

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of	)	
	)	
SAMHSA Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers	)	CC Docket No. 07-271
	)	
Toll Free Service Access Codes	)	CC Docket No. 95-155
	)	
	)	

To: The Commission

**COMMENTS OF THE KRISTIN BROOKS HOPE CENTER**

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**COMMENTS OF THE KRISTIN BROOKS HOPE CENTER**

The Kristin Brooks Hope Center (“KBHC”), by its attorneys, hereby submits these comments in the above referenced docket opposing the Substance Abuse and Mental Health Service Administration’s (“SAMHSA”) Petition for Permanent Reassignment of Three Toll Free Suicide Prevention Hotline Numbers (“the Petition”).<sup>1</sup> KBHC believes that Commission consideration of any permanent transfer of the suicide prevention hotline numbers is premature and legally barred until the Commission first resolves the objections raised by KBHC in its Application for Review<sup>2</sup> of the Wireline Competition Bureau’s order temporarily transferring control of the suicide prevention numbers to SAMHSA.<sup>3</sup> The SAMSHA Petition

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<sup>1</sup> U.S. Dep’t of Health and Human Svcs. Substance Abuse and Mental Health Svcs. Admin. Petition for Permanent Reassignment Of Three Toll Free Suicide Prevention Hotline Numbers, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Nov. 20, 2007) (hereinafter “SAMHSA Petition” or “Petition”).

<sup>2</sup> KBHC Application for Review, *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155 (filed Feb. 21, 2007) (Attachment A).

<sup>3</sup> *In the Matter of Toll Free Service Access Codes*, Order, 22 FCC Rcd 651 (2007) (hereinafter “800-SUICIDE Order” or “Order”) (granting the request of the SAMHSA to reassign temporarily three toll free numbers utilized as suicide prevention hotlines from KBHC to SAMHSA).

cannot be granted without having the direct and immediate effect of denying the KBHC Application for Review. Therefore, as a matter of law the Commission must first resolve the issues raised by KBHC in its Application for Review before any grant of the SAMHSA Petition.<sup>4,5</sup> In fact, a more appropriate procedural approach would be to consider the SAMHSA Petition in the same docket as the KBHC Application for Review, which has been pending before the Commission for several months. In view of the fact that the key underpinning of the *WCB Order* temporarily reassigning the numbers was the state of KBHC's finances, and that many months have passed since those facts were discussed, the Commission should issue a Public Notice to refresh the record prior to taking any permanent action on the Application or the SAMHSA Petition. A temporary extension of the prior reassignment for that purpose could provide the necessary time for this important exercise.

## **BACKGROUND AND INTRODUCTION**

### **The Kristin Brooks Hope Center**

The Kristin Brooks Hope Center is a private, non-profit organization dedicated to suicide prevention. H. Reese Butler founded KBHC as a means of paying tribute to his wife and as a way of providing hope to others struggling with depression shortly after his wife, Kristin Brooks, committed suicide in 1998. Initially funded by the sale of his home and the funds from his wife's life insurance, KBHC has grown in size and scope, and now operates numerous help lines that provide critical counseling services to people in need through the use of toll free

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<sup>4</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330-33 (1945) (requiring the Commission to address mutually exclusive claims together).

<sup>5</sup> Because SAMHSA's and KBHC's use of the suicide prevention hotlines is mutually exclusive, *see id.*, any communications between SAMHSA and the FCC should be reported as an *ex parte* communication in the appropriate dockets. Currently, no such communication has been reported in either docket. However, KBHC has filed a Freedom of Information Act request with both the FCC and SAMHSA, and will report what it learns from these requests to the Commission. FCC FOIA Control No. 2008-107; SAMHSA FOIA Control No. 2008-144CM.

numbers.<sup>6</sup> Prior to the WCB's *800-SUICIDE Order* temporarily taking away three of its lines, KBHC also operated 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA.<sup>7</sup>

KBHC uses an automatic number identification system to immediately route callers – who are depressed or suicidal, or who are concerned about someone who is depressed or suicidal – to a trained crisis line worker who can make a lethality assessment and determine what steps to take, up to and including immediate intervention. The suicide hotlines are really routing mechanisms for hundreds of local suicide prevention organizations. While many of these local organizations maintain their own numbers, they also receive calls from individuals located near them who have called one of KBHC's suicide hotlines. For many of these local crisis centers, KBHC's services provide the majority of the incoming calls. Constant 24 hour staffing and the use of advanced routing technology ensures that a trained crisis counselor will be on the line within twenty to thirty seconds of an individual dialing one of KBHC's numbers, regardless of the time of day. Since KBHC began operating the 888-SUICIDE hotline more than eight years ago (and 800-SUICIDE seven years ago), the hotlines have received more than two million phone calls, or approximately six-hundred-fifty calls per day.

