

**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 declaratory ruling)
and extraordinary relief regarding the actions)
of **Yorkshire Telecom, Inc.**, involving the)
unlawful transfer of the toll free telephone)
number 888-776-4737 directly between)
unrelated toll free service subscribers)

To: Marlene H. Dortch, Secretary
Attn: Chief, Wireline Competition Bureau

**AMENDED* PETITION FOR DECLARATORY RULING
AND REQUEST FOR SPECIAL RELIEF**

Mr. Robert Liff (“Liff”), by his attorney and pursuant to Section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554, and Section 1.2 of the Commission’s Rules and Regulations, 47 C.F.R § 1.2 (2010), hereby requests a declaratory ruling that the actions described herein constitute violations of the Commission’s Rules and Regulations for the provisioning and administration of toll free telephone numbers, Title 47 C.F.R., Section 52, Subpart D, 47 C.F.R. § 52.101 *et seq.*; the toll free number policies and requirements enunciated in CC Docket No. 86-10 and 95-155; related provisions in the applicable federal tariff, *Tariff F.C.C. No. 1, 800 Service Management System (SMS/800) Functions*, of The Bell Operating Companies (hereinafter cited as the “*SMS/800 Tariff*”); and Section 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(e). Further, pursuant to Section 1.41 of the Commission’s Rules, 47 C.F.R § 1.41, Liff seeks special relief to remedy these violations. In support of these requests, the following is respectfully shown:

* This is an amended version of a pleading filed on September 30, 2011. It has been amended to remove any specific complaints directed to PrimeTel Communications, Inc., or Verizon Communications, Inc. For further information regarding this, please refer to the Request for Expedited Action being filed concurrently herewith.

I. INTRODUCTION

1. Verizon Communications, Inc. (“Verizon”) was the Responsible Organization (“RespOrg”) for the toll free telephone number 888-776-4737 (the “Number”) prior to January 24, 2011. Yorkshire Telecom, Inc. (“Yorkshire”) has been the RespOrg since that date. Liff, who was interested in obtaining the Number, had been monitoring its status. In early October 2010 the Number was placed in “disconnect” status and, in accordance with applicable regulations, was scheduled to be released into the “spare” pool of numbers available for reservation on a first-come, first-serve basis on February 5, 2011. However, on January 24, 2011, the Number was ported from Verizon to Yorkshire, and returned to “active” status without ever having been placed in the spare pool.

2. The January 24, 2011, transfer was unlawful, because the effect (if not the intentional design) of the transaction was to move the number from one toll free service subscriber to another unrelated user without first making the number available to all potentially interested users on a first-come, first-served basis. The Commission has made it clear that “RespOrgs ... may *not* transfer toll free numbers directly from one entity to another unrelated subscriber, absent a specific directive by the Commission.”¹ This unlawful conduct deprived Liff of the opportunity for first-come, first-serve access to the Number.

II. FACTUAL BACKGROUND

3. Yorkshire is a Responsible Organization or RespOrg within the meaning of 47 C.F.R. § 101(b), under SMS/800 RespOrg Code YLC01. Verizon, directly and/or through one or more subsidiaries or affiliated entities, is also a Responsible Organization or RespOrg within the meaning of 47 C.F.R. § 101(b), under SMS/800 RespOrg Code VZW01. From June 18, 2009, to

¹ *Transaction Network Services, Inc.*, 26 FCC Rcd 2109, 2109 (2011).

January 24, 2011, Verizon was the RespOrg for the Number. From June 18, 2009, to October 6, 2010, the status of the Number in the SMS/800 database was ACTIVE. From October 6, 2010, to January 24, 2011, the status of the Number in the SMS/800 database was DISCONNECT.²

4. As of October 6, 2010, the toll free service subscriber for the Number was Progress, Inc., an entity doing business in Pipestone, Minnesota, and/or an affiliate or owner thereof (“Progress”). On or before January 24, 2011, a person contacted Ms. Sylvia Newell, the principal of Progress, seeking a signed letter of authorization (“LOA”) for the porting of the Number to Yorkshire. Newell was advised that another person or entity had inadvertently used the Number in advertising, marketing, and/or promotional materials and was now attempting to secure the Number to mitigate the costs associated with the error. On January 24, 2011, Newell signed an LOA on behalf of Progress for the porting of the Number to Yorkshire.³

