “the industry’s desire to divorce the BOCs and Bellcore from the daily administration of the SMS.” *Id.* ¶ 30. The Commission later approved of DSMI serving as the database administrator. *See* 5th Toll Free Service R&O ¶ 39.

with a Transition Committee made up of industry representatives⁹ to put together a detailed plan for accomplishing these goals. That plan includes a proposed reorganization of the Company's Board and membership that is intended to meet the first goal of expanding control of the Company from the BOCs alone to include industry representatives.

Through this petition, the Company now seeks the Bureau's approval for this proposed reorganization, which has been endorsed by the Transition Committee. The petition sets out the proposed composition for the new Board and the proposed process for filling the seats on the Board. The petition also addresses the benefits of this proposal to the SMS/800 service and to the public interest. Further, the petition sets out a plan for accomplishing the transfer of tariffing authority to the Company so that the new Board and membership structure can be put in place. Finally, the petition explains that it is both proper and desirable for the Company itself to assume the administrative role directly rather than managing these services through a third party such as DSMI.

PROPOSED NEW GOVERNANCE STRUCTURE

The proposed transition of the Company's governance has two components. As explained above, the Company is organized as a non-profit membership corporation. Currently, the three BOCs are the only members of the corporation. As part of the proposed governance transition, membership would be open to all RespOrgs and SCP Owner/Operators—not just the

⁹ The Transition Committee was led by co-chairs Aelea Christofferson (ATL Communications) and Dale Schneberger (Grande Communications). The remaining Committee members were Robert Bice (Hawaiian Telecom), Jon Durst (Verizon), David Greenhaus (800 Response Information Services), Tom Houlihan (Windstream), Robert Leabow (Advanced Communications Integration), Steven Levinn (CSF Corporation), Adam Long (Worldlink Services Corp.), Brian Lynott (TeleSmart Networks), Monica O'Neil (Level 3 Communications), and Michael Rothchild (Matrix Telecom). Following the Transition Committee's endorsement of the proposed reorganization, the Transition Committee expanded to include the current Board of Directors and CEO of the Company.

BOCs. Any RespOrg in good standing with SMS/800,¹⁰ and each of the eight SCP Owner/Operators in good standing with SMS/800,¹¹ would be automatically eligible for membership.

The second component of the proposal is a new, more representative Board of Directors for the Company.¹² The proposal provides for a three-year phased implementation of a new Board composition. In its first year, the Board would consist of twelve seats: one elected seat to be filled by a representative of a large RespOrg;¹³ one elected seat filled by a representative of a small RespOrg;¹⁴ one elected seat filled by a representative of an SCP Owner/Operator; one elected at-large seat filled by a representative of any RespOrg or SCP Owner/Operator; four seats filled by independent directors (the only directors to receive compensation for their Board service);¹⁵ one seat filled by the CEO of the Company (who would have voting power equivalent to other Board members); and three seats filled by BOC representatives. In its second year, the Board would be reduced to eleven seats; the BOCs would give up one seat, leaving two BOC representatives on the Board. Finally, in its third year, the Company's Board would be reduced

¹⁰ "Good standing" for RespOrgs would mean that the RespOrg has not had service suspended pursuant to the terms of the tariff.

¹¹ "Good standing" for SCP Owner/Operators would mean that the SCP Owner/Operator is not in breach of its contract.

¹² The proposal was previously summarized for the Commission in a presentation on May 10, 2012. For convenience, a copy of that presentation is attached hereto as Exhibit A.

¹³ A "large" RespOrg is one that controls more than the mean number of toll-free numbers as of the most recent report preceding a given nomination period.

¹⁴ A "small" RespOrg is one that controls fewer than the mean number of toll-free numbers as of the most recent report preceding a given nomination period.

¹⁵ The CEO of the Company will receive compensation for that management role, but will not be separately compensated for his or her role as a director.

to ten seats; the remaining two BOC seats would be eliminated, and a second at-large seat would be added. Each seat would have one vote on the Board.

