SMS/800®

Attachment A

Date: September 30, 2010

To: All Responsible Organizations (Resp Orgs)

Re: Order Issued from the FCC - Change to the 855 Toll Free Code Opening Date and Allocation Method Established

Please be advised, the Federal Communications Commission (FCC) released an Order today that announces a change to the 855 Toll Free code opening date and establishes an allocation method for the release of the 855 Toll Free code.

A copy of the FCC Order has been attached to this News Flash.

If you have any questions in regards to this News Flash, please contact the SMS/800 Help Desk at 888-SMS-3300, Option 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

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

ORDER

Adopted: September 30, 2010 **Released: September 30, 2010**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) establishes an allocation method for release of the 855 toll free code that will help ensure an efficient and equitable distribution of these numbers at the code's opening. We also grant, in part, a Petition for Emergency Relief and Expedited Action (Petition) filed by the Toll Free Number Coalition (Toll Free Coalition)[1] by delaying the October 2, 2010, code opening for one week to allow all Responsible Organizations (RespOrgs) time to review our allocation scheme and make any necessary preparations. We otherwise deny the Toll Free Coalition Petition. The Bureau directs Database Service Management, Inc. (DSMI), the SMS/800 database administrator, to delay the opening of the 855 toll free code until October 9, 2010. Upon the code's opening, we direct DSMI to limit each RespOrg to one hundred 855 numbers per day for the first 30 days that the 855 code is opened.[2] In doing so, we waive the Commission's rule that toll free numbers be distributed on a first-come, first-served basis[3] during the 30-day allocation period.

2. On June 25, 2010, the Bureau issued a letter authorizing DSMI to open the 855 toll free code.[4] Subsequently, on August 27, 2010, the Bureau issued a Public Notice seeking comment on whether the Commission should implement an allocation or rationing scheme for new 855 numbers to ensure that these toll free numbers are distributed fairly, and on the time period for any such approach.[5] The Commission received several comments offering allocation and rationing proposals. Additionally,

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[1] Toll Free Number Coalition Petition for Emergency Relief and Expedited Action, CC Docket No. 95-155 (filed Aug. 31, 2010) (Toll Free Coalition Petition).

[2] RespOrgs are entities that are certified by DSMI to access the SMS/800 database. Any entity that meets reasonable financial, technical and service-related requirements may serve as a RespOrg, including large users of toll free service. *See Provision of Access for 800 Service*, CC Docket No. 86-10, Order, 8 FCC Rcd 1423, 1428, para. 41 (1993). Subscribers seeking to obtain a toll free number must contact a RespOrg, which then obtains the toll free number from the SMS/800 database and manages the record for the number, including billing and routing information, as well as information about the subscriber's interexchange carrier.

[3] 47 C.F.R. § 52.111 ("Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission.").

[4] *See* Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Michael Wade, President, Database Service Management, Inc., CC Docket No. 95-155, DA 10-1117 (rel. June 25, 2010); *see also* Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Michael Wade, President, Database Service Management, Inc., CC Docket No. 95-155, DA 10-1440 (rel. Aug. 24, 2010) (granting a request by the SMS/800 Number Administration Committee to delay the 855 code opening by 24 hours, to Saturday, October 2, 2010, to lessen the impact on regular customer activities that take place during the normal business week).

[5] *Toll Free Service Access Codes*, CC Docket No. 95-155, Public Notice, DA 10-1604 (rel. Aug. 27, 2010).

the Toll Free Coalition filed its Petition, [6] which asks the Commission to take several actions it believes are necessary to ensure a more fair and orderly opening of the 855 code.[7]

Daily Cap on 855 Toll Free Numbers.

3. After reviewing the comments, the Bureau concludes that some type of rationing or allocation scheme is necessary for new 855 numbers. Indeed, no commenter opposed an allocation scheme. [8] In particular, we are persuaded that commenters' concerns that larger RespOrgs with enhanced connectivity to the SMS/800 database would otherwise be able to quickly reserve sought-after vanity numbers.[9] The Commission's rules strictly prohibit warehousing of toll free numbers, a practice in which RespOrgs, either directly or indirectly through an affiliate, reserve toll free numbers from the SMS/800 database without having an actual toll free subscriber for whom the numbers are reserved.[10] Nevertheless, we are concerned that certain RespOrgs may still engage in this practice. The daily allocation scheme is necessary to help prevent this activity and ensure a fair allocation of 855 numbers to all RespOrgs and, in turn, to all toll free subscribers.

