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Before the
Federal Communications Commission
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

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PETITION FOR RECONSIDERATION AND CLARIFICATION

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PETITION FOR RECONSIDERATION AND CLARIFICATION

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, files this petition for reconsideration and clarification of the Commission's Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (rel. August 8, 1996) (the "Report and Order") in the above-referenced dockets.

Introduction and Summary

Omnipoint requests that the Commission modify its "Area Code Implementation Guidelines" (Report and Order at ¶¶ 281-293) to provide for area code overlays based on Major Trading Areas ("MTAs"). A voluntary MTA-based area code assignment scheme

would allocate number resources more efficiently, would facilitate the entry of competition into the local communications marketplace, and would not be discriminatory to any particular service or technology. Because most MTAs encompass several states, the Commission itself, and not the states, must oversee the implementation of voluntary MTA area code overlays.

Discussion

I. The FCC Should Proactively Seek Solutions to the Current Critical Number Depletion Problem

As the Commission is aware, the numbering issues facing competitive entrants in local telecommunications, and particularly wireless providers, are fast becoming a major impediment to competition. As the Commission observed in its Number Portability Order (at ¶ 51)[1]:

> In recent years, the explosive growth of wireless services has caused an equally dramatic increase in the consumption of numbers. . . . The increased use of splits and overlays has resulted in both industry and consumer inconvenience and confusion. The consumption rate of NANP resources is likely to accelerate with the entry of new wireline and wireless customers.

This rapid rise in the demand for numbering resources by the wireless industry reflects the public's demand for alternative and more advanced local telecommunications services.

In Omnipoint's New York MTA service area alone, which is comprised of parts of five states, the issue of number depletion is of critical importance. In New York, a

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1 Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-286 (rel. July 2, 1996), *recon. pending* ("Number Portability Order").

wireless overlay covers area codes 212 and 718. This has, apparently, obviated the numbering turbulence in neighboring area codes. In New Jersey, however, the 201 NPA has been declared in jeopardy status, with only six NXXs available for assignment each month for all purposes until November, 1996. New entrants must request their numbers through a lottery system. Because the residential community is unhappy with the overlay plan that will require ten digit dialing and the business community is unhappy with the split plan that will cause the added expense of changing and reprogramming phone numbers, the New Jersey Bureau of Public Utilities (the "BPU") did not make a decision at its last meeting and elected to hear more testimony in an effort to see if some compromise solution could be found. This, in turn, caused the NPA relief date to slip to August, 1997, if an overlay plan is adopted, or November, 1997, if a split plan is adopted. If the overlay plan is adopted, six NXXs will continue to be the ration amount of numbers allotted each month to all carriers for all purposes. If the split plan is adopted, the ration is expected to be reduced to four NXXs per month. If the BPU does not make a decision at its meeting this month, the relief dates will slip again and the Commission will be asked to step in to solve the problem before number exhaust.[2] The other New Jersey area code in the New York MTA (908) is also involved in the relief plan, but it is not expected to exhaust before the relief plan is implemented. The area code in Connecticut was split this month (503 and 860), and every area code in Pennsylvania (215, 610, 717, and 412) is either in jeopardy, plan approved, or relief requested.

These problems are not unique to Omnipoint's New York MTA. Very similar issues can be found throughout the country, as state public utility commissions face the

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2 See Prefiled Testimony of Omnipoint Communications, Inc., Inquiry into the Merits of Alternative Plans for New Telephone Area Codes in New Jersey, Dkt. No. T096020132, NJ Bd. of P.U. (dated Aug. 16, 1996).