Elected Seats. The proposal provides for an election cycle with staggered terms (and no term limits). In the first year, the two RespOrg seats and the SCP Owner/Operator seat would be filled by directors elected to three-year terms. The at-large seat, meanwhile, would be filled by a director elected to a one-year term in both the first and second years. Finally, in the third year, the two at-large seats would be filled by directors elected to three-year terms (which would, accordingly, not completely overlap with the three-year terms of the other elected directors).

Several measures would be put in place to ensure that the Board remains fairly representative of all industry sectors. Most important is the reservation of three elected seats for small RespOrgs, large RespOrgs, and SCP Owner/Operators, respectively. Moreover, no single company would be allowed to hold more than one elected seat, unless that company held one RespOrg seat and one SCP Owner/Operator seat. Likewise, any BOC sitting in a BOC-designated seat could not simultaneously hold a RespOrg-elected seat.

Candidates for elected Board seats would be nominated either through self-nomination or by a Nominating Committee. In either case, candidates would be required to satisfy certain criteria: The candidate's employer entity must be in good standing with SMS/800 (that is, the employer must not be in suspension); the candidate must have the support of his or her employer organization; and the candidate would be required to disclose certain information, including but not limited to information about company affiliations, citizenship, criminal convictions, and regulatory enforcement actions. In addition to these eligibility criteria, the Nominating Committee would consider commitment to the toll-free industry as a whole, willingness and

ability to devote time to service on the Board, and capacity for independent judgment in fulfilling the fiduciary obligations of the director role.

The Nominating Committee for the first Board would consist of one industry member appointed by the current Board, one current Board member, and the CEO of the Company. Going forward, the seated Board would determine the composition of each future Nominating Committee; the Board could choose to retain the initial composition or to select any other combination that it deemed manageable and representative. In any event, no organization would be permitted to have more than one representative on the Nominating Committee at any time.

During a set time period before each election, the Nominating Committee would accept expressions of interest and would also reach out to recruit candidates who meet the eligibility and service criteria. (During this same period, self-nominating candidates would register their candidacy through the SMS/800 website.) The Nominating Committee would then assemble the slate of candidates. No Nominating Committee member would be eligible for nomination in an election for which that member participated in selecting the slate. Each candidate would be required to submit a questionnaire that includes such information as the candidate's name, employer entity, letter of support from that employer entity, biography, business and familial affiliations to the Company or SMS/800, views on the future direction of and challenges facing the Company, and potential conflicts of interest (based on a review of the Company's established policy on such conflicts). Each candidate would also be required to disclose any record of criminal convictions or of formal Commission investigations into the candidate, the candidate's employer, or any previous employer of the candidate.

The Nominating Committee would announce the final slate of candidates no later than ten calendar days before the election. Voting would be carried out through an online application

using an electronic ballot. For the RespOrg and SCP Owner/Operator seats, each entity in the relevant category would have one vote. For the at-large seats, in the first two years, each RespOrg and SCP Owner/Operator would have one vote. Beginning in the third year, the two at-large seats would be filled by proportional representation, with each entity receiving one vote for each toll-free number it controls. One existing Board member, the Company's CEO, and the Company's General Counsel would oversee the election process and would be responsible for tallying the votes. Election results would be announced within seven calendar days of the close of the voting period.

Elected directors would receive no compensation for their Board service, but would be reimbursed by the Company for their reasonable expenses related to Board activities, as spelled out by Company policies.

Independent Directors. The proposal provides that, following the election, one of the first tasks for the new Board members would be to appoint the four independent directors (and determine appropriate compensation for those directors). The independent directors must meet certain criteria: They must have no current or recent affiliation with other industry members or participants. They must have experience in corporate governance. And they must have expertise in other areas relevant to the Company's business, such as general telecommunications expertise, financial expertise, technological expertise, IT expertise, or expertise in guiding startup or emerging company development.

BENEFITS OF THE NEW COMPANY COMPOSITION

The proposed membership and governance structure has several benefits, including the ability to streamline the provision of SMS/800 service by having the Company assume tariffing responsibility and enforcement authority from the BOCs and by having the Company itself serve

as the neutral administrator of the service, rather than relying on DSMI to fill that role. The proposal will also serve the public interest by expanding responsibility for the SMS/800 system to represent the full industry served by that system. At the same time, the combination of members and directors drawn from the RespOrg and SCP Owner/Operator communities, management representation on the Board (through the CEO seat), and independent directors will properly balance governance authority. Finally, the Company's internal executives and the gradual phase-out of guaranteed BOC representation on the Board (described above) will ensure a seamless transition, ensure continuity, and prevent any disruptions in the provision of SMS/800 service.

