

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

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

To: The Commission

APPLICATION FOR REVIEW

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SUMMARY

Kristin Brooks Butler took her own life in 1998 after a long battle with bipolar disorder, leaving behind her husband, Reese Butler. Determined to create a legacy for his wife and to prevent similar tragedies, Mr. Butler took the proceeds of her life insurance policy and the proceeds from the sale of their home and founded the Kristin Brooks Hope Center (“KBHC”). Prior to that time, hundreds of local organizations sponsored “hotlines” and other suicide prevention counseling services, but there was no national organization to tie these groups together and coordinate their message. Reese Butler corrected that.

To mend this flaw in the American suicide prevention fabric, Mr. Butler started 888-SUICIDE to serve as a national hotline that same year. He organized the hundreds of small local organizations into a connected national group by routing calls received by the national number to the appropriate local counseling center based on the originating location of the inbound call. The following year, in 1999, KBHC and Mr. Butler expanded the service to the even more recognizable 800-SUICIDE. In the eight years since KBHC was founded, Mr. Butler added 12 more help lines to this network, including 877-SUICIDA, 877-VET2VET, 800-GRADHLP, 800-PPDMOMS, 800-442-HOPE (the Hope Center’s signature hotline), and many more. Collectively, these help lines have handled more than two million calls and saved thousands of lives.

In early December 2006, SAMHSA submitted a request to the FCC asking the Commission to unilaterally order the transfer of five of KBHC’s hotlines to SAMHSA. On January 22, 2007, the Wireline Competition Bureau, in disregard of the Commission’s own rules, the toll free industry guidelines, and the SMS/800 Tariff, granted the Order in part, reassigning three of KBHC’s numbers (1-800-SUICIDE, 1-888-SUICIDE, and 1-877-SUICIDA) to

SAMHSA for the period of one year. The WCB took this action based on unsupported or outdated assessments by SAMHSA of KBHC's financial situation and KBHC's disputes with its telecommunications carrier.

The *800-SUICIDE Order* is flawed procedurally in four important ways. *First*, there was no record to support its conclusion that the reassignment was needed to ensure an orderly transition of service without interruption. *Second*, there was no record evidence about KBHC's finances to support the conclusion that any threat to the continued availability of the suicide prevention hotlines existed. *Third*, no record evidence existed to support the proposition that KBHC's finances were even relevant to the potential loss of this critical public service. *Finally*, the order was beyond the authority delegated to the Wireline Competition Bureau. Commission rules grant the WCB authority to act only on requests which do not present novel questions of fact, law, or policy. The involuntary reassignment of a number from a private charity to a government agency is unprecedented in toll free number administration.

The *800-SUICIDE Order* is also flawed constitutionally. The reassignment of these numbers constitutes a government "taking." While traditional property rights do not attach to phone numbers, the right to use these numbers has an inherent value that the courts have recognized. Any taking must be done in a manner that provides for an adequate hearing, judicial oversight, and just compensation. Here, no such safeguards existed.

Finally, the *Order* is not in the public interest. It is the policy of the current administration to encourage the privatization of social services wherever possible. KBHC created these lines and built value in them through advertising. To forcibly remove them from KBHC and give them to the federal government, regardless of the government's intentions, would send a chilling message to non-profit organizations that provide critical public services.

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APPLICATION FOR REVIEW

The Kristin Brooks Hope Center (“KBHC”), by its attorneys and pursuant to section 1.115 of the Commission’s Rules, 47 C.F.R. § 1.115, hereby submits this Application for Review of the Order issued by the Chief of the Wireline Competition Bureau (“WCB”) on January 22, 2007, granting the request of the Substance Abuse and Mental Health Services Administration (“SAMHSA”) to reassign from KBHC to SAMHSA three toll free numbers utilized as suicide prevention hotlines.¹ Over the last eight years, KBHC has provided vital suicide prevention services by handling more than two million calls to the hotlines it operates, thereby saving thousands of lives. KBHC is ready, willing, and able to continue offering its consistently high level of service to those in need of help if and when the Commission orders the return of the hotline numbers to the service of KBHC. The vital services KBHC offers could have been ensured without forcibly transferring KBHC’s numbers to SAMHSA, and therefore the Commission should overturn the *800-SUICIDE Order* and return the numbers to KBHC.

¹ In the Matter of Toll Free Service Access Codes, *Order*, DA 07-130 (rel. Jan. 22, 2007) (hereinafter “*800-SUICIDE Order*” or “*Order*”).