4. The proposals to address these concerns generally fall under one of two categories: (1) limiting the number of 855 toll free numbers a RespOrg may reserve, or (2) imposing a "randomized round robin" allocation scheme, whereby each RespOrg submits a list of all requested 855 numbers, which is then randomized so that numbers are not processed by preference.[11] We find that the most equitable and practical allocation scheme is to impose a daily number reservation limit on each RespOrg for the first 30 days of the 855 code opening. Such an allocation scheme gives all RespOrgs, regardless of their size and connectivity to the SMS/800 database, an equal opportunity to obtain 855 numbers when the new code opens. Moreover, this allocation plan can be implemented expeditiously. As stated by DSMI, daily allocation of toll free numbers is something DSMI has implemented in the past and can implement with the 855 code without engaging in software modifications or testing that would delay the October 2, 2010, release date.[12] For these reasons, we believe that a daily allocation is preferable to a "randomized round robin," which, although a useful concept, would require DSMI to develop or purchase

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[6] In its Petition, the Toll Free Coalition states that it is composed of small RespOrgs, toll free number service providers, and their customers. *See* Toll Free Coalition Petition at 1, n.1.

[7] *See infra* para. 7.

[8] *See, e.g.*, Vanity International Comments at 1 (filed Sept. 3, 2010) (stating that an allocation scheme is necessary to avoid those RespOrgs "with the most powerful connections from getting first pick of the *best* available numbers – and overwhelming the SMS/800 system with real-time requests"); Comments of Bill Quimby at 1 (filed Sept. 2, 2010) (stating that capacity issues with the release of the 855 code "will be eliminated or greatly reduced with rationing"); ATL Comments at 2 (filed Sept. 10. 2010) (stating, "[t]he desire for specific numbers by a few RespOrgs and the lengths they will go to get them has made the process of simultaneous release of numbers in a code inherently a process that can be abused."). Numerous commenters made the argument that, a temporary daily cap on the amount of 855 numbers that can be taken per day is necessary to prevent a few vanity number businesses from hoarding a large amount of the 855 numbers that real customers need to build their businesses. *See, e.g.*, Comment of Louis Allen at 1 (filed Aug. 31, 2010); Comment of Toni House at 1 (filed Aug. 31, 2010); Comment of Aaron Story at 1 (filed Sept. 1, 2010).

[9] *Id.*

[10] *See* 47 C.F.R § 52.105.

[11] *See* Vanity International Comments at 2; *see also* ATL Comments at 2 (supporting the randomized round robin rationing plan).

[12] *See* DSMI Comments at 2 (filed Sept. 2, 2010) (stating that is has imposed a flat rate allocation across all RespOrgs); *see also* DSMI Reply Comments at 1-2 (filed Sept. 10, 2010) (noting that such an allocation scheme has been designed and tested); Worldlink Services, Corp. Comments at 1 (filed Sept. 7, 2010) (stating "[d]aily rationing would be the most logical choice and only realistic means the SMS could take to counter any number hoarding.").

a "randomization tool," make software modifications, test the application, and obtain feedback from industry.[13]

5. Moreover, we find that a limit of one hundred 855 numbers per day per RespOrg, is a reasonable limit that affords all RespOrgs, regardless of their size and connectivity, an opportunity to reserve their most desired 855 vanity numbers. DSMI has provided a recent, six-week representation of the amount of toll free numbers reserved per week. Based on this information, the current 425 active RespOrgs are reserving approximately 30 toll free numbers per day.[14] For our allocation scheme, we have increased the daily reservation number to one hundred per day to account for increased demand expected with a new code opening. Accordingly, we conclude that based on the number of RespOrgs vying for vanity numbers in the newly-opened 855 code, a limit of one hundred numbers per day for a 30-day allocation period is sufficient to level the playing field for 855 vanity numbers.[15] We reiterate that, under the Commission's rules, RespOrgs may not reserve toll free numbers without having an actual toll free subscriber for whom those numbers are being reserved, and toll free numbers may not be reserved with the intent of selling the number for a fee.[16]

6. To implement this daily allocation scheme, we waive the Commission's requirement that toll free numbers be assigned on a first-come, first-served basis.[17] The plain language of section 52.111 of the Commission's rules authorizes the Commission to direct assignment of toll free numbers on a basis different than the usual first-come, first-served basis.[18] Moreover, the Commission has authority to waive any provision of its rules for good cause shown.[19] The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.[20] We find that to ensure a more equitable distribution of 855 toll free numbers, a limited deviation from the first-come, first-served rule is warranted. However, we limit this waiver to the 30-day allocation period, after which time regular distribution of 855 numbers will commence. We note that in 1997, the Common

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[13] DSMI Reply Comments at 2.

