

Ex Parte Filing

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th 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 in response to MEMORANDUM FROM SMS/800, INC. filed Friday, August 23, 2013 addressing the method to be employed for the release of the 844 toll free code (**CC docket No. 95-155**). This 844 Release Coalition ex parte counters some of the points made in the SMS/800, Inc. filing and provides clarification and insight on various claims made therein that we believe will be useful to the Commission in its deliberations.

Industry Consensus

1. Per SMS/800, Inc.:

‘The Company researched the total market share of the Coalition in order to better understand the Coalition’s industry representation. The Coalition is comprised of 57 entities that, together, represent approximately 13% of the active Resp Orgs in the SMS/800 and entities comprising the Coalition hold market share of roughly 16% of the toll free number inventory not in the spare pool. Based on this information, it is not clear to the Company that the 844 NPA allocation proposal advocated by the Coalition in its ex parte is representative of the Resp Org community as a whole.’

844 Release Coalition response:

The 57 entities that comprise the 844 Release Coalition, together, represent 98% of the Resp Orgs that responded to the Commission’s Notice of the 844 release. To the best of our knowledge, the Coalition membership represents an unprecedented number of Resp Orgs joining together in support of any specific toll free issue before the FCC in recent history. This group of Resp Orgs represents millions of toll free number users.

2. Per SMS/800, Inc.:

‘Further, when a Coalition representative raised its concerns, consistent with the Coalition ex parte, at a recent SMS/800 Number Administration Committee (“SNAC”) meeting on August 7, 2013, the SNAC declined to act based on differing opinions expressed by SNAC members on the preferred allocation method, in which some members would like to have all numbers acquired at once, while others would like a method more similar to the 855 opening. Since there was no consensus reached among its members, the SNAC determined not to provide comments to the Commission regarding a suggested solution.

844 Release Coalition response:

Attendance on the SNAC call referred to by SMS/800, Inc. was comprised of 6 Resp Orgs, including AT&T, Verizon and Century Link. Additionally, the proposal that SNAC reach consensus on the 844 allocation issue was directly opposed by a representative of SMS/800, Inc., who indicated that they would challenge the validity of an FCC filing by SNAC as procedurally out of order.

Entity Means Resp Org ID; The SMS/800

3. Per SMS/800, Inc.:

‘Contrary to the Coalition’s claim, it cannot put in place a temporary patch overnight or rely on a manual workaround and assume that it will perform as tasked and satisfy regulatory imposed conditions, especially in the context of an activity as significant as an NPA code opening. The nation’s sole toll free database cannot and will not depend on a human manipulated spreadsheet.’

844 Release Coalition response:

The database already relies upon manual entry for much of the toll free number entry and administration, yet the SMS/800, Inc. suggests that a single entry (0 or 100) cannot be made correctly by entity, with over three months to collect the affidavits and perform the data entry. Even if the database had the software capability they refer to, they would still have to manually input the affiliate relationships. The SMS/800 indicates (p. 5, footnote 8) that “The Coalition is stating fact when they assert that the reserve allocation (“WRA”) screen can control the allocation at an Entity level”. This capability is in fact all that is needed to control (allow or block) access to 844 numbers in accordance with directions (affidavits) submitted by Resp Orgs. It also suggests that even if a Resp Org were remiss in submitting its affidavit, the situation could be corrected early on in the thirty day code opening process by changing the selection upon submission of an affidavit.

Analysis of the “Affidavit” Solution

4. Per SMS/800, Inc.:

‘Although it is unclear from the Coalition’s ex parte, it appears the burden of monitoring these affidavits and reporting violations of any Commission order on affidavits would rest on the shoulders of the Company. The Coalition does not provide an explanation of the construct of the affidavit, how it is to be delivered to the Resp Orgs, justification for such an affidavit under the Commission’s authority, justification of such an affidavit under the tariff, the administration of such affidavits within the SMS/800 or the legal ramifications of enforcement of such provisions to include indemnification should an error occur or other problems created through implementing such a proposal.’

844 Release Coalition response:

The SMS/800, Inc. has clearly demonstrated that they are capable and experienced with the process of informing Resp Orgs, requesting responses, updating, reminding, and collecting affiliate designation forms from their Resp Org customers as it described with respect to the affidavits collected in connection with the proposed future election of industry representatives to the Company’s Board of Directors. While the SMS/800 argues the 58% response rate on that effort was low, it likely reflects that fact that governance of SMS/800 is not perceived to be a burning issue by some in the industry.

There is more than adequate time to provide notice to the industry and collect affidavits to assure a fair and equitable release as required by the law. Indeed, the Commission's order relating to the release of the 855 code¹ was released on September 30, 2010, and the Commission found (par. 8) that delay of one week, to October 9, 2010, was "adequate time for Resp Orgs to make any necessary network and administrative preparations" required by that order.

As for the SMS/800's potential exposure to legal liability should it not collect the affidavits properly, it would be no different than its responsibility with respect to any other aspect of the code release process. It should also be pointed out that even when the SMS/800 system experienced a major failure during the release of the 877 code² locking out many Resp Orgs while others were reserving numbers, to the knowledge of the Coalition, no claims for damages were submitted.

5. Per SMS/800, Inc.:

'Any collection of affidavits, or other sworn statements, by the Resp Orgs for the purpose of verifying affiliations so that they may participate in the 844 NPA code opening should be implemented independent of the Company's corporate governance activities and with careful process and monitoring to ensure no one customer is negatively impacted or otherwise unfairly prejudiced.

844 Release Coalition response:

While the SMS/800, Inc. is to be commended for its concern that when it comes to the affidavits, the SMS/800, Inc. wants to make sure that "no one customer is negatively impacted or otherwise unfairly prejudiced". The Coalition only asks to apply a similar standard to the entire 844 code release. If the Commission does not act, the multiple Resp Org IDs held by two of the owners of the SMS/800, and likely several other Resp Orgs, will result in the overwhelming majority of the Resp Org community, and their millions of customer being "negatively impacted" and "unfairly prejudiced" in disregard of the mandate of the law.

¹ In the Matter of Toll Free Service Access Codes, CC Docket 95-155, Order, DA 10-1885 (rel. September 30, 2010)

² Toll Free Number Coalition Petition Emergency Relief and Expedited Action, CC Docket 95-155 (filed August 31, 2010).

The 844 Release Coalition 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 29, 2013