BACKGROUND AND INTRODUCTION

A. The Kristin Brooks Hope Center

The Kristin Brooks Hope Center (“KBHC”) is a private, non-profit organization dedicated to suicide prevention. Since 1998, KBHC has operated toll free help lines to provide critical counseling services to people in need.² H. Reese Butler founded KBHC with the proceeds from his wife’s life insurance and the sale of his home shortly after his wife, Kristin Brooks, committed suicide in 1998. Until the recent action by the WCB, chief among the numbers KBHC operated and held as the subscriber of record were 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA, each of which offers counseling to individuals in need of immediate mental health services. KBHC obtained a trademark for 800-SUICIDE on September 9, 2003, and regularly advertises that number and its services to the public. Additionally, KBHC uses the 800-SUICIDE trademark for fundraising purposes.

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 prevention hotlines as operated by KBHC 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

² Until the recent action by the WCB, the numbers operated by KBHC included: (800) 784-2433 [800.SUICIDE] ; (888) 784-2433 [888.SUICIDE]; (877)784-2432 [877.SUICIDA]; (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]; (877) 968-8454 [877.YOUTHLINE]; (888)861-8460; (877) 495-0009; (800) 472-3457 [800.GRADHLP]; (877) 472-3457 [800.GRADHLP]; (800)773-6667 [800.PPD.MOMS].

prevention hotlines.³ 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 the suicide prevention hotlines – regardless of the time of day. Since KBHC began operating the 888-SUICIDE hotline 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 prevention 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.

B. The Current Dispute

The Kristin Brooks Hope Center has been the sole operator of the suicide prevention hotlines since it first began offering service in 1998. When KBHC began operating

³ The current proceeding involves the transfer of three numbers focused on suicide prevention. They are (800) 784-2433 [800.SUICIDE], (888) 784-2433 [888.SUICIDE], (877)784-2432 [877.SUICIDA] (collectively the "suicide prevention hotlines").

the 800-SUICIDE hotline in May 1999, it purchased toll free service from PacWest for a brief period of time before porting all of its toll free numbers to MCI. In June 2002, KBHC ported all 14 of its toll free numbers, including the suicide prevention hotlines, to AT&T. Four years later, in April 2006, KBHC ported all of its numbers, including the suicide prevention hotlines, to Patriot Communications.

Prior to December 2004, KBHC received a substantial portion of its funding for the operation of the suicide prevention and crisis hotlines through a federal government mental health program administered by the Substance Abuse and Mental Health Services Administration (“SAMHSA”), an agency under the Department of Health and Human Services. Starting in 2005, SAMHSA moved its funding to another toll-free number, (800) 273-TALK, operated by a private organization.⁴ SAMHSA continues to fund (800) 273-TALK to this day.

When SAMHSA ceased funding KBHC’s operation of 800-SUICIDE, KBHC continued to operate the toll free crisis and suicide prevention hotlines while it secured other sources of funding. During the summer of 2006, KBHC fell behind in its payments to Patriot. This circumstance led to negotiations between KBHC, Patriot, and SAMHSA. As a result of those negotiations, SAMHSA agreed to pay the Patriot invoices on behalf of KBHC temporarily, beginning August 26, 2006, until the issues surrounding KBHC’s funding were resolved. In light of this arrangement, Patriot continued to receive payments for 800-SUICIDE until the Wireline Competition Bureau issued the number reassignment here at issue.⁵

During the course of the negotiations between KBHC, Patriot, and SAMHSA, KBHC agreed in August 2006 to permit 800-SUICIDE to be operated by SAMHSA. Initially,

⁴ The subscriber of record for (800) 273-TALK is SHS of Rockville, Maryland, a private organization.

⁵ KBHC has recently resolved its dispute with Patriot in a settlement agreement which, among other things, extinguished KBHC’s debt to Patriot and ended all litigation between them.

this agreement was to include the transfer of that number to SAMHSA. However, after consultation with counsel, KBHC was advised that such direct transfers of toll free numbers between end-users are inconsistent with FCC rules. KBHC then sought to revise the arrangement with SAMHSA to accomplish the objectives in a lawful manner. Between August 25, 2006 and the issuance of the *800-SUICIDE Order*, several meetings and numerous letters were exchanged in an unsuccessful attempt to resolve the situation. On November 28, 2006, Patriot indicated that it would cease providing service to the toll free numbers unless matters were resolved by January 8, 2007.