Importantly, these benefits can be achieved without the need for a formal transfer of control application under 47 C.F.R. § 63.03, which sets out the procedure for a carrier seeking to “transfer control of lines or authorization to operate pursuant to section 214.” Such an application is required only when there is a change of a carrier's “ultimate ownership or control.”¹⁶ As described above, control of the Company is currently shared between the three BOCs; no single entity exercises control. Thus, a transfer of governance from the BOCs to the broader industry—so long as no industry player assumes *de jure* or *de facto* control over the Company—would not constitute a transfer of control under section 63.03(d) of the Commission's rules. The proposed Board composition set out above would ensure that no single entity could exercise control over the Company. Accordingly, the proposal does not require a separate or additional transfer of control application.

¹⁶ 47 C.F.R. § 63.03(d)(1).

PLANNED TRANSFER OF TARIFFING AUTHORITY

As explained above, one of the reasons for the proposed changes to the Company's membership and governance is to enable the transfer of tariffing authority for SMS/800 from the BOCs to the Company. Pursuant to the Commission's 1993 order, the BOCs currently have responsibility for filing and enforcing the tariff because, at the time of the initial assignment of that responsibility, the BOCs "control[led] all fundamental aspects of SMS/800 access."¹⁷ If the Commission approves the Company's new membership and governance structure, however, the BOCs will no longer be in control. The Company will directly control all fundamental aspects of SMS/800, and that direct control will be overseen by the Company's own management and its representative Board of Directors.

Therefore, upon approval of this Petition, the BOCs and the Company will seek to accomplish the transfer of tariffing responsibility from the BOCs to the Company by filing a joint transfer of control application under 47 U.S.C. § 214 and 47 C.F.R. § 63.03. This proposed transfer is described more fully in the following paragraphs. If the transfer is approved, the Company would be a common carrier for purposes of providing the SMS/800 service. The Company would have the same authority, responsibility, and obligations for filing and enforcing the tariff, and for providing SMS/800 access on reasonable and non-discriminatory terms and rates, that the BOCs currently have. In particular, the enforcement terms and obligations set out in the current tariff would be adopted and assumed by the Company going forward.

1. Under § 214, a telecommunications carrier must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating, or engaging in transmission over lines of communications, or before discontinuing, reducing, or

¹⁷ 1993 800 Service Order ¶ 31.

impairing service to a community. Under section 63.03 of the Commission's regulations, a domestic carrier seeking to transfer control of lines or authorization to operate pursuant to § 214 must obtain prior approval from the Commission. Accordingly, the BOCs and the Company would apply to the Commission to transfer authorization to operate the SMS/800 access service.

The § 214 transfer process is an appropriate mechanism for accomplishing the proposed transfer because, as the Commission has determined, SMS/800 access is a Title II common carrier service that must be offered under tariff.¹⁸ Common carrier services include those that involve "interstate or foreign communication by wire or radio."¹⁹ "Communication by wire," in turn, includes not only "the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection," but also all facilities and services that are "incidental to such transmission."²⁰ The Commission has determined that although SMS/800 access does not itself involve interstate or foreign transmission, it is "technically necessary" for, and therefore "incidental to," the provision of an interstate and/or foreign transmission service — namely, 800 access service.²¹

2. The Commission made this determination in response to a petition for declaratory ruling asking the Commission to require that SMS/800 access be tariffed.²² Having granted that petition, the Commission proceeded to address, on its own motion, who should file the tariff for SMS/800 access in the first instance. At the time, the BOCs and their subsidiary Bellcore controlled all aspects of the SMS/800 operation. "Under these circumstances," the Commission

¹⁸ See 1993 800 Service Order ¶ 25; *Beehive Tel.* Order ¶ 32.

¹⁹ 47 U.S.C. § 153(11).

²⁰ *Id.* § 153(59).

²¹ 1993 800 Service Order ¶ 27.

