

## Ex Parte Filing

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, Room TW-A325  
Washington, D.C. 20554

**Re: Toll Free Service Access Codes, CC Docket No. 95-155**

Dear Ms. Dortch,

The 844 Release Coalition (“the Coalition”) hereby submits an Ex Parte filing to address the method to be employed for the release of the 844 toll free code (CC docket No. 95-155). The Coalition recommends that for the first 30 days of the 844 NPA code opening, each “Resp Org” be limited to reservations of one hundred (100) 844 numbers per day. Additionally, in order to ensure fair and equitable access for all companies, it is suggested that the Commission provide clarification of the term “Resp Org” for the purpose of the code opening, to include any and all affiliated entities and companies with multiple (two-digit alpha) Entity Codes, under common ownership and control<sup>1</sup>, and that companies with common ownership and control over multiple Resp Org entities are to be treated as a single Resp Org for the purposes of setting the daily allocation of 844 numbers.

In order to expedite the implementation of the “affiliate” restrictions and aid in its enforcement, the Coalition recommends that the Commission direct SMS/800, Inc. to carry out some fundamental administrative procedures, and to issue some clear notifications to all Resp Orgs, prior to the 844 Code release. In addition, the SMS/800 Inc. should also be directed to provide the Commission with a specific set of documents and reports before, during and after the release.

The Coalition provides its recommendations in the form of sample portions of an anticipated Commission Order, as follows:

By the Chief, Wireline Competition Bureau:

1. On July 31, 2013, the Bureau issued a letter authorizing SMS/800, Inc. to open the 844 toll free code on December 7, 2013 **at noon, Eastern Time**. In that letter the Bureau also stated that the allocation method for the 844 code remains under consideration. In this Order, the Wireline Competition Bureau (Bureau) establishes an allocation method for release of the 844 toll free code that will help ensure an efficient and equitable distribution of these numbers at the code's opening. Upon the code's opening, we direct SMS/800, Inc. to limit each “Resp Org”, as defined herein, to one hundred 844 numbers per day for the first 30 days that the 844 code is opened. In doing so, we waive the Commission's rule that toll free numbers be distributed on a first-come, first-served basis during the 30-day allocation period.<sup>2</sup>
2. In its Public Notice, released April 4, 2013, The Wireline Competition Bureau (Bureau) sought comment on whether the number allocation method it adopted to open the 855 toll

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<sup>1</sup> The Commission has rules for Affiliates designed to prohibit companies from gaining unfair advantage by avoiding compliance with the intent of the law. The SMT has already implemented a process for voting in SMS/800, Inc Board Members (and has reported that 55-60% have already responded), thereby acknowledging that in matters of fairness equity which impact a broad spectrum of Resp Orgs, such a method for aggregating Affiliated entities is warranted. The Commission could facilitate implementation of this approach by clarifying its “100 per Resp Org” rule as requiring that affiliates not be considered to be separate Resp Orgs.

<sup>2</sup> See generally 47 C.F.R. §§ 52.101-52.111 for compliance with the Commission's toll free rules. 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.”).

free code should be used for the release of 844. Specifically, the Bureau directed the toll free administrator to limit each Responsible Organization (Resp Org) to 100 numbers in the 855 code, per day, for the first 30 days that the code was open, thus waiving the Commission's rule that toll free numbers be distributed without limitation on a first-come, first-served basis during the 30-day allocation period.<sup>3</sup> Interested parties were requested to notify us of any concerns they have about that (855) allocation method and specify how the Commission could structure an allocation method to address those concerns for the release of 844.