unenviable task of splitting or overlaying area codes in order to obtain numbers for new wire entrants eager to fulfill the promise of local competition, while simultaneously facing the flood of number requirements for PCS systems, which can and do use more than one number for the various services offered. See e.g. Petition for Declaratory Ruling, Teleport Communications Group, Inc. at 8-14 (filed July 12, 1996) (TCG describes several overlay plans and continuing numbering issues in Texas, California, Massachusetts, Maryland, New Jersey, and Pennsylvania). As competition emerges, numbering resources will undoubtedly be strained further than ever before. New wireless systems presently under construction are of a magnitude never before experienced in this country. Very soon, the Commission will have licensed up to six PCS providers plus SMR operators throughout each BTA in the country, in addition to the two existing cellular carriers. Some or all of these competitors will operate fully digital systems, such as recently announced by AT&T Wireless, capable of competing with the wireline provider for the same numbering resources. New wireline and cable-based competitors, including MCI, AT&T, MFS, TCG, TCI, Time Warner, and others, will also enter the local telecommunications market and will make significant demands for assignments of numbering resources.

Since the new PCS carriers, in most cases, have no customers and the present wireless customer is reluctant to give out his or her wireless phone number, the position that all users must use the same area code is causing undue hardship and cost to the underlying wireline customer. It just isn't right that carriers such as Omnipoint, with heavy number requirements, cause the overlays or splits to the wireline customer. In addition, customers today currently use several different numbers for office, for friends and family, and yet more for facsimile and data applications. As competing carriers vie for business, consumers will undoubtedly demand more convenience and service possibilities with numbering resources. For example, carriers could offer subscribers a

telephone number for calls so that children or grandparents can call the subscriber without the inconvenience or reluctance associated with traditional collect call procedures. Or, subscribers may want a number for business-related calls made from home without the cost and inconvenience associated with an additional line or another subscription. In a competitive environment, carriers will efficiently respond to such consumer demand, so long as numbering scarcity does not interfere with the provision of those services.

The scarcity of numbering resources impacts residential, business, and governmental customers dramatically, making it increasingly difficult for state officials to resolve numbering issues. As a result, numbering issues often get mired in public hearings and political controversies that promise no efficient and timely solutions for new entrants like Omnipoint that are ready to introduce new competitive local services. With the exponential increase in demand for numbering resources in the near future, solutions different from the traditional approach of state-by-state number resource allocation, where previously there was only one telecommunications provider, must be found.

Changes to the local telecommunications market, encouraged and protected by the 1996 Telecom Act and the Commission's implementation proceedings, will undoubtedly strain the limits of the current numbering scheme, forcing industry and regulators to re-think the current model of numbering administration. These changes include the entry of new providers with the elimination of regulatory entry barriers (47 U.S.C. § 253), service provider number portability so that consumers can freely switch to the most efficient provider (47 U.S.C. § 251(b)(2)),[3] interconnection rights for all telecommunications

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3 Number portability itself will not resolve the current and future critical numbering administration issues. Omnipoint strongly supports long-term number portability because it facilitates customer choice of the local provider best meeting the customer's

(Footnote continued to next page)

carriers with the incumbent local exchange carrier ("LEC") on mutually reciprocal terms, (47 U.S.C. § 251(c)(2)), unbundled access to and resale of incumbent LEC network services (47 U.S.C. § 251(c)(3) & (4)), and the demise of restrictions against inter-LATA services by regional Bell operating companies (47 U.S.C. § 271).

While the Commission has worked vigorously to implement orders and conduct proceedings that further a new age of local competition, numbering administration must also be revamped. In Omnipoint's view, aspects of the Report and Order represent a significant step toward unbiased and efficient numbering, with its emphasis on an independent NANC, nondiscriminatory overlays and splits, and technology-neutral decisions. However, the Report and Order failed to recognize the potential of alternative local providers that are not bound by the incumbent LECs' rate center or LATA boundaries. As Omnipoint explained in this proceeding, adoption of a larger MTA-based alternative to the incumbent LEC area code model can foster vigorous competition and can more efficiently use numbering resources.