²² See *id.* ¶ 20.

found, “the BOCs should file the SMS tariff.”²³ Following this ruling, the BOCs have been responsible for filing the SMS/800 tariff since the establishment of SMS/800 in 1993.²⁴

The Commission’s initial assignment of tariffing responsibility to the BOCs does not, however, preclude a transfer of that responsibility or make § 214 an inappropriate procedural vehicle for reassigning that responsibility to the Company. First, the Commission’s 1993 order did not deny the BOCs ability to transfer the tariff-filing responsibility pursuant to otherwise applicable statutes and regulation, if such a transfer was shown to be in the public interest. Thus a transfer of tariff responsibility would not be inconsistent with the Commission’s determination that the BOCs should file the tariff in the first instance. And, as explained above, the proposed transfer of tariffing responsibility to the restructured Company is in the public interest.

Even if the proposed transfer represented a departure from the Commission’s prior determination, there would be no obligation to conduct a notice-and-comment rulemaking to effect that change. Typically, a change in agency policy requires notice-and-comment rulemaking if the policy represents a “substantive rule” or (more controversially) if the agency is departing from a settled interpretation of its own regulation.²⁵ Neither description applies to the Commission’s directive to the BOCs to file the SMS/800 tariff. In doing so, the Commission did not purport to set out a legal rule or interpret an existing regulation. Instead, much like a policy statement, the Commission’s order “simply let[] the public know its current enforcement or

²³ *Id.* ¶ 31.

²⁴ *See id.*; *Beehive Tel.* Order ¶ 32.

²⁵ *See, e.g., Syncor Int’l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir. 1997) (defining “substantive rule” as one in which the agency “claim[s] to be exercising authority to itself make positive law”); *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, 117 F.3d 579, 586 (D.C. Cir. 1997) (“Once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking.”).

adjudicatory approach.”²⁶ Therefore the Commission “retains the discretion and the authority to change its position.”²⁷

The procedural context of the Commission’s decision confirms its freedom to reassign SMS/800 tariffing responsibility. The Commission’s initial assignment of that responsibility to the BOCs was in response to a petition for declaratory ruling. A petition for declaratory ruling “terminating a controversy or removing uncertainty” is handled “in accordance with section 5(d) of the Administrative Procedure Act.”²⁸ Section 5(d), now codified at 5 U.S.C. § 554(e), classifies such declaratory orders as a type of adjudication.²⁹ Thus the Commission’s declaratory ruling proceedings are not subject to the notice and comment requirements set out in 5 U.S.C. § 553. Indeed, as a declaratory order, the Commission’s initial assignment of SMS/800 tariffing responsibility to the BOCs is “even further removed from rulemaking requirements” than an “interpretative rule.”³⁰ Unlike “substantive” or “legislative” rules, “interpretative rules” can be changed without resort to notice-and-comment rulemaking procedures.³¹ So too can declaratory orders, such as the assignment of SMS/800 tariffing responsibility, be changed by the Commission without resort to rulemaking.

²⁶ *Syncor*, 127 F.3d at 94.

²⁷ *Id.*

²⁸ 47 C.F.R. § 1.2(a).

²⁹ *See also Chisholm v. FCC*, 538 F.2d 349, 364 n.30 (D.C. Cir. 1976) (“The declaratory ruling belongs to the genre of adjudicatory rulings.”).

³⁰ *British Caledonian Airways, Ltd. v. Civil Aeronautics Bd.*, 584 F.2d 982, 989 (D.C. Cir. 1978).

³¹ *See, e.g., American Mining Congress v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1108-09 (D.C. Cir. 1993) (discussing “[t]he distinction between those agency pronouncements subject to APA notice-and-comment requirements and those that are exempt”).

3. In an ex parte discussion on May 5, 2011, Commission staff raised the question whether the proposed transfer of SMS/800 access would require both a domestic and an international § 214 application. Under the Commission's rules, no international application is required, and the transfer of tariff responsibility can be effected through a single, domestic § 214 application.