KBHC has received numerous awards and accolades for the services it provides. Additionally, Mr. Butler has been called on repeatedly to address suicide prevention conferences, often as the keynote speaker or as conference Chairman. In 1999, the City of San Francisco honored KBHC for creating "Reason to Live Day." In 2000, Governor Glendening of Maryland honored KBHC and Reese Butler for their efforts in preventing suicide by creating the SUICIDE

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<sup>6</sup> These numbers currently operated by KBHC include (800) 442-4673 [800.442.HOPE]; (877) 838-2838 [977.VET2VET]; (800) 722-9498; (800) 827-7571; (866) 771-1276; (866) 968-8454 [866.YOUTHLINE]; (888)861-8460; (877) 495-0009; (800) 472-3457 [800.GRADHLP]; (877) 472-3457 [800.GRADHLP]; (800)773-6667 [800.PPD.MOMS].

<sup>7</sup> KBHC obtained a trademark for 800-SUICIDE on September 9, 2003. Until the WCB's release of the *800-SUICIDE Order*, these numbers featured prominently in KBHC's fundraising material.

hotlines. In 2001, Mr. Butler was the keynote speaker at the Contact USA 34th Annual Conference and the Tennessee Third Annual Suicide Prevention conference, and also co-chaired the Virginia Suicide Prevention Conference. Over the next two years, Mr. Butler gave the keynote address at the Tennessee Fifth Annual Suicide Prevention Conference and was honored by Governor Jeb Bush at the Florida State Capitol. In February 2004, he also received a personal letter of appreciation from Governor Bush's wife, Columba Bush.

### **The Dispute with SAMHSA**

Prior to December 2004, KBHC received a substantial portion of its funding for the operation of the suicide hotlines and its other crisis prevention hotlines from a federal government mental health grant administered by the Substance Abuse and Mental Health Services Administration, an agency under the Department of Health and Human Services. When its participation in that program ended, KBHC received support from the National Mental Health Association for two years. When that support ended, KBHC continued to operate the toll free suicide and crisis prevention hotlines with money generated from its own fundraising efforts.

During the summer of 2006, KBHC fell behind in its payments to its carrier, Patriot Communications. This circumstance led to negotiations between KBHC, its carrier, and SAMHSA. As a result of those negotiations, SAMHSA agreed to pay temporarily the carrier invoices on behalf of KBHC beginning August 26, 2006, until the issues surrounding KBHC's funding were resolved. By the beginning of January 2007, KBHC had no payments outstanding to Patriot Communications.

On December 12, 2006, SAMHSA submitted a request to the FCC asking that the Commission unilaterally order KBHC's Resp Org to reassign five of KBHC's numbers to

SAMHSA in the SMS/800 database.<sup>8</sup> The justifications for this highly unusual request were (i) that the threat of termination of service by KBHC's carrier created an "emergency" and (ii) that KBHC did not have the financial ability to operate the numbers, thus jeopardizing their continued operation. KBHC duly opposed this request, and in its filings demonstrated that SAMHSA's concerns were unfounded.

On January 22, 2007, the Wireline Competition Bureau ("WCB" or "Bureau") partially granted SAMHSA's request, temporarily transferring three toll free numbers (800 SUICIDE, 888-SUICIDE, and 877-SUICIDA) from KBHC to SAMHSA for the period of one year.<sup>9</sup> The WCB took this action despite a lack of record evidence as to KBHC's financial status, and despite a statement from KBHC's carrier that it would not, in fact, cease service as SAMHSA alleged. On February 21, 2007, KBHC filed an Application for Review of the Bureau's action with the Commission. In the ensuing 11 months since the Bureau issued the *800-SUICIDE Order* based on SAMHSA's statements regarding KBHC's alleged financial inability to operate the numbers, KBHC has continued to operate its other 11 toll-free lines without incident or financial trouble. The Commission has not yet ruled upon KBHC's Application for Review.

On Monday, November 20, 2007, two days before Thanksgiving, SAMHSA filed its Petition for permanent reassignment of the three toll free suicide prevention hotline numbers, without providing notice to KBHC or KBHC's counsel of record. Additionally, to the best of

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<sup>8</sup> Letter from Eric Broderick, Assistant Surgeon General, to Kevin Martin, Chairman, Federal Communications Commission (Dec. 12, 2006); Letter from Michael Leavitt, Secretary of Health and Human Services, to Kevin Martin, Chairman, Federal Communications Commission (Aug. 25, 2006).

