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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	)	CC Docket No. 92-105
	)	
	)	

REPLY COMMENTS

Sprint Corporation, on behalf of Sprint Communications Company LP and the United Telephone companies, hereby respectfully submits its Reply to Comments on proposed changes to the Rules that would require local exchange carriers to provide abbreviated dialing arrangements. As discussed briefly below, assignment of scarce N11 codes for use as an abbreviated dialing mechanism to access information services is contrary to the public interest. Even those few parties advocating use of N11 codes for abbreviated dialing fail to propound an allocation methodology which is non-discriminatory and otherwise reasonable. The debate over appropriate use of N11 codes highlights the need for greater Commission involvement in the development of policies affecting use of numbering plan resources generally.

I. USE OF SCARCE N11 CODES FOR ABBREVIATED DIALING IS CONTRARY TO THE PUBLIC INTEREST.

Of the numerous parties filing comments in this proceeding, only one LEC, BellSouth (whose request for authorization to assign an N11 code to Cox Enterprises, Inc. triggered the instant rulemaking), and a few commercial entities which

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obviously hope to be an N11 code assignee,[1] support use of N11 codes for abbreviated dialing for enhanced services. In contrast, most of the rest of the industry opposes use of N11 codes as proposed in the NPRM.[2] As these latter parties point out, there are several compelling reasons why assignment of N11 codes for abbreviated dialing for enhanced services is contrary to the public interest.

First, N11 codes are an extremely scarce national resource (there are, at most, four to six unassigned N11 codes), and demand for these codes is likely to far exceed supply.[3] Indeed, some of the N11 codes presumed in the NPRM to be unassigned are actually already in use,[4] and several LECs have reported that as of the date comments in this proceeding were filed (June 5, 1992), they had already received N11 code requests from several parties for unspecified uses.[5]

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[1]Cox, MCI, Datatrex, LO/AD Communications, Mobile Connections, Mtel, and the Newspaper Association of America.

[2]Parties opposed include Sprint Corp.; all of the LECs except for BellSouth; Bellcore; Ad Hoc; AT&T; BT North America ("BTNA"); the Information Industry Association ("IIA"); the Information Technology Association of America ("ITAA"); MFS; NTCA; and USTA.

[3]See, e.g., Sprint Corp., p. 3; Ameritech, p. 7; AT&T, p. 2; Bellcore, p. 3; Bell Atlantic, p. 2; BTNA, p. 4; GTE, p. 2; IIA, p. 1; Nynex, p. 2; Pacific, pp. 2, 7; Rochester, p. 3; SWB, p. 6; and USTA, p. 7.

[4]See, e.g., Pacific, p. 2; Anchorage Telephone Utility, p. 1; and Puerto Rico Telephone Company, pp. 1-2.

[5]See, e.g., Sprint Corp., p. 3, n. 4; Ameritech, p. 7; Bell Atlantic, p. 2; GTE, p. 7; and Pacific, p. 9. In some cases, the number of requests already exceeds available supply.

The extreme scarcity of codes raises serious public policy issues. Aside from the difficulty of implementing a non-discriminatory allocation methodology (discussed in Section II below), the lack of general availability creates a situation in which those few entities which do obtain an N11 code also obtain a concomitant, arguably unreasonable, competitive advantage. Conferring such a competitive advantage upon a few select companies, far from stimulating the development of a competitive information services market, could actually impede its development. Any attempt to impose limits, no matter what their merits, upon who is eligible to receive N11 codes for abbreviated dialing purposes--for example, only ESPs, or only those entities which provide a national service--will undoubtedly result in charges of discrimination, unreasonable use/user restrictions, and failure by the BOCs to comply with their CEI (comparably efficient interconnection) obligations.

Second, as the Commission itself has recognized (NPRM, para. 13), currently unassigned N11 codes may be needed to alleviate impending geographic code exhaust--a need which is questioned by only two parties.[6] Contrary to Cox's claim (p. 3) that "permitting the unused N11 codes to lie fallow...would

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[6] See Cox, p. 33 ("there is no foreseeable need to recall N11 codes..."), and Mtel, p. 3; contrast to Bellcore, the administrator of the North American Numbering Plan, p. 6 ("[t]here are currently two requests for the assignment of an NPA code prior to 1995 and only one remaining unassigned code"). See also letter from Bellcore included as Attachment I to US West's comments.

be inefficient...," it seems clear that planning for a problem which could affect millions of customers is the only prudent course. Although the proposed rules would provide for the recall of assigned N11 codes should such codes be needed as an NPA or SAC, recalls are difficult (it is not clear, for example, which N11 code should be recalled) and likely to be strongly resisted by the code assignee.[7]

Third, there is likely to be substantial customer confusion over use of N11 codes if such codes are used for different purposes in different jurisdictions.[8] Indeed, customer confusion could arise within the same jurisdiction; for example, in EAS (extended area service) arrangements, two LECs could assign the same N11 code to two different information service providers. National codes such as 911 are useful in large part because end users know they can dial this code from virtually any exchange in order to obtain emergency assistance.