An international § 214 application is required only when a party seeks to “construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line” in order to provide service between the United States and a foreign point.³² The SMS/800 database includes toll-free numbers assigned to customers throughout the geographic area served by the North American Numbering Plan. But while subscribers to toll-free services may be located elsewhere in North America, the operation of SMS/800 service occurs entirely within the United States and is governed by a domestic tariff. It does not involve operation of or transmission over any international (or domestic) “lines.” Accordingly, as the provider of SMS/800 access, the Company does not own or operate any international “lines,” nor would it acquire any international lines through the transfer of tariffing responsibility. And, as described above, the Commission has determined that SMS/800 access is not itself a transmission service but is instead “incidental to” such service.³³ The contemplated transfer involves a domestic common carrier service but no international service subject to the requirements of § 214 and therefore requires only a domestic § 214 application.

³² 47 C.F.R. § 63.18.

³³ See 1993 800 Service Order ¶ 27; see also Tariff § 2.1.1(B) (“The Company does not undertake to transmit messages under this tariff, but furnishes the use of its services to Resp Orgs for the creation and maintenance of toll-free call processing records.”).

4. Finally, the proposed § 214 transfer application would be eligible for streamlined treatment. Section 63.03 provides for a streamlined transfer of control process with an expedited commenting schedule; under this process, applicants may transfer control on the 31st day after the date of public notice listing the application as a streamlined application.³⁴ This streamlined process presumptively applies to certain enumerated categories of applications, including those in which “[t]he transferee is not a telecommunications provider.”³⁵ Because the proposed transferee—that is, the Company—is not currently a provider of telecommunications services, the application to transfer control of SMS/800 access would be eligible for the streamlined process. Additionally, streamlined treatment would be particularly appropriate here because the Bureau will have had the opportunity—through this Petition and any comments received thereon—to review the proposed transfer and consider its merits. Moreover, none of the “appropriate circumstances” listed in Section 63.03 for removing an application from streamlined processing should be present here. The § 214 transfer application will not seek a “non-routine request for waiver of the Commission’s rules” (or, indeed, any waiver); it will not, on its face, “violate a Commission rule or the Communications Act”; the Company and the BOCs do not intend to “fail[] to respond promptly to Commission inquiries”; and, as noted, the Bureau will have had time to consider (through consideration and approval of this Petition) any comments that might “raise public interest concerns” and any other factors implicating the public interest.³⁶

³⁴ See 47 C.F.R. § 63.03(a).

³⁵ *Id.* § 63.03(b)(ii).

³⁶ See 47 C.F.R. § 63.03(c)(1)(i)–(v) (setting out these five circumstances in which an application may be removed from streamlined processing).

NEUTRAL ADMINISTRATOR

In addition to taking on responsibility for filing and enforcing the SMS/800 tariff, the newly reorganized Company would assume the role of the neutral administrator of the SMS/800 service, including 8YY numbering resources. As described above, that role is currently filled by a third party, DSMI. The Company also contracts with DSMI to support its operation of SMS/800, and that contract provides DSMI with the access and resources it needs to perform its duties as the neutral administrator. However, the Company already runs the day-to-day operations of the SMS/800 service, holds the contracts with the SCP Owner/Operators, and holds the contracts with third-party vendors that provide the operational components of the SMS/800 service. Therefore, as part of the tariff transfer, the Company proposes to administer the SMS/800 service directly, instead of contracting with a third party such as DSMI. To ensure continuity and prevent any loss of institutional knowledge, the Company would propose to continue its contract with DSMI for a period of time during the transition.

This proposal would result in more efficient administration and provision of the service. The Company already has direct access to and control of the SMS/800 database and, as noted above, runs the day-to-day operations of the SMS/800 service. And, given the transition of direction of the Company away from the BOCs, the proposal would not threaten the neutrality of the administration of SMS/800. The Company would be directed by the industry, and service would be provided under the neutral terms of the Tariff; the Company can therefore serve as the impartial administrator for the SMS/800 service.