3. In its 2010 Order regarding the allocation method for the release of 855 numbers, the Commission stated that the Commission's rules strictly prohibit warehousing<sup>4</sup> of toll free numbers, a practice in which Resp Orgs, either directly *or indirectly through an affiliate* (emphasis added), reserve toll free numbers from the SMS/800 database without having an actual toll free subscriber for whom the numbers are reserved. We continue to be concerned that certain Resp Orgs may engage in this practice.
4. In its implementation of the 2010 order DSMI, by disregarding the reference to affiliates, did not adequately employ procedures to protect against warehousing, thereby ensuring a fair allocation of 855 numbers to all Resp Orgs and, in turn, to all toll free subscribers. By using **Resp Org IDs** as a surrogate for **Resp Orgs**<sup>5</sup> DSMI violated the Commission's order because it did not account for the fact that some Resp Orgs have multiple Resp Org IDs.
5. After reviewing the comments, the Bureau concludes that some type of rationing or allocation scheme is necessary for new 844 numbers, otherwise those Resp Orgs with enhanced connectivity to the SMS/800 database would be able to quickly reserve sought-after vanity numbers and companies with multiple Resp Org codes, by virtue of having affiliated entities, might circumvent the fair and equitable allocation of 844 toll free numbers.
6. We find that the most equitable and practical allocation scheme is to impose a daily number reservation limit on each Resp Org for the first 30 days of the 844 code opening. Such an allocation scheme gives all Resp Orgs, regardless of their size, connectivity to the SMS/800 database, and number of affiliates, an equal opportunity to obtain 844 numbers when the new code opens.
7. Moreover, we find that a limit of one hundred 844 numbers per day per Resp Org, is a reasonable limit that affords all Resp Orgs, regardless of their size and connectivity, an opportunity to reserve their most desired 844 vanity numbers. We reiterate that, under

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<sup>3</sup> *Toll Free Service Access Codes*, CC Docket No. 95-155, Public Notice, DA 10-1604 (rel. Aug. 27, 2010).

<sup>4</sup> See 47 C.F.R. § 52.105(a) (defining warehousing as the "practice whereby Responsible Organizations, either directly or indirectly through an affiliate, reserve toll free numbers from the Service Management System database without having an actual toll free subscriber for whom those numbers are being reserved."); see also 47 C.F.R. § 52.107(a) ("hoarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service. The definition of hoarding also includes number brokering, which is the selling of a toll free number by a private entity for a fee."). *Mr. Richard Jackowitz, IT Connect, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Red 7896 (2012) (finding Mr. Jackowitz and IT Connect apparently liable, jointly and severally, for a proposed forfeiture penalty in the amount of \$240,000 for apparently violating Section 52.107 of the Commission's rules, willfully and repeatedly by brokering 15 toll free numbers for fees ranging from \$10,000 to \$17,500 per number).

<sup>5</sup> Resp Orgs 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 Resp Org, including large users of toll free service. See *Provision of Access for 800 Service*, CC Docket No. 86-10, Order, 8 FCC Red 1423, 1428, para. 41 (1993). Subscribers seeking to obtain a toll free number must contact a Resp Org, 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.

the Commission's rules, Resp Orgs 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.

8. 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.<sup>6</sup> The plain language of section 52.111 of the Commission's rules authorizes the direct assignment of toll free numbers on a basis different than the usual first-come, first-served basis. Moreover, the Commission has authority to waive any provision of its rules for good cause shown.<sup>7</sup> The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. We find that to ensure a more equitable distribution of 844 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 reservations will continue.
9. In its Petition, the 844 Release Coalition (the Coalition) states that the system used for the 855 allocation, was inequitable and discriminatory to the extent that every day Resp Orgs with multiple IDs (including the SMT's owners) were entitled to reserve up to five or six times as many numbers as other Resp Orgs.) The 844 Release Coalition requested that the Commission do one of two things: (1) Once an Entity has exceeded its allowed limit that Resp Org, as well as all of its sub-Resp Orgs, would be blocked from making any additional 844 Reservations until the start of the next day. The Coalition suggests that "the documents and descriptions of the WRA (Reservation Allocation) screens support the Coalition's understanding – namely, that the existing functionality, coupled with the Designations of Affiliated Companies through affidavits, would easily permit the system to restrict the primary entity code to 100 numbers per day (and affiliates to zero)", preventing affiliated companies from reserving more than one hundred 844 numbers (in aggregate) per day.<sup>8</sup> Alternatively, (2) "Should the Commission decide for any reason that the preceding approach is not workable, there is an alternative approach to addressing the discrimination which results from the use of Entity IDs, which would not entail any Information System resource. The Commission should:
  - a. Require affidavits from every Resp Org that wants to participate in the 844 "pre-release" program (100 per day for a month) – affidavits of affiliated companies must identify the Primary affiliate which will be allocated 100 numbers per day).
  - b. Prohibit Affiliates from separately participating in the "pre-release" program.
  - c. Require SMS to manually set allocations at zero for (a) Resp Orgs who do not submit an affidavit; and (b) affiliates other than entities designated as the Primary affiliate.
  - d. For a period extending 30-60 days after the "pre-release" program, permit affiliate Resp Orgs to transfer 844 numbers to their affiliates and/or their affiliates' customers (limited