II. Voluntary MTA-Based Area Codes Offer A Solution That Promotes Competition and Relieves Critical Number Depletion Problems

Competitive local service providers build systems based on market (not regulatory) pressures that are distinct from the incumbent LEC's LATA-and rate center-based constraints. The Commission's Report and Order should have taken into account these changes in the marketplace.[4] The service areas of new, competing local providers

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(Footnote continued from previous page)

service needs. Resolution of numbering administration issues, not number portability, will permit carriers to offer alternative services and add new subscribers, particularly before LRN is fully implemented.

4 As the Commission has noted, "[a]ccess to numbering resources is essential to entities desiring to participate in the telecommunications industry." In the Matter of Administration of the North American Numbering Plan, CC Dkt. No. 92-237, Report

(Footnote continued to next page)

have found more efficient service deployments not based on current geographic boundaries of NPAs. The Commission should foster that new competition by recognizing broader and more logical service areas of carriers competing with the incumbent LECs. Indeed, as the Bell companies are authorized to provide inter-LATA services,[5] the current NPA service boundaries may prove to be too limiting for all telecommunications carriers.

The Commission recognized this fundamental shift in local serving areas in its First Report and Order (at ¶ 1036): "We conclude that the largest FCC-authorized wireless license territory (*i.e.*, MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between CMRS providers." See also 47 C.F.R. § 51.701(b)(2) ("local telecommunications traffic" is defined as "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area"). A numbering plan that also recognizes the logical MTA-based local serving area is an appropriate extension of the Commission's overarching plan to reshape local telecommunications regulation to facilitate a more competitive market.

Specifically, Omnipoint urges the Commission to facilitate new competition by assigning one or more NPAs for each of the 51 MTA license service areas. Carriers

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and Order, 11 FCC Rcd. 2588, 2608 (1995) ("NANP Order"). *See also* Ameritech Order, 9 FCC Rcd. at 4604 ("The ready availability, and use, of numbering resources by communications services providers is essential if the public is to receive the communications services it wants and needs. . . . For example, new wireless service providers and competitive access providers (CAPs) can not offer service without adequate access to new telephone numbers.").

5 47 U.S.C. §§ 271, 272.

could then voluntarily choose to obtain blocks of MTA-based NXX codes. Omnipoint proposes that no carrier should be prohibited from obtaining such NXX assignments; both wireless and wireline carriers alike should be eligible. A voluntary assignment process would mean that no carrier is discriminated against; no carrier should be forced to accept a set of MTA-based numbers. Omnipoint's proposal is not to replace or supersede the existing, smaller NPA assignment boundaries. Rather, Omnipoint's proposal would offer carriers an alternative to the existing regime that may well prove valuable for wireless and wireline entrants to deploy regional networks.

Major Trading Areas are widely accepted by both the Commission and the telecommunications industry as logical territories for telecommunications service areas, especially for providers serving mobile customers. Such large geographic regions were adopted as PCS license territories in order "to promote the rapid deployment and ubiquitous coverage . . . follow[ing] the natural flow of commerce,"[6] to "spur competition,"[7] to "facilitate regional and nationwide roaming; [and to] allow licensees to tailor their systems to the natural geographic dimensions of PCS markets."[8] The Commission specifically rejected geographic license areas based on LATA boundaries. Id. at 7730. Significantly, 41 of the 46 MTA license areas in the continental U.S. include the territory of more than one state; Omnipoint is not aware of a single MTA in the contiguous U.S. that lies entirely within one exchange area or LATA boundary.

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6 Memorandum Opinion and Order, GN Dkt. No. 90-314, 9 FCC Rcd. 4957, 4986 (1994).