A neutral administrator for SMS/800 is required by statute.³⁷ The criteria for determining whether an entity meets the statutory neutrality requirement are: (1) the entity may not be an affiliate of any telecommunications service providers or an affiliate of any interconnected VoIP provider; (2) the entity (and any of its affiliates) may not issue a majority of its debt to, or derive a majority of its revenues from, any telecommunications service provider; and (3) the entity must not be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities.³⁸ As the Commission has explained, these criteria serve three purposes:

First, they ensure that entities seeking to participate in the telecommunications marketplace obtain timely and efficient access to numbering resources, and that no particular industry segment is favored or disadvantaged. The criteria also ensure that the administrator remains neutral in order to maintain the trust and confidence of the entities that must submit sensitive information to the administrator in its numbering administration activities. Finally, the criteria ensure that the administrator is able to comply with its obligations without excessive Commission oversight.³⁹

The Company would meet the regulatory criteria for neutrality, and the Company's service as the SMS/800 administrator would be consistent with the objectives of those criteria.

First, the Company would not be an "affiliate" of any telecommunications service providers or interconnected VoIP providers. An "affiliate" is defined as "a person who controls, is controlled by, or is under the direct or indirect common control with another person."⁴⁰

³⁷ See 47 U.S.C. § 251(e)(1) ("The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."); see also 5th Toll Free Service R&O ¶ 16.

³⁸ See 47 C.F.R. § 52.12(a)(1); see also 5th Toll Free Service R&O ¶ 16 (determining that these regulatory criteria, which were adopted for judging the NANPA and the B&C Agent, also apply to the SMS/800 administrator).

³⁹ 5th Toll Free Service R&O ¶ 17.

⁴⁰ 47 C.F.R. § 52.12(a)(1)(i).

“Control” is further defined as a 10% or greater equity interest, the power to vote 10% or more of securities, or “the power to direct or cause the direction of the management and policies of” an entity.⁴¹ Under those definitions, the Company would not be an “affiliate” of any entity following the transition described above.

The Company is structured as a non-profit membership corporation; it has no equity or securities. And no individual entity has the power to direct the Company’s management and policies. The Company’s bylaws provide that matters decided by members are to be decided by a majority vote, ensuring that no individual members can make decisions regarding management. Under the proposed restructuring of the Company, the membership would include several hundred RespOrgs and the eight SCP Owner/Operators, any one of whom would have to secure the consent of a majority of the members in order to act.

Nor would any single entity have the ability to direct the Company’s management and policies by controlling the Board. As described above, each of the twelve (and subsequently ten) Board members would have equal voting power, and no individual entity would be able to hold more than one seat at a time on the Board. The one exception to that rule is for an entity that is both a RespOrg and an SCP Owner/Operator; that entity could hold two of the elected seats at any one time. But even in that scenario, having two votes on a ten- or twelve-member Board would not allow for control of the Board’s actions and decisions. Indeed, the proposed structure for the Company’s new Board would ensure that no single segment of the industry would exercise control, let alone any individual company. Board control would be distributed among large and small RespOrgs, SCP Owner/Operators, the Company’s management (through its

⁴¹ *Id.* § 52.12(a)(1)(i)(A)-(C).

CEO), and independent directors with no industry affiliation or interest. Under these circumstances, the Company will be able to satisfy the first neutrality criterion.

Second, the Company does not (and would not) “issue a majority of its debt to” or “derive a majority of its revenues from” any telecommunications service provider.⁴² As explained above, the Company is a not-for-profit membership corporation; it does not issue debt. And the Company will derive “revenues” in connection with the operation of SMS/800 from the user fees paid by RespOrgs and SCP Owner/Operators. No individual RespOrg constitutes a majority of that customer segment.⁴³ And there are currently eight SCP Owner/Operators, none of whom constitutes a majority of that customer segment. The Company accordingly meets the second of the neutrality criteria.⁴⁴

Third, the Company will not be subject to undue influence by any party with a vested interest in the outcome of numbering administration and activities. In approving DSMI as the neutral administrator of SMS/800, the Commission held that this criterion was satisfied because “the terms of the SMS/800 Tariff are uniquely structured to ensure that the administration of toll free numbers is competitively neutral” and “DSMI may not exercise its discretion to administer toll free number services in a manner inconsistent with the tariff.”⁴⁵ For the same reasons, the Company would meet the third neutrality criterion. The same tariff terms ensuring competitively neutral administration of SMS/800 are still in place, and—like DSMI—the Company would have

⁴² 47 C.F.R. § 52.12(a)(1).