[14] *See* Letter from Michael Wade, President, Data Service Management, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-155, Attach, at 2 (filed Sept. 29, 2010) (providing the average amount of toll free numbers taken from the database per week, over a six week period. The average of this six week period is 92,136 numbers, per week. This weekly average, when divided by the current 425 active RespOrgs, equals approximately 216 numbers per RespOrg, per week. That number divided by seven days, equals 30 numbers per RespOrg per day).

[15] We believe that a 30-day allocation period gives the 425 RespOrgs sufficient opportunity to reserve their customers' most desired 855 vanity numbers. A daily allotment affords RespOrgs multiple attempts to satisfy the needs of subscribers looking for a vanity number that meets their needs. We believe anything beyond 30 days would unnecessarily restrict access to 855 numbering resources.

[16] *See* 47 C.F.R §§ 52.105, 52.107; *see also* Letter from A. Richard Metzger, Jr., Acting Chief, Common Carrier Bureau to Michael Wade, President, Database Service Management, Inc. at 3 (rel. Sept. 29, 1997) (800/888 Allocation Letter); Comments Sought on 855 Toll Free Code Opening Allocation, CC Docket No, 95-155, Public Notice, DA 10-1604 at 2 (rel. Aug. 27, 2010).

[17] 47 C.F.R. § 52.111; *see also Toll Free Service Access Code,* CC Docket No. 95-155,Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9060 para. 3 (1998)("vanity numbers [in] future toll free codes shall be assigned on a first-come, first-served basis as each code is opened for calling").

[18] Section 52.111 of the Commission's rules states: "Toll free numbers shall be made available on a first-come, first-served basis *unless otherwise directed by the Commission.*" 47 C.F.R. § 52.111 (emphasis added).

[19] *See* 47 C.F.R. § 1.3 ("The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

[20] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

Carrier Bureau, on delegated authority, implemented a rationing scheme for the 800 and 888 toll free codes.[21] In that letter, the Bureau directed DSMI to limit the quantity of 800 or 888 numbers a RespOrg may reserve per week.[22] Here, we impose a similar scheme, but impose it on a daily basis and only for the 855 code.

Toll Free Coalition Petition.

7. In its Petition, the Toll Free Coalition requests that the Commission do one of two things: (1) issue a declaratory ruling no later than September 30, 2010, directing DSMI to defer the scheduled October 2, 2010, release of the 855 code until such time as "DSMI has demonstrated to the satisfaction of the Commission that this allocation will be administered in a fair, orderly and non-discriminatory manner, as required by the Commission and the SMS/800 tariff;"[23] or, in the alternative, (2) direct all RespOrgs to defer for a period of 30-60 days "the assignment to customers of numbers using the new code, reserving the right to require DSMI to recover all numbers and institute a new deployment in the event there is demonstrable proof that the scheduled October 2 release is not fair and equitable."[24] The Coalition also asks that under either option, the Commission reinstate the right of first refusal early reservation plan that was put in place with the 888 code release. Such a reservation plan would allow a RespOrg to pre-reserve an 855 toll free number for a subscriber who had the same number in another toll free code (*e.g.*, 1-800-Flowers, 1-888-Flowers, 1-877 Flowers, 1-866-Flowers).[25]

8. We grant the Toll Free Coalition's request to delay the 855 code opening, but for only one week. We conclude that a week is sufficient time for DSMI to notify RespOrgs of our allocation scheme and allow them to make any necessary network and administrative preparations. We deny the Toll Free Coalition's requests to either delay the 855 code opening until DSMI demonstrates that allocation of the 855 code will be fair, orderly and non-discriminatory, or defer 855 number assignments and allow DSMI to recover all released numbers if there is some "demonstrable proof" that the release was not equitable because the requests are overly broad and unworkable. We find these proposals unworkable because as stated by DSMI, it cannot recover reserved numbers after the opening and institute a new deployment "without software changes to the SMS/800 system."[26] Moreover, we find that the request that DSMI somehow "demonstrate" that the release would be fair to be vague and overly broad. Indeed, as stated by