<sup>9</sup> *800-SUICIDE Order*, 22 FCC Rcd at 651.

KBHC's knowledge, no ex parte filing was entered regarding any meetings or telephone discussions between SAMHSA and FCC staff.

### ARGUMENT

**I. THE COMMISSION MUST FIRST ADDRESS THE ISSUES RAISED IN KBHC'S APPLICATION FOR REVIEW BEFORE CONSIDERING THE PETITION FOR PERMANENT REASSIGNMENT OF THE SUICIDE HOTLINES**

The Commission must act upon KBHC's Application for Review before entertaining SAMHSA's newest petition. The Bureau's decision in the *800-SUICIDE Order* denied KBHC the use of the numbers it obtained, advertised, and maintained for more than eight years, and has caused a significant disruption in the operation of KBHC. The arguments KBHC set forth in its Application for Review remain valid, and equally applicable to the permanent transfer SAMHSA now seeks, which is an extraordinary request. Because the three numbers at issue can only be assigned to one entity, grant of the SAMHSA Petition will constitute denial of the KBHC Application for Review. Therefore, prior to making any permanent decision, the Commission must first consider whether the initial decision to remove the numbers, even temporarily, was justified as a matter of law or advisable as a matter of public policy.<sup>10</sup>

In its Application for Review, KBHC raised four major objections to the *800-SUICIDE Order*.<sup>11</sup> The resolution of these objections will directly impact Commission consideration of the newest petition submitted by SAMHSA. First, KBHC asserts that the WCB's decision to temporarily transfer the numbers lacked evidentiary and factual support in the record, making the decision to transfer the numbers "arbitrary and capricious" in violation of

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<sup>10</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330-33 (1945) (requiring the Commission to address mutually exclusive claims together).

<sup>11</sup> See Attachment A – KBHC's Application for Review.

the Administrative Procedure Act.<sup>12</sup> At no time did the evidence in the record support SAMHSA's claims of an emergency justifying a departure from the Commission's generally applicable rules. Similarly, the record did not support SAMHSA's unsubstantiated claims that KBHC's financial situation precluded it from continuing to operate the toll free numbers. Importantly, because SAMHSA's Petition alleges identical facts to those disputed by KBHC in its Application for Review of the *800-SUICIDE Order*, Commission resolution of KBHC's factual objections to the Bureau's *Order* as part of its response to KBHC's Application for Review likely will resolve the issues raised with respect to the current Petition as well.

Second, the Commission still needs to determine whether the WCB acted within its authority when it ordered the temporary transfer of the toll free numbers (an action not contemplated in the toll free number rules) in the absence of an actual emergency.<sup>13</sup> Without this nearly unprecedented action by the Bureau, the dispute would be in a dramatically different posture. As mentioned above, the "emergency" concern over KBHC's finances has not manifested itself in the 11 months since the Bureau issued the *800-SUICIDE Order*; KBHC continues to operate and pay for services for its other 11 toll-free numbers. Thus, the Commission should first determine whether the current situation arose legally within the existing framework of law before determining how this dispute should proceed on a permanent basis.

Third, as discussed at length in the Application for Review, the Commission should examine whether the WCB's *800-SUICIDE Order*, and any potential permanent order, violate the Due Process Clause.<sup>14</sup> To satisfy the requirements of the Fifth Amendment, the Commission must establish "reasonable, certain, and adequate provisions" for obtaining

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<sup>12</sup> Attachment A – KBHC's Application for Review at 6; 5 U.S.C. § 706(2)(A).

<sup>13</sup> Attachment A – KBHC's Application for Review at 10.

<sup>14</sup> *Id.* at 12.

compensation at the time of the taking.<sup>15</sup> No such provisions have yet been made for the temporary taking of the numbers, much less for the permanent taking thereof. The Commission should examine KBHC's claim relating to the temporary transfer of the numbers before moving on to what sort of compensation might be appropriate for a permanent transfer of the toll free numbers.

Fourth, the Commission should determine whether the temporary transfer of the toll free numbers truly served the public interest before determining whether a permanent transfer of the numbers may be justified.<sup>16</sup> The temporary reassignment made by the WCB in the *800-SUICIDE Order*, and any potential permanent reassignment, would be in direct contradiction of the Commission's policy of protecting the value end users develop in their assigned vanity numbers. In particular, the Commission should carefully weigh whether the ordered transfer of a non-profit organization's toll free resources might not discourage similarly benevolent private organizations from providing like services in the future. Furthermore, as discussed in the Application for Review, KBHC's services are superior to those of SAMHSA as KBHC serves a broader public and offers better privacy safeguards. In particular, KBHC can offer services to callers from Mexico and Canada – services that SAMHSA is statutorily barred from offering. Therefore, the Commission should first determine whether even the temporary transfer of the numbers serves the public before determining whether the leap to a permanent transfer of the numbers is truly in the public interest.