7 Id. at 4987-88.

8 Second Report and Order, GN Dkt. No. 90-314, 8 FCC Rcd. 7700, 7732 (1993).

Omnipoint believes that its MTA-based area code proposal could yield the following six public interest benefits:

1. MTA-Based Area Codes Would Relieve the Problems of the Current Area Code Assignment System

The area codes in jeopardy and exhaustion, as noted above, demonstrate that the current scheme lacks significant capacity to handle the current numbering demands. As new competitors emerge, including several PCS, SMR, and wireline competitors for the local loop, the demand for numbers will increase exponentially,[9] and it would appear that the current scheme simply will not respond in a manner that permits efficient, timely market entry. The alternative MTA-based scheme would take the pressure off the current area code scheme by permitting new entrant providers to allocate their number allotment over a larger geographic area. As the Commission has noted, "a new entrant will employ equipment capable of serving a larger area per switch, and serve fewer customers in each area served by one switch, than incumbent LECs do presently." Number Portability Order at n.539. With a wider logical serving area and a less dense customer base, many new entrants would find the alternative MTA scheme attractive. This, in turn, would alleviate the problem of new entrant demands for additional numbers, and reduce the unfortunate incidence of area code splits and overlays.

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9 The Commission notes in its Number Portability Order (at n. 150) that two-thirds of new telephone numbers go to wireless carriers, while the number of wireless customers is expected to increase exponentially over the next few years. PCIA 1994 PCS Market Demand Forecast (Jan. 30, 1995) (PCIA estimates that PCS subscriptions alone will reach 15 million by the year 2000).

2. *MTA-Based Area Codes Would Reduce Market Entry Barriers of State-By-State Number Allocation Process*

Congress has mandated that the Commission reduce market barriers to entry created by the states' government regulatory processes. 47 U.S.C. § 253. Currently, wireless carriers serving multi-state MTA or BTA areas, as well as new wireline entrants that serve multi-state metropolitan areas, must go through the arduous, state-by-state NXX code assignment process. The incumbent LECs also currently hold the position of code administrator working in conjunction with the states, making the present scheme neither impartial nor equitable. New entrants will not give their projections of number use to the incumbent LEC that is the numbering administrator because, in almost all cases, the incumbent LEC is a competitor and competing companies do not give their business plans to their competitors. Until the new NANC replaces the incumbent LECs with independent code administrators, the current and immediate needs of new entrants are still effectively in the hands of the incumbent LEC -- a situation which is plainly inconsistent with Congress' goals for new entrant competition, as well as neutral and impartial numbering administration.

Even after the independent code administrator is in place, the state-by-state allocation process significantly slows the introduction of new competition.[10] By contrast, an expeditious federally-based MTA allocation scheme would avoid tremendous time and money lost on state allocation proceedings. For example, Omnipoint currently holds one MTA PCS license covering five states (New York, New Jersey, Connecticut, Pennsylvania, and Vermont), as well as 18 BTA PCS licenses covering 13 states. The expense and time lost in obtaining numbering resources from all of those states is a

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10 Local cities and towns will likewise continue to politicize the process.

needless regulatory cost that can be easily avoided if the Commission would allocate more logical MTA-based area codes. Moreover, this state-by-state process forces each PCS operator into a *de facto* state entry regulation proceeding, contravening the express preemption provisions of Section 332 of the Act.[11]

Finally, the obstacles of number jeopardy and number exhaust proceedings that currently plague many metropolitan areas themselves create barriers to market entry. When an area experiences number exhaust, it is, by definition, unable to provide new carriers with sufficient numbering resources to enter the market. Similarly, in areas experiencing or approaching number jeopardy, it is typically difficult or impossible to obtain a sufficient number allocation to launch a competitive service. During the months and years that state administrators must face the difficult and politically-charged split or overlay decisions,[12] new entrants are forced to wait out the process before they can obtain numbers to introduce service.

3. *MTA-Based Area Codes Would Permit Carriers to Respond Quickly to Market Demand and Not Reveal Market Plans to Competitors*

For the new entrant with plans to deploy in a large region, the process of obtaining numbers associated with smaller area codes places it at a competitive disadvantage. First, under the current scheme, the incumbent LEC, as code administrator, is made aware of the new entrant's plan for deployment months in advance of market entry. The loss of this sensitive strategic information to the new entrant's largest

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11 47 U.S.C. § 332(c)(3)(A) ("no State or local government shall have any authority to regulate the entry of . . . any commercial mobile service").