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<sup>6</sup> 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).

<sup>7</sup> 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 therefore is shown.").

<sup>8</sup> See DSMI Comments (filed Sept. 2, 2010) (stating that The Commission and the Resp Orgs are aware of the fact that SMS/800, Inc. has implemented an allocation capability, which is not currently activated, that offers the following options:

- 1) Allocation based on the relative size of the various Resp Orgs;
- 2) Allocation based on a flat rate across all Resp Orgs;
- 3) Allocation based on a combination of (1) and (2) above; or
- 4) Allocation based on table values defined by the Commission.

- waiver of the rule on transfers). To assure that the system is not abused, the Primary affiliates could be required to report all such assignments/ports to the Commission.
- e. State its intention to impose heavy forfeitures on any company violating the Affiliate restrictions.
  - f. Direct the SMS/800 to check the records of Resp Orgs not authorized to participate in the “pre-release” on a **daily basis** and report to it violations of the Commission’s order.”
10. We grant the 844 Release Coalition’s request in part, hereby providing clarification that the term “Resp Org”, for the purpose of this 844 number allocation, includes any and all affiliated entities, and companies with multiple (two-digit alpha) Entity Codes, under common ownership and control, and that companies with common ownership and control over multiple Resp Org entities are to be treated as a single Resp Org for the purposes of setting the daily allocation of 844 numbers. This allocation plan can be implemented expeditiously.
  11. The SMS/800, Inc. is hereby directed to notify all Resp Orgs that in order to participate in the first thirty days of the 844 release, they must provide (if they have not already done so) completed affidavits, Designation of Affiliated Companies, identifying all affiliated companies and multiple (two-digit alpha) Entity Codes under common ownership and control to the SMS/800 no later than November 15, 2013.
  12. The SMS/800, Inc. will also notify all Resp Orgs of the specific rules set forth herein by the Commission regarding affiliated entities and limitations on 844 reservations during the initial thirty days of the 844 code release.
  13. The SMS/800, Inc. will also apprise all Resp Orgs that daily 844 reservations will be reviewed, and that violations of the limitations which apply to affiliated entities or multiple Resp Org IDs will be subject to penalties and fines (comparable to those that apply to violations of the warehousing rules) and may be required to return excess 844 numbers to the Spare Pool.
  14. Any Resp Org ID, not covered by a Designation of Affiliated Company form submitted to the SMS/800, Inc. will be prohibited by SMS/800, Inc. from reserving 844 numbers for the first 30 days of the 844 code release.
  15. To assist in the enforcement of “affiliated entities” restrictions of this allocation plan the SMS/800, Inc. is ordered to provide the Commission with a series of reports, in order to identify Resp Org codes of affiliated entities and to monitor daily 844 reservations, including:
    - a. Copies of all Designation of Executive Contact and Declaration of Affiliated Companies forms; both those submitted previously by Resp Orgs to SMS/800, Inc. for the purpose of identifying persons eligible to vote for a new board of directors of a restructured SMS/800, Inc.<sup>9</sup>, and those submitted prior to November 30, 2013, for the purpose of qualifying to participate in the 844 release.
    - b. Report summarizing Affiliated Companies (item a. above) forms as submitted, including the Resp Org ID of all affiliated companies.
    - c. Series of reports of **all** Resp Org ID’s, sorted by: two-digit Resp Org code; Primary Contact; Address and Contact Number(s)..... For the first thirty **days** of the code release, a daily report of number 844 reservations, by Resp Org ID, with subtotals for Affiliated Companies groups.
  16. If for some reason the SMS/800 cannot block unauthorized Resp Orgs from reserving 844 numbers during the first 30 days of the code release, it will be incumbent upon each