5. On January 24, 2011, Yorkshire presented the LOA to Verizon, whereupon the number was ported to Yorkshire. On January 24, 2011, Yorkshire became the RespOrg for the Number. Yorkshire has been the RespOrg for the Number from January 24, 2011, to the present. On January 24, 2011, the status of the Number in the SMS/800 database was changed to RESERVED. Yorkshire did not reserve the Number on behalf of Progress, any principal or affiliate of Progress, or any person or entity associated with Progress.⁴ On January 24, 2011, the status of the Number in the SMS/800 database was changed to ACTIVE. The Number has been in ACTIVE status since that time.⁵

² Attachment A (Exhibit No. 5 to the original petition).

³ Attachment B (Exhibit No. 8 to the original petition). A copy of the LOA (as supplied by Yorkshire in its October 20, 2011, response) is appended hereto as Attachment C.

⁴ Attachment B.

⁵ Attachment A.

6. In the 2010, Liff became interested in obtaining the. He learned that the number was in ACTIVE status and that Verizon was the RespOrg. On or about October 6, 2010, Liff learned that the SMS/800 status of the Number changed to DISCONNECTED. He knew that, pursuant to the applicable toll free number administration procedures, the SMS/800 status of the Number would be changed to SPARE on February 5, 2011, unless the disconnected subscriber reclaimed the number and resumed service prior to that date. The Number would then go into the “spare pool” of numbers available for reservation and assignment to new subscribers on a first - come, first-serve basis. Liff made arrangements to have the status of the Number monitored and to be reserved for him as soon as it became available for reservation and assignment. Sometime between January 24 and February 4, 2011, Liff discovered that the status of the Number had changed to ACTIVE, and that the Number had been ported to RespOrg Code YLC01.⁶

III. LEGAL ANALYSIS & ARGUMENT

A. The Applicable Legal Standards and Regulatory Requirements

7. Section 251(e)(1) of the Communications Act confers upon the Commission exclusive jurisdiction over "those portions of the North American Numbering Plan that pertain to the United States."⁷ It is well established that telephone numbers, including toll free numbers, are a public resource—they are not “owned” by either the telecommunications carriers or the subscribers.⁸ The Commission has established a regulatory structure for the provisioning,

⁶ Attachment C.

⁷ 47 U.S.C. § 251(e)(1).

⁸ *Administration of the North American Numbering Plan*, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591 (1995); *Toll Free Service Access Codes*, CC Docket No. 95-155: *Notice of Proposed Rulemaking*, 10 FCC Rcd 13692, 13702 (1995), *Fourth Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 9058, 9061, n.14 (1998), *Order*, 20 FCC Rcd 15089, 15090-15091 (2005), *Order*, 21 FCC Rcd 9925, 9927 (2006), *Order*, 22 FCC Rcd 651, 653 (2007), *Order*, 24 FCC Rcd 13022, 13029 12 (2009).

administration, and portability of toll free telephone numbers on an equitable basis.⁹ This field is also governed by the SMS/800 Tariff setting for the rules and regulations pursuant to which RespOrgs¹⁰ have access to the centralized database for toll free number management.¹¹ The SMS/800 Tariff has the force of law.¹²

8. The 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."¹³ The SMS/800 Tariff similarly provides: "Specific toll-free number requests are honored based upon availability, on a first-come first-served basis."¹⁴ The numbers available for such reservation and assignment are said to be in SPARE status in the SMS/800 database, or in the

⁹ Part 52, Subpart D (Toll Free Numbers) of the FCC Regulations, 47 C.F.R. §§ 52.101–52.111 (2010).

¹⁰ A "RespOrg" or "Responsible Organization" is "[t]he entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber. 47 C.F.R. § 52.101(b). The RespOrg is often the toll free service provider, but need not be. The subscriber is free to designate an entity other than the carrier to service as its RespOrg.