Fourth, contrary to Cox's assertion (pp. 3, 5) that local use of N11 codes "will be easy to implement," there are technical limitations to providing abbreviated dialing through N11 codes. Some LEC switches are not capable of performing

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[7] See, e.g., Ameritech, p. 10; Bellcore, p. 7; BTNA, p. 4; Pacific, p. 10; Rochester, p. 5; SNET, p. 4; and SWB, p. 9.

[8] See, e.g., Sprint Corp., p. 6; Ad Hoc, p. 3; Ameritech, p. 8; Centel, p. 2; Nynex, p. 7; Pacific, p. 13; USTA, p. 32; and US West, p. 22. Concerns about the likelihood of customer confusion are far more credible than claims by Cox (p. 4) that assignment of N11 codes to hundreds of different information service providers across the nation is an "efficient and effective use of the telephone network."

the necessary number translation and of accurately recording and billing usage of N11 traffic.[9] The NPRM does not address the need for a mechanism to recover costs associated with LEC switch upgrades needed to comply with the proposed rules. However, it would obviously be unreasonable to expect all access customers to bear the costs of upgrades which will benefit at most four to six commercial entities.

Fifth, while N11 access may be convenient and easy to use, it should be recognized that abbreviated dialing is not a service which is essential to the provision of information services. Other dialing arrangements exist which can accomodate far more than four or six service providers. Indeed, major ESPs have emphasized that nationwide lineside 7-digit access would be far more beneficial than localized 3-digit abbreviated dialing access.[10] Other parties note the availability of other dialing arrangements (950-XXXX, 976-XXXX, 900), or suggest that new dialing arrangements (555-XXXX, N11-XXXX, intelligent network platforms) be pursued.[11] Each of these alternatives should be explored further before scarce N11 codes are distributed to a few assignees.

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[9] See, e.g., Sprint Corp., pp. 6-7; GTE, p. 4; Pacific, p. 14; USTA, p. 17; and US West, p. 16.

[10] See, e.g., Sprint, p. 9; BTNA, p. 2; ITAA, p. 9. These parties also note the lack of success encountered in resolving this request in industry fora.

[11] See, e.g., Ameritech, p. 6; Bell Atlantic, p. 2; Pacific, p. 19; SWB, p. 12; USTA, p. 9; and US West, p. 9.

Finally, use of N11 codes for abbreviated dialing could pose a threat to LEC access revenues.[12] LECs cannot police all use of N11 codes to ensure that they are not being abused, and even if no access charge arbitrage is intended, the inability to measure usage via N11 dialing could result in cost over- or under-recovery.

II. THOSE PARTIES ADVOCATING ASSIGNMENT OF N11 CODES FOR ABBREVIATED DIALING HAVE FAILED TO SUGGEST AN APPROPRIATE ALLOCATION METHODOLOGY.

If, contrary to the recommendations of most of the industry, the Commission decides to adopt its proposed rules, the virtually certain excess of demand over supply of N11 codes will require the implementation of some allocation methodology. Although several alternatives exist (first come, first served; lottery; auction; innovator's preference), none will effectively protect and promote the public interest. Even those parties advocating assignment of N11 codes for abbreviated dialing have failed to propose an allocation methodology which is truly rational and reasonable.

Two parties, MCI and Cox, advocate allocation of N11 codes on a "first come, first served" basis,[13] suggesting that such a methodology is somehow fair and easy to administer. Such is not the case. A first come, first served allocation methodology penalizes those service providers that awaited the

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[12] See Sprint Corp., p. 7.

[13] See MCI, p. 4; Cox, p. 11.

outcome of this proceeding before seeking authority to use an N11 code, or that investigated use of these codes in the past and were dissuaded or prohibited from using such codes. First come, first served also forecloses use of this resource for future applications which may prove to be of far greater public utility than a single commercial information service offering. Where a public resource such as N11 codes can be used in many ways, it is the public benefit rather than the date on which the resource request was received which should determine how that resource is used.