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[21] *See* 800/888 Allocation Letter (establishing a number conservation plan by limiting the weekly reservation of toll free numbers in the 800 and 888 codes). In addition, the Bureau has waived the first-come, first-served rule in the context of toll free vanity numbers. *See Toll Free Service Access Codes,* CC Docket No. 95-155, Order, 22 FCC Rcd 651 (Wireline Comp. Bur. 2007); *see also Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 22 FCC Rcd 21573 (Wireline Comp. Bur. 2007) (extension until Apr. 21, 2008); *see also Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC Rcd 6623 (Wireline Comp. Bur. 2008) (extension until July 17, 2008); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC Rcd 11015 (Wireline Comp. Bur. 2008) (extension until Nov. 14, 2008); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 23 FCC 16659 (Wireline Comp. Bur. 2008) (extension until May 14, 2009); *Toll Free Service Access Codes*, CC Docket No. 95-155, Order, 24 FCC 5638 (Wireline Comp. Bur. 2009) (extension until Aug. 14, 2009); *see also Toll Free Service Access Codes*, CC Docket No. 95-155, Order, DA 09-1804, (rel. Aug. 13, 2009) (extension until October 14, 2009).

[22] 800/888 Allocation Letter at 2.

[23] Toll Free Coalition Petition at 1.

[24] *Id.* According to the Petition, the Toll Free Coalition sought the same relief in November 2000, with the then scheduled release of the 855 code. That petition was dismissed as moot after the Commission directed DSMI to postpone release of the 855 code. *See id.* at 1, n.2.

[25] *Id.* at 8-9.

[26] DSMI Reply Comments at 2.

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DSMI, the Toll Free Coalition "proposes no methods to assess the fairness of the results."[27] Finally, even if we did conclude that the Toll Free Coalition's request otherwise had merit, DSMI has explained that it has made "substantial upgrades to SMS/800 service" since the release of the 877 and 866 codes.[28] Specifically, over the last five months, DSMI has engaged in several rounds of testing and now can support system upgrades. In addition, DSMI has incorporated several changes to the system that are designed to improve performance during the 855 code opening. These changes will allow increased, simultaneous usage. Specifically, DSMI states that it has made the following improvements: "(1) logon transactions made parallel running in five concurrent regions; (2) dedicated buffers added; (3) buffer sizes increased; (4) number of concurrent Web-based access (WBA) users allowed on SMS/800 was tripled (from 1,500 to 4,500); (5) Mechanized Generic Interface buffer management system implemented; and (6) increased WBA timeout clock from 300 seconds to 1200 seconds."[29] We conclude that these DSMI system enhancements, coupled with our daily cap allocation scheme, sufficiently address the Coalition's concerns.

9. We also deny the Toll Free Coalition's request that the Commission reinstate the right of first refusal early reservation plan that was put in place with the 888 code release.[30] The Coalition argues that the record of the 877 and 866 code justifies reinstating the right of first refusal. We disagree. First, as stated by DSMI, when the Commission did establish the right of first refusal for the 888 code, there was only one existing 800 code, which meant there was only one previous RespOrg and subscriber with a right of first refusal for any given number. Now, with the subsequent release of the 877 and 866 codes, "[a]ny attempt to implement a right of first refusal plan for the 855 code opening would require addressing the possibility that up to four different RespOrgs and end users have that right."[31] DSMI further notes that "[s]orting out who has the right of first refusal would clearly be a lengthy and involved process with a significant amount of industry participation, and perhaps subscriber feedback, being considered."[32] We agree with DSMI that such a plan is not feasible. Moreover, we believe that such a plan is inequitable, as early reservation could deny new subscribers from obtaining vanity numbers that may have been assigned to others in previous code openings. We note the right of first refusal was only implemented for the 888 code and not for the subsequent releases of the 877 and 866 codes. For all these reasons, we deny the Toll Free Coalition Petition.

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251(e), sections 1.3 and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.111, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291,[33] that DSMI, upon release of the 855 toll free code, shall limit the number of 855 toll free numbers each Responsible Organization may reserve to one hundred per day for the first 30 days of the 855 code opening. We also direct DSMI to notify each Responsible Organization of such action.

11. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 251(e) and 408 of the

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[27] *Id*; *see also* ATL Communications, Inc. Comments at 2 ("I don't think that anything DSMI could do would alleviate the concerns expressed in that filing.").

[28] DSMI Reply Comments at 3.

[29] *Id.* at 4.

[30] *See Toll Free Service Access Codes*, CC Docket No. 95-155, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9060, para. 3 (1998).

[31] DSMI Reply Comments at 3.

[32] *Id.*

[33] *See* 47 U.S.C. § 155(c).

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Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the Petition for Emergency Relief and Expedited Action filed by the Toll Free Number Coalition IS GRANTED to the extent set forth herein and otherwise IS DENIED.

12. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 251(e) and 408 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251(e), and 408, section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, and pursuant to authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that this action IS EFFECTIVE IMMEDIATELY UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
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