¹¹ Toll free numbers, along with associated electronic records, are contained in a centralized service management system (or SMS) database. Operation of the SMS/800 Database is performed by Data Services Management, Inc. *Provision of Access for 800 Service*, CC Docket No. 86-10, *Order*, 19 FCC Rcd 1423, 1425 (1993); *Toll Free Service Access Codes*, CC Docket No. 95-155, *Order on Reconsideration*, 22 FCC Rcd 22188, 22188-22189 (2007). RespOrgs gain access to the database pursuant to special tariff of the Bell Operating Companies. SMS/800 Functions, Tariff FCC No. 1 (hereinafter, the "*SMS/800 Tariff*").

¹² "A tariff filed with a federal agency is the equivalent of a federal regulation." *Cushman v. Sprint Corp.*, 133 F. 3d 484, 488 (7th Cir. 1998). "[A] tariff, required by law to be filed, is not a mere contract. It is the law." *Carter v. AT&T*, 365 F. 2d 486, 496 (5th Cir. 1966), *cert. denied*, 385 U.S. 1008 (1967); *see also MCI Telecommunications Corp. v. Teleconcepts, Inc.*, 71 F. 3d 1086, 1095 (3rd Cir. 1995).

¹³ 47 C.F.R. § 52.111.

¹⁴ *SMS/800 Tariff* at § 2.3.1(A)(2). The reservation of a number without having an identified subscriber is *prima facie* evidence of "warehousing," an expressly prohibited practice, an unreasonable practice under Section 201(b) of the Communications Act, and inconsistent with the mandate of Section 251(e) of the Act that numbers be made available on an equitable basis. *Toll Free Service Access Codes*, CC Docket No. 95-155, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162, 11178-11179 (1997); 47 C.F.R. § 52.105(b)(1); *SMS/800 Tariff* at § 2.2.2(A).

“spare pool” of available numbers.¹⁵ The reservation of a number without having an identified subscriber is prima facie evidence of “warehousing,” an expressly prohibited practice, an unreasonable practice under Section 201(b) of the Communications Act, and inconsistent with the mandate of Section 251(e) of the Act that numbers be made available on an equitable basis.¹⁶

9. “RespOrgs ... may *not* transfer toll free numbers directly from one entity to another unrelated subscriber, absent a specific directive by the Commission.¹⁷ When a subscriber discontinues toll free service, the number is to be placed into DISCONNECT status for a period of 120 days,¹⁸ 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: The applicable regulation expressly provides:

All toll free numbers in disconnect status must go directly into the spare category upon expiration of the 4-month disconnect interval. Responsible Organizations shall not retrieve a toll free number from disconnect status and return that number directly to working status at the expiration of the 4-month disconnect interval.¹⁹

B. The Unlawful Actions of Yorkshire

10. In the matter at hand these regulations, policies, and requirements were clearly violated. The prior user terminated its toll free service on October 6, 2010. Verizon thereupon changed the SMS/800 status of the Number from ACTIVE to DISCONNECT. The prior user

¹⁵ 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.

¹⁶ *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).

¹⁷ *Transaction Network Services, Inc.*, 26 FCC Rcd at 2109.

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

¹⁹ *Id.*

had until October 5, 2011, to reclaim the Number to be used with either a reactivated or new toll free service with the same or a different carrier. But that is not what happened.

11. The prior subscriber signed the LOA because she was told another entity had mistakenly used the number in advertising and marketing materials, and now wished to secure use of the number in order to avoid the expenditure of recalling and revising those materials. This appears to have been a false representation, but even had it been true, the purpose of securing the LOA was not to have the former subscriber reclaim the number and reestablish toll free service, which would have been the subscriber's right under FCC requirements, but rather to transfer from the number directly from the prior subscriber to a new subscriber, bypassing the spare pool, a clear contravention of the first-come, first served scheme that is fundamental to the Commission's toll free number administration policy.²⁰

V. PROPOSED REMEDIES AND REQUEST FOR SPECIAL RELIEF

12. The direct transfer from the Number from one subscriber to another unrelated subscriber, without the number first having been placed in the spare pool, was clearly a violation of applicable provisions of the Communications Act, Commission regulations and policy, and the SMS/800 tariff. These same legal provisions afforded Liff the right to a first-come, first-serve opportunity to reserve the Number, a right of which he was deprived by the unlawful actions described herein. Liff therefore respectfully seeks redress and remedy, as follows.