⁴³ Currently, the largest RespOrg controls fewer than twenty percent of the toll-free numbers available through SMS/800.

⁴⁴ Even if this criterion is determined not to be met, the Commission permitted DSMI to serve as the neutral administrator without satisfying this element. *See* 5th Toll Free Service R&O ¶ 22.

⁴⁵ *Id.* ¶ 24.

no discretion to administer the SMS/800 service in a manner inconsistent with the tariff.

Accordingly, the Company would satisfy the last of the three neutrality criteria.

Finally, allowing the Company to administer the SMS/800 service (including the number administration aspect of the service) directly, instead of assigning that role to a third party, would achieve the objectives underlying the neutrality criteria. Eliminating an additional contracting party will streamline the provision of SMS/800 service and facilitate “efficient access to numbering resources.”⁴⁶ Under the new governance structure proposed above, the Company will be representative of all industry segments, ensuring “that no particular industry segment is favored or disadvantaged.”⁴⁷ This same representativeness will give the Company “the trust and confidence”⁴⁸ of entities that use the SMS/800 service, because those entities will be members of the Company and represented on its Board. And the restructured Company will be able to “comply with its obligations without excessive Commission oversight.”⁴⁹ For all of these reasons, the Company should be permitted to serve as the neutral administrator of SMS/800.

CONCLUSION

The Bureau should approve the petition to restructure the management, operation, and administration of the SMS/800 service.

⁴⁶ *Id.* ¶ 17.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

Dated: September 13, 2012

Respectfully submitted,

Handwritten signature of Aaron M. Panner and Melanie L. Bostwick, with the initials 'mlb' written to the right of the signature.

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Exhibit A

SMS/800

**SMS/800
PROPOSED TRANSITION OF
SMS/800 FUNCTIONS TARIFF**

FCC STATUS MEETING

May 10, 2012

AGENDA

- **Review of Industry Collaboration in Board Development**
- **Proposed Structure of SMS/800, Inc. Board of Directors**
- **Proposed Nominations Process**
- **Timeline and Next Steps**

INDUSTRY COLLABORATION UPDATE

Collaboration of the Industry and the Service Providers in Pursuit of Tariff Transition

- Industry Transition Committee met in person with SMS/800, Inc. CEO and Board of Directors, Michael Wade of DSMI and SMS/800, Inc. legal counsel on April 9 – 10, 2012 to discuss reorganization of SMS/800, Inc. Board to include industry representatives.
- Based on this discussion, all participants agreed to the Board composition and election further described in this presentation.

PROPOSED INDUSTRY BOARD STRUCTURE

The Board composition over the first 3 years will be as follows:

1 st Year	2 nd Year	3 rd Year	Notes
1 elected large Resp Org seat*	1 elected large Resp Org seat*	1 elected large Resp Org seat*	
1 elected small Resp Org seat*	1 elected small Resp Org seat*	1 elected small Resp Org seat*	
1 elected SCP O/O seat*	1 elected SCP O/O seat*	1 elected SCP O/O seat*	
1 elected At-large seat*	1 elected At-large seat*	2 elected At-large seats**	
4 independents	4 independents	4 independents	<i>All appointed by new Board</i>
CEO	CEO	CEO	<i>CEO has same vote as Board</i>
3 BOC-designated Seats	2 BOC-designated Seats	0 BOC Seats	<i>While any one BOC sits in a "BOC-designated" seat it cannot also hold another Resp Org-elected seat</i>
12	11	10	<i>Total number of Board seats</i>

For all elected seats, no one company can hold more than one seat; provided, however, that a company can hold a Resp Org-elected and a SCP O/O-elected seat.

