

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: November 27, 2013

Released: November 27, 2013

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) establishes an allocation method for the 844 toll free code scheduled to open on December 7, 2013. Specifically, when the code opens, we direct SMS/800, Inc., the entity that oversees the toll free Service Management System for the North American Numbering Plan, to limit each Responsible Organization (RespOrg) to 100 numbers from the new code, per day, for the first 30 days that the 844 code is open. In so doing, we temporarily waive the Commission's rule that toll free numbers must be distributed on a first-come, first-served basis to the extent necessary to accommodate this direction. The Bureau instituted the same allocation method when the 855 toll free code was opened. For reasons discussed below, the Bureau declines to adopt a new allocation method proposed by the 844 Release Coalition (Coalition).

2. On July 31, 2013, the Bureau authorized SMS/800, Inc. to open the new 844 toll free number code on December 7, 2013. To prepare for the code opening, the Bureau had earlier issued a

1 RespOrgs are entities that the SMS administrator certifies 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. 4 (1993). Subscribers seeking to obtain a toll free number must contact a RespOrg, which then obtains the toll free number from the toll free database. The RespOrg also manages the record for the number, which includes information about billing, routing, and the subscriber's interexchange carrier.

2 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").

3 Toll Free Service Access Codes, CC Docket No. 95-155, Order, 25 FCC Rcd 13687 (Wireline Comp. Bur. 2010) (855 Code Opening Order).

4 See 844 Release Coalition Comments and Petition for Relief, CC Docket No. 95-155 (filed May 6, 2013) (Coalition Petition). The Coalition is comprised of a group of 57 RespOrgs. For a list of Coalition members, see Attachment E.

5 See Letter from Julie A. Veach, Chief, Wireline Competition Bureau, FCC, to Gina Perini, Chief Administrative Officer and General Counsel, SMS/800 Inc., CC Docket No. 95-155, 28 FCC Rcd 11131 (Wireline Comp. Bur. 2013). SMS/800, Inc. initially recommended that the Commission open the 844 toll free code on February 15, 2014. See Letter from Gina Perini, Chief Administrative Officer and General Counsel, SMS/800 Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-155 (filed Nov. 14, 2012). However, due to increased demand for toll free number reservations that accelerated the exhaust of existing toll free number resources, SMS/800, Inc. modified its recommendation and asked to open the 844 code on December 7, 2013. See

(continued...)

Public Notice seeking comment on whether the number allocation method used to open the 855 toll free code should be used to open the 844 code.⁶ SMS/800, Inc. and CenturyLink recommended that the Bureau follow the same allocation method to open the 844 code as it did to open 855.⁷ The Coalition representing certain RespOrgs, in comments and a petition for relief, asked the Bureau to modify the allocation method for the 844 and future toll free code openings.⁸ The Coalition asked that the Commission: (1) prohibit affiliated RespOrgs from reserving more numbers than other RespOrgs; (2) prohibit the number administrator from assigning additional toll free numbers to affiliated RespOrgs; and (3) direct each RespOrg to file an affidavit, subject to perjury sanctions, disclosing any common ownership with other RespOrgs.⁹ The Coalition asked the Commission to delay the release of any toll free codes until these requirements could be put in place, including, if necessary, any amendments to Commission rules.¹⁰

3. After reviewing the record and considering the date for the 844 code opening, we find that we should use the same allocation method used to open the 855 code. We find that this allocation method will distribute 844 numbers more equitably and efficiently than if we did not impose an allocation method, without necessitating delay in opening the code.¹¹ The Bureau found that the allocation method for the 855 code opening responded to concerns that 855 numbers, particularly vanity numbers, would not be distributed equitably.¹² We are again concerned that, without an allocation method, larger RespOrgs with enhanced connectivity to the SMS database would be able to quickly reserve sought-after vanity numbers.¹³ We conclude that the daily number reservation limit on each RespOrg for the first 30 days of

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Letter from Gina Perini, Chief Administrative Officer and General Counsel, SMS/800, Inc., to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 95-155 at 1-2 (filed June 28, 2013).

⁶ *Toll Free Service Access Codes*, CC Docket No. 95-155, Public Notice, 28 FCC Rcd 4361 (Wireline Comp. Bur. 2013).

⁷ See SMS/800, Inc. Comments, CC Docket No. 95-155 at 6-8 (filed May 6, 2013) (SMS/800, Inc. Comments); see also CenturyLink Comments, CC Docket No. 95-155 at 2-4 (filed May 6, 2013) (CenturyLink Comments).

⁸ Coalition Petition.