²⁰ This is assuming, of course, that the number was in fact reserved for a bona fide subscriber to toll free service. Liff, undersigned counsel, and several other people have, for the past few months, dialed the number from various different area codes, and there has never been an answer or a diversion to any sort of recording. The number just rings with no answer. If the Number is being held with no toll free service subscriber (or if it is being held with PrimeTel or some other affiliate of Yorkshire acting as a shell), this would also violate the rules against hoarding of toll free numbers by RespOrgs. 47 C.F.R. § 52.107.

A. Declaratory Ruling

13. First, Liff respectfully requests a declaration that the transfer of the failure to return the Number to the spare pool and its porting to a different RespOrg for purposes other than reactivation of the original subscriber within the prescribed grace period was unlawful and a violation of applicable FCC regulations, policies, and tariffs governing the administration of toll free telephone numbers.

B Transfer of Number

14. It is further requested that the Commission enter an order directing Yorkshire to transfer the Number to Liff. Section 52.111 of the Rules expressly acknowledges the Commission's authority to authorized exceptions to the usual first-come, first-served protocol in certain cases.²¹ The Commission has in fact ordered transfers of toll free numbers to specified users where there were important public interest reasons for so doing.²² Liff respectfully submits that there are sufficient public interest grounds for granting such special relief in this case. Unless 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

²¹ 47 C.F.R. § 52.111 (directing assignment of toll free numbers on a “first-come, first-served basis unless the Commission directs otherwise”).

²² *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). 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).

incentive to present complaints to the Commission. But such complaints must be encouraged, for at least two important reasons. First, absent complaints, the Commission will never be made aware of such violations. The nature of toll free number administration is such that the Commission cannot adequately monitor and police the conduct of RespOrgs; indeed, often the subscribers and potential subscribers involved are unable to learn all the behind-the-scenes maneuvering involved. Second, the threat of such complaints can serve to deter RespOrgs from committing such violations. But unless there is a realistic hope of obtaining the sought-after number, a wronged party would have little incentive to expend the time and financial resources necessary to present a complaint to the Commission.

C. Referral to Enforcement Bureau for Investigation & Sanctions

15. Liff further asks that this matter be referred to the Enforcement Bureau for a full investigation, focusing particularly on the practices and actions Yorkshire, including, but not limited to, the practice of soliciting letters of authorizations from existing toll free subscribers for the purpose of transferring numbers to other unrelated subscribers. Depending on the results of such investigation, the Commission should impose such sanctions on the Yorkshire as it may determine is appropriate, for the violations of the toll free number regulations and policies, for the false statements and lack of candor in the carriers' responses to the informal complaint, and for any further violations found in the course of addressing this complaint or in the investigation proposed in the preceding paragraph. Possible sanctions should include, without limitation, a cease and desist order, monetary forfeiture, and decertification as a RespOrg.

WHEREFORE, good cause having been shown, and it appearing to be in the public interest, it is respectfully requested that the foregoing amended petition for relief be granted.

Respectfully Submitted,

ROBERT LIFF



By: Robert J. Keller
His Attorney

Email: rjk@telcomlaw.com
Telephone: 202.223.2100
Facsimile: 202.223.2121

Law Offices of Robert J. Keller, P.C.
PO Box 33428
Washington, D.C. 20033

Dated: January 31, 2013

Certificate of Service

I, Robert J. Keller, counsel for Robert Liff in the above-captioned matter, hereby certify that on this 31st day of January 2013, I caused copies of this pleading be served on the following via first class U.S.P.S., postage prepaid:

Charles H. Helein, Esq.
The Helein Law Group
1220 Daviswood Drive, 2nd Floor
McLean, VA 22102-2220



Robert J. Keller



Phone: (888) 767-3300 Option 1
Email: amer.bis.sms800.sms800hd@sykes.com

May 2, 2011

Name: Robert J. Keller
Company: Law Offices of Robert J. Keller, P.C.

Dear Robert J. Keller,

SMS/800® non-proprietary information of a toll free number consists of the current service provider, current status and the trouble referral number of the current service provider. SMS/800 does not contain information for numbers other than toll-free (800, 888, 877, 866, & 855). Please note that customer information is not maintained by SMS/800 and must be obtained from the current toll free service provider.