12 The Report and Order restrictions on splits and overlays make those decisions more subject to appeal and additional litigation.

competitor is a significant drawback.[13] Even if the incumbent LEC is eventually replaced with an independent administrator, the process of filing for numbering resources still lays open the new entrant's business plan for either public inspection or informal leaks to both incumbent and competitive carriers.

Moreover, the assignment of numbers across a smaller area leaves the new entrant with less flexibility to respond to changing demand for its services. With an MTA area code assignment, the carrier can allocate numbers within the geographic MTA based on consumer demand. If more numbers are needed in a particular area than originally anticipated, the carrier can simply shift its own internal marketing plans. By contrast, under the current area code scheme the carrier that experiences a high customer demand in a single area code is forced to apply for additional NXX codes before it can meet that increased demand, even while other numbering resources in a contiguous area are unused.

4. MTA-Based Area Codes Would Make More Efficient Use of Numbering Resources Allocated to New Entrants

As discussed above, carriers would have more flexibility of the actual use of their allocated numbers under an MTA scheme. For this reason, an MTA-based assignment would yield more efficient use of numbering resources. The current scheme permits the carrier to use a single number only across a small area of its total service region; the carrier has no flexibility to take a number assigned to, for example, the 202 area code (Washington, D.C.) and give it to a customer in the 703 area code (Northern Virginia). Since the new entrant knows this limitation on the resource, but does not know exactly where its future consumer demand will be greater (D.C. or Northern VA, for example), it must *overstate* its overall need for numbers in the larger region, and attempt to obtain

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13 *See* NANP Order, 11 FCC Rcd. at 2620 ("An entity requesting CO codes is required to divulge competitively sensitive information to the CO code administrator.").

excess numbering resources in every area, so that it can be prepared for the consumers' actual demand. Obviously, this practice, while rational from an individual carrier's perspective, only exacerbates the number scarcity problem. By contrast, under an MTA scheme, carriers could use their numbering resources across a logical metropolitan region as they see actual demand develop, and thus there would be no economic incentive to overtax the numbering system.

5. *MTA-Based Area Codes Would Eliminate Inefficient "Stockpiling" of Wireless Handsets*

Many wireless carriers must pre-program the customer handset with a distinct telephone number. Because wireless services are typically sold to the public on a point of contact basis, the actual distribution stores of the carrier must be ready with a sufficient supply of handsets to meet consumer demand. Handsets must be preprogrammed for each NPA or a downloading scheme must be used that gives new customers the numbers they want after the phone is bought, which causes a delay in the use of the phone until a number is programmed. If only nominal demand in a particular NPA actually materializes, the carrier that preprograms numbers is left with an inventory of handsets in that NPA which either depreciates or must be reprogrammed. Either way, the carrier incurs costs as a result of the NPA scheme, plus has numbers in NPA rate centers that could be better used.

An MTA-based scheme would produce a more efficient result because all handsets would be preprogrammed with the same MTA area code. Therefore, if higher demand exists in some stores than others, the carrier could simply keep those stores better stocked than the stores in areas with lighter demand. Because the carrier could avoid the "stockpiling" problem, it may even require a smaller inventory of handsets, further reducing its costs of business. In a competitive market of wireless services, eliminating the costs of stockpiling will inure to the consumers' benefit.

6. MTA-Based Area Codes Would Offer Intra-MTA Location Portability

As the Commission noted in its Number Portability Order (at ¶ 187), location portability can "promote consumer flexibility and mobility and potentially promote competition by allowing carriers to offer different levels of location portability in a competitive manner." An MTA-based area code would implement and, at the very least, test the efficacy of location portability by allowing customers to move considerable distances within an MTA and retain their telephone number. For example, in Omnipoint's New York MTA, a customer could move from Northern New Jersey to Vermont or from Connecticut to Northern Pennsylvania and take along his or her telephone number.