On December 12, 2006, SAMHSA submitted a request to the FCC asking that the Commission unilaterally order the Resp Org to register five of KBHC's numbers in SAMHSA's name.⁶ The bases for this request were (i) that the possible January 8 termination of service created an "emergency" and (ii) that KBHC did not have the financial ability to operate the numbers, thus jeopardizing their continued operation. However, on January 3, 2007, Patriot stated to the Commission that it would not disconnect service to the suicide prevention numbers until the current dispute was resolved.⁷ On January 22, 2007, despite Patriot's statement that it would not disconnect service, and without any evidence in the record concerning KBHC's finances, the Bureau granted SAMHSA's request in part, transferring 800-SUICIDE, 888-SUICIDE, and 877-SUICIDA to SAMHSA.⁸

⁶ Att. A -- Letter from Eric Broderick, Assistant Surgeon General, to Kevin Martin, Chairman, Federal Communications Commission (Dec. 12, 2006); Att. B -- Letter from Michael Leavitt, Secretary of Health and Human Services, to Kevin Martin, Chairman, Federal Communications Commission (Aug. 25, 2006).

⁷ Opposition of Patriot Communications LLC to Kristin Brooks Hope Center's Petition for Cease and Desist Order and For Sanctions, *In the Matter of Kristin Brooks Hope Center and 1-800-SUICIDE*, CC Docket No. 95-155 (filed Jan. 3, 2007) at 1.

⁸ The two other toll free numbers sought by SAMHSA were not reassigned, and are not in dispute for the purposes of the Application for Review. The non-disputed numbers are 800-442-4673 and 800-827-7571.

ARGUMENT

I. THE ORDER TRANSFERRING CONTROL OF THE SUICIDE PREVENTION HOTLINES VIOLATES THE ADMINISTRATIVE PROCEDURE ACT.

The Commission's toll free number regulations contain no provision allowing for toll free numbers to be transferred directly from one subscriber to another.⁹ Specifically, § 52.103 provides only for numbers to be returned to Spare Status when subscribers no longer use them, and for the numbers to be made available to potential new subscribers on a "first come, first served" basis. Direct transfers of numbers between subscribers contravene the lag time and hoarding rules, and violate the "first come, first served" policy.¹⁰ Any departure from the rules requires either a waiver procedure or an emergency – and neither was present here.

A. The WCB's Order Was "Arbitrary and Capricious" in Violation of § 706(2)(A).

The *800-SUICIDE Order* cites 47 C.F.R. § 52.111 as permitting a departure from the first come, first served number assignment rules when "otherwise directed by the Commission."¹¹ It states that the situation here was such an occasion. However, such Commission (or Bureau) directions to depart from established rules may be undertaken only in compliance with the Administrative Procedure Act. This it failed to do. The *800-SUICIDE Order* is arbitrary and capricious and inconsistent with the APA because it fails to state "relevant factors or articulate a rational connection between the facts found and the choice made."¹²

⁹ 47 C.F.R. §§ 52.101 *et seq.*

¹⁰ Letter from L. Charles Keller, Chief, Network Services Division, Common Carrier Bureau to Michael Wade, President, DSMI, *Re: Modifying SMS/800 Disconnect and Suspend Status functions to preclude transfers of toll free numbers directly between subscribers* (Dec. 6, 2000).

¹¹ *800-SUICIDE Order*, ¶ 8, fn. 26.

¹² *Earthlink, Inc. v. FCC*, 462 F.3d 1, 9 (D.C. Cir. 2006) (quoting *AT&T Corp. v. FCC*, 220 F.3d 607, 616 (D.C.Cir.2000)).

Specifically, the *800-SUICIDE Order* is fatally flawed in at least three ways: (1) there was no record evidence to support its conclusion that the “emergency” reassignment was needed “to ensure an orderly transition of service without possible interruption”;¹³ (2) there was no record information about KBHC’s finances to support the conclusion that “the financial vulnerability surrounding KBHC’s provision of the suicide prevention hotlines poses a significant threat to the continued availability” of the services;¹⁴ and (3) there is no record evidence to support the proposition that KBHC’s finances are even relevant to the “potential loss of this critical public service.”¹⁵ Each of these factors is an independent disconnect between the facts of the case and the conclusions reached.

1. There was no “emergency” justifying a rule departure.

In particular, there is no support for the Order’s finding that an emergency existed to warrant the extraordinary step of an involuntary number transfer. The only imminent threat for discontinuance of service in the record – Patriot’s November 28 statement indicating an intention to terminate service on January 8 – was withdrawn by Patriot’s filing with the Commission on January 3, 2007. There was no other suggestion of any sort that service would not continue indefinitely. And yet, in an order dated January 22, 2007, nearly three weeks after the termination notice was withdrawn by Patriot, the WCB concluded that a reassignment was justified based on “the record of discord among the parties” and “KBHC’s history of being unable to pay its service providers.”¹⁶ The jeopardy to continued service created by the “record

¹³ *800-SUICIDE Order*, ¶ 8.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 28.

¹⁶ *Id.* at ¶ 8.