Below is the non-proprietary information on the toll free numbers submitted:

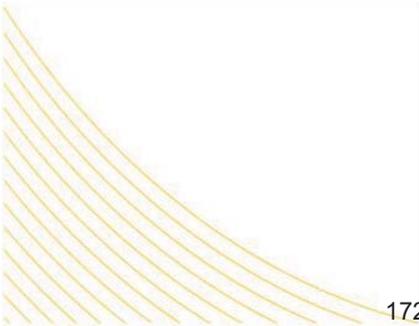
Dial Number	Service Provider	Status	Service Provider Contact #
(888) 776-4737	VERIZON BUSINESS		800-624-5677
	6-18-09 to 10-6-10	ACTIVE	
	10-6-10 to 1-24-11	DISCONNECT	
	1/24/2011	RESERVED	
	Ported to		
	YORKSHIRE TELECOM		800-967-5744
	1/24/2011	Reserved	
	1-24-11 to Current	Active	

If you have any questions regarding the information you have received, please contact the SMS/800 Help Desk at (888) SMS-3300, option 1.

Sincerely,



Mark Ohlhauser
Analyst
SMS/800 Help Desk





Phone: (888) 767-3300 Option 1
Email: amer.bis.sms800.sms800hd@sykes.com

May 2, 2011

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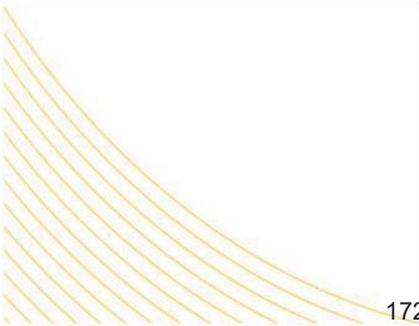
Dial Number	Service Provider	Status	Service Provider Contact #
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	10-6-10 to 1-24-11	DISCONNECT	
	1/24/2011	RESERVED	
	Ported to		
	YORKSHIRE TELECOM		800-967-5744
	1/24/2011	Reserved	
	1-24-11 to Current	Active	

If you have any questions regarding the information you have received, please contact the SMS/800 Help Desk at (888) SMS-3300, option 1.

Sincerely,



Mark Ohlhauser
Analyst
SMS/800 Help Desk



DECLARATION OF SYLVIA NEWELL

I, Sylvia Newell, hereby state the following:

1. I am the principal of Progress, Inc., located at 101 Fourth Avenue NE, Pipestone MN.
2. Until October of 2010, Progress, Inc., had been a subscriber to toll free service, using the toll free telephone number 888-776-4737 (or 888-PROGRESS).
3. On or about October 6, 2010, I terminated service.
4. Sometime in late January 2011, I was contacted by a gentleman who said he was an advertising or marketing agent of some sort. He stated that he had printed advertising material that mistakenly used the telephone number 888-776-4737. He asked if I would sign a document releasing my rights as former subscriber to the number so that the advertising materials would not have to be redone. Because I had terminated service and had no intention of using the number again, I agreed to do so. On or about January 24, 2011, I signed a form provided to me, believing that was its purpose.
5. Neither I, Progress, Inc., nor any person or company affiliated with either us has reactivated any toll free service using the number 888-776-4737.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 22 day of September, 2011.



Sylvia Newell

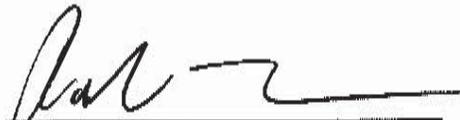
DECLARATION OF ROBERT LIFF

I, Robert Liff, hereby state the following:

I assisted in the preparation of the Amended Petition for Declaratory Ruling and Request for Special Relief regarding the toll free telephone number [REDACTED]-888-776-4737 to be filed with the Commission in CC Docket No. 95-155. I am generally familiar with the allegations and assertions set forth therein. The factual assertions in the Amended Petition, save and except matters that are otherwise attested to and/or supported or which are subject to official notice by the Commission, are true and correct of my personal knowledge. All allegations are offered in good faith.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of January, 2013.



Robert Liff