⁹ *Id.* at 5-6; see also Letter from David Greenhouse, 800 Response, on behalf of the 844 Release Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-155 at 5 n.3 (filed July 12, 2013) (Coalition July 12, 2013 *Ex Parte* Letter); Letter from David Greenhouse, 800 Response, on behalf of the 844 Release Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-155 at 1-5 (filed Aug. 23, 2013); Letter from David Greenhouse, 800 Response, on behalf of the 844 Release Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-155 at 1-2 (filed Oct. 21, 2013).

¹⁰ Coalition Petition at 5-6.

¹¹ CenturyLink Comments at 3 (stating that the chosen distribution method achieved the Commission's objective and urging its adoption for the opening of the 844 code as well); see also SMS/800, Inc. Comments at 7-8 (recommending that for a period of 30 days after the date for the 844 code opening, no RespOrg may reserve more than 100 toll free numbers in the new code in any one 24-hour period).

¹² *855 Code Opening Order*, 25 FCC Rcd at 13688-78, paras. 3-5; see also SMS/800, Inc. Comments at 6 (noting that vanity numbers have been proven to be in higher demand than other toll free numbers and, therefore, controlled distribution of these resources will assist in responsibly meeting that demand).

¹³ *855 Code Opening Order*, 25 FCC Rcd at 13688, para. 3; see also SMS/800, Inc. Comments at 4 (stating that "those RespOrgs with the financial wherewithal to connect to the SMS/800 via a technology known as Mechanized Generic Interface ("MGI") were identified as having an advantage over other RespOrgs because of the flexibility inherent in that interface"); see also SMS/800, Inc. Comments at 4 n.11 (defining MGI as a "two-way interface with the SMS/800 allowing RespOrgs, among other things, larger batch orders and real-time, automatic throughput to downstream toll free number customers").

the 844 code opening gives all RespOrgs, regardless of whether or not they use enhanced connectivity to the SMS database through a Mechanized Generic Interface, a fairer opportunity to obtain 844 numbers when the new code opens.¹⁴

4. For purposes of the allocation, a RespOrg is considered to be an entity as identified by the first two characters of its RespOrg identification (ID) in the SMS database.¹⁵ The Coalition maintains that some affiliated RespOrgs have obtained multiple RespOrg IDs and thus can reserve well above the 100 number daily limit.¹⁶ The Coalition argues that the proposed allocation method would benefit a small number of companies with multiple RespOrg IDs, contrary to the Commission's policy that toll free numbers be allocated on an equitable and efficient basis.¹⁷ The Coalition also suggests a process it believes can quickly block RespOrg affiliates from reserving toll free numbers upon the 844 code opening.¹⁸

5. The Bureau recognizes the Coalition's concern that RespOrg affiliations may affect the precise distribution of numbers. However, the Commission must balance the goals of ensuring fair and efficient number distribution with the need to implement an allocation method in a timely manner. We find that we could not adopt the Coalition's proposed methodology without delaying the opening of the 844 code, and that such delay would put unacceptable pressure on toll free numbering resources. For example, the Commission would need to consider whether the statutory definition of affiliate is appropriate to apply to RespOrgs.¹⁹ In addition, SMS/800, Inc. would have to develop and implement modifications to its database to identify and block toll free reservations for affiliated RespOrgs. SMS/800, Inc. expressed concerns last August that the Coalition's proposed allocation method would necessitate a delay in opening the new code and could not be completed prior to the first calendar quarter of 2014.²⁰ According to SMS/800, Inc., changes to its current allocation method to block RespOrg affiliate reservations will require substantial time to work with its multiple vendors to coordinate the necessary changes to software and hardware, train employees, and conduct tests to ensure that any 844-

¹⁴ *855 Code Opening Order*, 25 FCC Rcd at 13688, para. 3; *see also* SMS/800, Inc. Comments at 7 (stating that given the Commission's concerns regarding the potential for abuse, Commission precedent with the 855 code, as well as feedback previously by many in the industry, a more proactive path during and immediately after the 844 code opening would be of mutual benefit to all). *Id.* at 8 (stating that while 100 toll free numbers seems a relatively small figure, setting the limit at that level not only appeals to the larger RespOrgs who do in fact have greater demand but also allows the smaller RespOrgs the opportunity to process that amount in the 24-hour period in the event they are fortunate to have similar subscriber demand).

¹⁵ SMS/800, Inc. Comments at 8.