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<sup>9</sup> See attachment A.

affiliated group of Resp Orgs to monitor and restrict aggregate reservation so as not to exceed 100 (and they should be notified of this fact by SMS/800). In either case, SMS/800 needs to have adequate procedure and system modifications in place within twelve months, thereby taking the steps necessary to assure that these changes are fully implemented , well in advance of any future code releases (833,822, etc.).

The 844 Release Coalition also stands ready to meet directly with Commission staff to address any questions they might have.

Respectfully submitted,

THE 844 RELEASE COALITION

By: David Greenhaus (HW)

August 23, 2013

**DESIGNATION OF EXECUTIVE CONTACT**  
**AND DECLARATION OF AFFILIATED COMPANIES**

The person designated below will serve as your company's Executive Contact for all communications to and from SMS/800, Inc. in connection with corporate governance matters. Your Executive Contact will be responsible for nominating candidates for election to the SMS/800, Inc. Board of Directors and casting votes on behalf of your company for SMS/800, Inc. Board of Director elections in which your company is eligible to vote. In addition, your Executive Contact will be responsible for taking any necessary actions as a member representative to the SMS/800, Inc. on behalf of your company and all other Responsible Organizations (Resp Orgs) and/or Service Control Point Owners/Operators (SCP O/Os) related to your company by virtue of having commonality of ownership and control, as further described below in the "Declaration of Related Companies" section. All correspondence related to SMS/800 Inc. corporate governance will be addressed directly to the Executive Contact that you designate on this form.

It is your responsibility to contact SMS/800, Inc. at [Governance@SMS800Inc.com](mailto:Governance@SMS800Inc.com) with any updated information about your designated Executive Contact including name, email address, telephone number and mailing address. Unless you otherwise inform us in writing, the Executive Contact information you provide on this form will renew automatically on an annual basis.

**Please complete sign and return all of the forms to SMS/800, Inc. as soon as possible. The information provided on these forms is for internal corporate governance purposes only and will not be made public.**

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**DESIGNATION OF EXECUTIVE CONTACT**

Legal Name of Company: \_\_\_\_\_

Primary Entity Code: \_\_\_\_\_

Company Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_

Name and Title of Executive Contact: \_\_\_\_\_

Executive Contact Mailing Address (if different from Company Mailing Address):

\_\_\_\_\_  
\_\_\_\_\_

Executive Contact Phone: \_\_\_\_\_

Executive Contact Email: \_\_\_\_\_

**DECLARATION OF AFFILIATED COMPANIES**

Please list below those two-character Resp Org Entity Codes and SCP O/O IDs for all companies for which there is a relationship of *common ownership and control* as defined below.

The term “common ownership and control” should be interpreted to mean either *de jure* or *de facto* control of a company.

A company has *de jure* control if such company possesses, directly or indirectly, an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in another company in excess of fifty percent of the total equity interests in the other company. In addition, *de jure* control can be established if a company possesses the power to vote more than fifty percent of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other company.

A company has *de facto* control if such company possesses the power to direct or cause the direction of the management and policies of such other company, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other company, by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise.

The Following two-character Resp Org Entity Codes and/or SCP O/O IDs are related by way of common ownership and control (as defined above) with the above named company and will be represented by the Executive Contact designated on this form.

Two-character Resp Org Entity or SCP O/O ID # (attach additional sheet if necessary):


I certify that the foregoing information is true and correct and that I am duly authorized to sign this DESIGNATION OF EXECUTIVE CONTACT AND DECLARATION OF AFFILIATED COMPANIES on behalf my company as of this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_