* Voted all affiliated entities = one vote

** Voted by proportional representation (one vote per TFN controlled)

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PROPOSED INDUSTRY BOARD STRUCTURE: ELECTION CYCLE

Elected seats will have staggered terms, as follows, with no term limits:

1 st Year Election	2 nd Year Election	3 rd Year Election
1 large Resp Org seat elected to 3 year term		
1 small Resp Org seat elected to 3 year term		
1 SCP O/O seat elected to 3 year term		
1 At-large seat elected to 1 year term	1 At-large seat elected to 1 year term	2 At-large seats elected to 3 year terms

PROPOSED INDUSTRY BOARD STRUCTURE: CANDIDATE NOMINATIONS

Board candidates will be nominated in two ways, as follows:

- Nominating Committee slate
- Self-nomination

Criteria for candidates from either nominating method:

- Employer entity must be in good standing with SMS/800 as of a certain date to be determined
- Candidate must have support from employer organization
- Candidate will be required to disclose information regarding criminal convictions
- Other criteria to be considered:
 - commitment to toll-free industry as a whole;
 - willingness and ability to devote time to the role; and
 - capacity for independent judgment in fulfillment of fiduciary obligations of director role.

PROPOSED INDUSTRY BOARD STRUCTURE: CANDIDATE NOMINATIONS

Nominating Committee slate selection process:

- Nominating Committee shall accept expressions of interest within a defined period of time prior to each election and also reach out to recruit candidates that meet stated criteria.
- First Nominating Committee consists of 1 industry member appointed by current Board, 1 current BOC Board member and the SMS/800, Inc. CEO.
- Future Nominating Committees can be the same composition or any other combination that is both manageable and representative (as determined by the then-seated Board).
- Members of the Nominating Committee will not be eligible for nomination.
- No organization will have more than one representative on the Nominating Committee.



PROPOSED INDUSTRY BOARD STRUCTURE: *INDEPENDENT DIRECTORS*

Independent Directors will be appointed by Board after 1st Year elections.

Criteria for selection of Independent Directors will be as follows:

- No current or recent affiliation with other industry members or participants
- Experience in corporate governance
- Expertise in other areas relevant to the corporation's business
 - Factors to be considered include but are not limited to: financial, IT/ technology, start-up/ emerging company development and general telecommunications

TIMELINE AND NEXT STEPS

- **FCC Review of Proposal**
- **Transition of Tariff Responsibility**
- **Nomination and Election Process**
- **Board Transition Completed by Q3/Q4 2012**

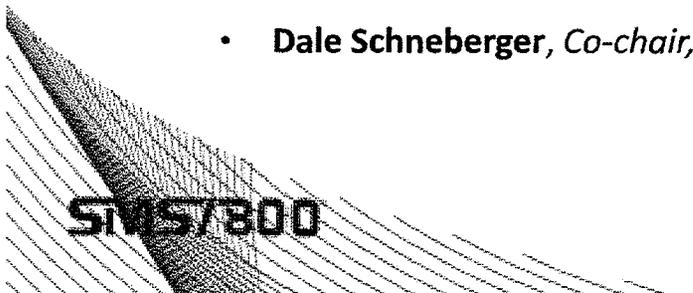
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MEETING PARTICIPANTS

- **Peter Bahr**, *Verizon representative to SMS/800, Inc. Board of Directors*
- **Ann Berkowitz**, *Verizon regulatory, SMS/800 Point of Contact*
- **Thomas FitzGerald**, *CEO of SMS/800, Inc.*
- **Philip Linse**, *CenturyLink representative to SMS/800, Inc. Board of Directors*
- **Brian Lynott**, *Transition Committee member, TeleSmart Networks*
- **Gina Perini**, *SMS/800, Inc. corporate counsel, GTC Law Group*
- **Michael Rothchild**, *Transition Committee member, Matrix Telecom*
- **Gary Sagnella**, *AT&T representative to SMS/800, Inc. Board of Directors*
- **Dale Schneberger**, *Transition Committee Co-chair, Grande Communications*

TRANSITION COMMITTEE MEMBERS

- **Robert Bice**, Hawaiian Telcom
- **Aelea Christofferson**, *Co-chair, ATL Communications*
- **Jon Durst**, *Verizon*
- **David Greenhaus**, *800 Response Information Services*
- **Tom Houlihan**, *Windstream*
- **Robert Leabow**, *Advanced Communications Integration*
- **Steven Levinn**, CSF Corporation
- **Adam Long**, *Worldlink Services Corp*
- **Brian Lynott**, *TeleSmart Networks*
- **Monica O'Neil**, *Level 3 Communications*
- **Michael Rothchild**, *Matrix Telecom*
- **Dale Schneberger**, *Co-chair, Grande Communications*



STMS/800