¹⁶ Coalition Comments at 4 & Attach. B. According to the Coalition, with the 855 code opening there were at least 24 companies with two or more RespOrg IDs in which the first two digits were different and thus, were allocated "200 to 700" 855 numbers per day. *See id.* at 3-4. The Coalition further claims that "[i]n the last three years . . . 100 of the two digit RespOrg IDs are now associated with 35 companies that share identical Company Names, Contact Names, Phone Numbers, Fax Numbers or Email Addresses. Collectively, these 35 groupings can reserve a total of 7,200 additional numbers per day for the first 30 days a code is opened than they would be permitted if they were limited to 100 per grouping." *See id.* at 4.

¹⁷ *Id.* at 4.

¹⁸ *See* Coalition July 12, 2013 *Ex Parte* Letter at 3-5, Attach. E (modifying the 844 system to allow only "primary entities" a daily 100 number limit allocation, while all other affiliated entity codes are set to 0).

¹⁹ While "affiliate" is defined for certain purposes (*see, e.g.*, 47 C.F.R. § 63.03(b)(3) (relating to transfers of control); 47 C.F.R. § 52.12(a)(1)(i); 47 U.S.C. § 153(1)), the term is not defined in the context of distributing toll free numbers.

²⁰ Letter from Gina Perini, Chief Administrative Officer and General Counsel, SMS/800, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-155 at 10 (filed Aug. 23, 2013) (SMS/800, Inc. Aug. 23 *Ex Parte* Letter).

related changes to its systems do not affect other database functions.²¹ Moreover, the Coalition's proposal to require each RespOrg to file an affidavit disclosing common ownership would likely require the Commission to obtain approval under the Paperwork Reduction Act, which also would impose a delay.²²

6. We conclude that implementing the Coalition's proposed changes to the allocation system would significantly delay the 844 code opening date, and that such delay would not serve the public interest in ensuring a reliable supply of toll free numbers. We further conclude that limiting distribution of numbers for the first 30 days after the new 844 toll free code is opened, without separately evaluating RespOrg affiliation, will promote the equitable and efficient distribution of numbers more than if we do not limit such distribution, and that such an allocation methodology can be implemented in a timely manner. Accordingly, we will limit each RespOrg to 100 numbers from the new code, per day, for the first 30 days that the 844 code is open. We reiterate that, under the Commission's rules, a RespOrg 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.²³

7. As we did for the 855 code opening, the Bureau temporarily waives the Commission's requirement that toll free numbers be assigned on a first-come, first-served basis as necessary to implement this allocation method.²⁴ The plain language of section 52.111 of the Commission's rules authorizes the Commission to assign toll free numbers on a basis different than the usual first-come, first-served basis.²⁵ Moreover, the Commission has the authority to waive any provision of its rules for good cause shown.²⁶ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.²⁷ 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.²⁸ However, we limit this waiver to the 30-day allocation period, after which time regular distribution of 844 numbers will commence.

²¹ SMS/800 also notes: "In the aggregate, if the changes were implemented in this calendar year, the additional cost to the Company is estimated to be \$655,000." *Id.* at 9-10.

²² Paperwork Reduction Act of 1995, Public Law No. 104-13.

²³ See 47 C.F.R. §§ 52.105, 52.107; see also *855 Code Opening Order*, 25 FCC Rcd at 13689, para. 5; CenturyLink Comments at 3 ("Certainly the deployment of the 844 code must be done within the strictures of the Commission rules which prohibit warehousing, hoarding, and brokering of toll free numbers").

²⁴ *855 Code Opening Order*, 25 FCC Rcd at 13689, para. 6; 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"); SMS/800, Inc. Comments at 7 ("Allocation would remove an incentive for any RespOrg to push the limits of the Commission's warehousing and hoarding rules. Such an allocation would also preserve the equity in distribution of those numbers. That, naturally, is of paramount concern to the government and to the industry.").

²⁵ 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).

²⁶ 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.").

²⁷ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁸ See *855 Code Opening Order*, 25 FCC Rcd at 13689-90, para. 6 (articulating benefits of granting a temporary waiver).

8. 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 0.291,²⁹ that SMS/800, Inc., upon release of the 844 toll free code on December 7, 2013, SHALL LIMIT the number of 844 toll free numbers each Responsible Organization may reserve to 100 per day for the first 30 days of the 844 code opening. We also direct SMS/800, Inc. to notify each Responsible Organization of such action.

9. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 4(j) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j) and 251(e), and sections 1.3 and 52.111 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.111, a waiver of the Commission's first-come, first-served rule, 47 C.F.R. § 52.111, IS GRANTED for a period of 30 days once the 844 code is opened to implement the allocation method.

10. 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, 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 Relief filed by the 844 Release Coalition IS DENIED.

11. 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 Order IS EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

²⁹ See 47 U.S.C. § 155(c).