It is perhaps significant that Cox also urges (p. 19) that "transfers of codes...be permitted freely." If its recommendation here were to be adopted, Cox, which doubtless considers itself "first" (or at least one of the first), would be in a position to extract extraordinary profits from the sale or transfer of its N11 code to another entity--the very type of gouging which Cox asserts is an unreasonable practice.[14] As several parties correctly point out, assignment of a public resource such as N11 codes does not confer property rights upon the assignee.[15]

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[14] See, e.g., Cox, p. 16; see also Cox letter to Chairman Sikes regarding BellSouth's Petition for Expedited Declaratory Ruling Regarding Assignment of N11 Codes, dated March 17, 1992, p. 6 (opposing a lottery on the grounds that the winner "would be in a position to extract monopoly rents from any legitimate potential user").

[15] See, e.g., AT&T, p. 7; SWB, p. 10; USTA, p. 19.

The other allocation methodologies are also inappropriate for assigning scarce N11 codes. For example, auctions favor companies with the greatest financial resources--the wrong criterion to apply in situations such as this one, where no determination has yet been made as to how best to use the public resource. Innovator's preference entails subjective evaluations about the merits of a particular service, and thus is subject to abuse and charges of discrimination. Finally, lotteries encourage service requests from speculators who hope to derive some windfall profit from obtaining a very scarce resource. Such speculation is also inappropriate given the scarcity and importance of the resource at issue.

As Pacific notes (p. 7), "[b]ecause the allocation of these few codes will undoubtedly cause dissatisfaction among those not chosen, it will be difficult, if not impossible, to devise an equitable allocation scheme." Given the public interest concerns discussed in Section I supra, it would seem clear that in the case of N11 codes, discretion is the better part of valor. The best course here would be for the Commission to abandon its proposed rules regarding abbreviated dialing, and relieve itself of the need to choose an allocation methodology in this instance.

III. THE COMMISSION SHOULD TAKE A MORE ACTIVE ROLE IN DETERMINING THE ALLOCATION AND USE OF NANP RESOURCES GENERALLY.

Although there is some debate about which N11 code assignment methodology would be appropriate if the Commission decides to mandate the use of N11 codes as proposed in the NPRM, all parties agree that extreme care must be exercised to

ensure the nondiscriminatory treatment of all N11 requests. Several parties suggest that decisions about the allocation of N11 codes not be left to the discretion of the LECs or Bellcore;[16] indeed, some of the BOCs themselves request specific guidance from the Commission regarding assignment, use and recall of N11 codes, to protect themselves against charges of discrimination.[17]

The emphasis upon the need to protect against discrimination in the assignment of N11 codes applies to NANP resource requests generally. As Sprint Corp. pointed out (pp. 8-11), decisions about the allocation and use of public resources appear to be made at least in part on the basis of the identity of the entity making the resource request, and the body before which such request is presented. The lack of a consistent and clearly defined set of standards to evaluate the merits of service requests has led to claims, whether warranted or not, that management of national resources is arbitrary and possibly discriminatory. Thus, Sprint urged the Commission, as a neutral public policy-making body, to use the instant proceeding to provide firm guidance to the industry on the design and implementaton of principles and safeguards that will ensure that public numbering resources, including N11 codes, are assigned in a nondiscriminatory and otherwise reasonable

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[16] See, e.g., Sprint Corp., p. 8; Cox, p. 25; IIA, p. 3; ITAA, p. 5; MCI, p. 5.

[17] See, e.g., Ameritech, p. 14; US West, p. 21.

manner, and are used for purposes which promote the public interest.

Other parties echo Sprint's concern. For example, both NTCA (p. 4) and AT&T (p. 5) urge that issues such as use of N11 codes be incorporated into a broader numbering plan administration proceeding. BTNA, noting the lack of progress in industry fora such as the IILC, recommends (p. 7) that the Commission take a more active role in guiding the industry toward a form of nationwide lineside access and other such dialing arrangements. These recommendations should be adopted. It is clear that firm guidance from the Commission on issues relating to allocation and use of public numbering resources is warranted and necessary.

IV. CONCLUSION.

For the reasons cited above, the Commission should find that assignment of scarce N11 resources to provide abbreviated dialing access to information services is contrary to the public interest. The Commission should also dismiss claims that allocating N11 codes on a first come, first served basis

is either reasonable or rational. Finally, the Commission should take a more active role in NANP issues generally, to ensure the fair treatment of all NANP resource requests.

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