Finally, the failure of the Commission to resolve the Application for Review has substantially prejudiced KBHC. Without a final order of the Commission, KBHC has been unable to appeal the transfer of its numbers to the judiciary or to seek recompense for the loss of

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<sup>15</sup> *Williamson Cnty. Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194-95 (1985).

<sup>16</sup> Attachment A – KBHC Application for Review at 14.

its numbers under the Due Process Clause. 5 U.S.C. § 704. KBHC and its founder, Reese Butler, spent hundreds of thousands of dollars and countless hours over an eight year period publicizing the suicide prevention hotline numbers and building a network of local agencies to answer calls to them. The Bureau's *Order* transferring the numbers to SAMHSA has weakened that work (without due process or even so much as a factual inquiry to ascertain whether a real "emergency" existed), and Mr. Butler's hard work will be ruined unless the numbers are returned to KBHC. A final order of the Commission on the Application for Review would allow KBHC to seek redress in the event that the Commission chooses not to overturn the WCB's decision.

**II. NO EMERGENCY COMPELS IMMEDIATE ACTION UPON SAMHSA'S PETITION BY THE COMMISSION**

A delay in the current proceedings to allow the Commission time to address the issues raised by KBHC in Application for Review will not unduly prejudice the public, SAMHSA, or KBHC. As SAMHSA states in its Petition, the numbers will remain open and available to callers without interruption (excepting those callers outside of the United States) while the FCC deliberates. While SAMHSA provides an inferior service which has fewer local call centers, does not publicize the numbers for widespread acceptance (KBHC owns the trademarks on the suicide prevention hotlines), and includes regulations which discourage callers from using the numbers (primarily a failure to respect the privacy of callers), allowing an extension of the temporary assignment while the Commission conducts a proper investigation and legal review is a far better option than granting SAMHSA's Petition without inquiry or due process. As such, the Commission may take additional time to properly respond to KBHC's Application for Review without risking the interruption of the services currently provided by the hotlines.

Furthermore, SAMHSA will not be substantially prejudiced by any delay. In its Petition, SAMHSA indicates that if it continues to be assigned the suicide prevention hotline numbers, it will maintain the three suicide prevention hotlines and ensure their financial support.<sup>17</sup> SAMHSA has not indicated that its funding is contingent upon the Commission's permanent award of the toll free numbers. Indeed, any such statement would fly in the face of SAMHSA's statement as to the critical nature of the suicide prevention hotlines.<sup>18</sup> Moreover, if SAMHSA were to make such a claim, the Commission can merely reassign the numbers to KBHC, as it should do in any event. KBHC's performance during the nearly one year period since SAMHSA first alleged the false "emergency" SAMHSA claimed justified the removal of the suicide prevention hotlines from KBHC has shown that KBHC's operation of these numbers is the best option for the long term.

Finally, although the Commission's inaction on the Application for Review has impeded KBHC's ability to raise funds and generate awareness of its issues, KBHC feels that the benefits of fully developing the record in this proceeding outweigh the additional harm that any necessary continued delay may engender. Indeed, the Commission has a duty under the Act and its own rules to consider fully the important issues KBHC raised in its Application for Review, and renews in these comments, before moving forward with the permanent transfer SAMHSA requests. Failure to do so will cloud the transfer of the numbers, which would not serve the public interest.

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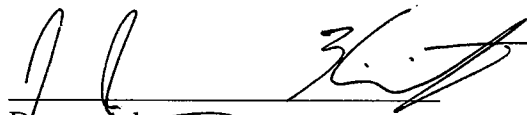
<sup>17</sup> SAMHSA Petition at 6, 7.

<sup>18</sup> *Id.* at 4 ("Suicide prevention hotlines are a critical public health resource").

**III. CONCLUSION**

For the foregoing reasons and the reasons articulated in its Application for Review, KBHC respectfully requests that the Commission first resolve its pending Application for Review before addressing the issue of permanent reassignment raised in the SAMHSA Petition.

Respectfully submitted,



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# **KBHC COMMENTS**

## **ATTACHMENT A**

**Before the  
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In the Matter of	)	
	)	
	)	
SAMHSA EMERGENCY REQUEST FOR	)	CC Docket No. 95-155
THE PERMANENT REASSIGNMENT	)	
OF FIVE TOLL FREE SUICIDE	)	
PREVENTION NUMBERS	)	
	)	
	)	
	)	

To: The Commission

**APPLICATION FOR REVIEW**

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