While the Commission expressed concern in the Number Portability Order (at ¶¶ 184-85) that consumers may, in the near term, be confused by location portability, Omnipoint believes that confusion can be avoided. For example, if consumers are adequately informed through advertising and by customer care personnel, they will certainly understand that the unique NPA code for alternative carriers does not necessarily bring with it long-distance charges.[14] In any event, MTA assignments would provide a unique opportunity for consumers to obtain location portability and for the Commission, consumers, and the industry to evaluate its merits.

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14 Customers presumably already know that dialing a 10-digit "500" or "800" number does not necessarily implicate a long-distance charge. Further, in an era when customers will choose from several competing local and long-distance service plans to get the best value for their money, it is unfair to assume that the public will not learn that the single MTA-based area code in their region is not long-distance.

III. MTA-Based Area Codes Are Consistent With the Commission's Numbering Administration Goals

An MTA-based area code plan is fully consistent with the Commission's three guidelines in the Report and Order for numbering administration that (1) facilitates entry into the communications marketplace through timely and efficient allocation of numbering resources; (2) does not unduly favor or disadvantage one industry segment or consumer group; and (3) does not unduly favor one technology over another. Report and Order at ¶ 281. As explained above, MTA-based numbering resources can ease the burden and increase the overall efficiency of the current NPA scheme, as well as offer new entrant carriers a more efficient numbering alternative.

The MTA-based plan is also nondiscriminatory to industry segments and to various technologies. As stated above, with a voluntary MTA alternative, no carrier is forced to accept a numbering overlay that it believes is not in its best interests, unlike the forced overlay plan found objectionable in the Ameritech decision. In addition, the MTA alternative would be open to all carriers, both wired and wireless. Because MTAs are much larger than the current NPAs, wireline carriers should find its efficiencies are quite attractive. Obviously, because most FCC wireless telephony licenses are allocated on an MTA basis (with BTA licenses comprising a single MTA), wireless carriers should also be able to benefit from an interstate numbering scheme that is tailored to their service areas. MTAs were originally chosen for mobile use because they are large areas that roughly track population and commercial traffic. However, MTAs function well as a common denominator service area for both wired and wireless carriers, and so MTA-based NPAs would not "unduly favor or disadvantage" wireline carriers vis-a-vis wireless

carriers.[15] They would also slow down the need for states to have to approve NPA overlays or split present NPAs that are entirely in one state.

IV. The Commission Should Exercise Its Plenary Jurisdiction Over Numbering Administration to Establish MTA-Based Area Codes

As the Report and Order notes (at ¶ 267), "Section 251(e)(1) confers upon the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." While it delegated to the states the authority to "resolve matters involving the implementation of new area codes," the Commission retained its "authority to set policy with respect to all facets of numbering administration." Id. at ¶¶ 272, 271.

Omnipoint respectfully submits that the Commission adopt Omnipoint's voluntary MTA-based area code scheme and, to the extent necessary, reconsider its decision to delegate area code implementation to the states. *Cf.*, Ameritech Order, 9 FCC Rcd. at 4604 ("the administration of the NANP must reflect sensitivity to the growth and dynamic nature of the communications industry if our regulatory goals . . . are to be realized. If it is to achieve this sensitivity, administration of the plan must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications service providers."). Because MTAs generally cover several state jurisdictions, it is not feasible to delegate implementation of an MTA-based plan to the states. Therefore, the Commission itself should establish MTA area codes.

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15 We also note that the Commission's discrimination concerns in both the Ameritech and the Texas proceedings have consistently focused on area code plans that disfavor wireless carriers. An MTA-based plan would provide advantages for both wireline and wireless providers.

Conclusion

For the reasons stated herein, Omnipoint urges the Commission to establish one or more MTA-based area codes for all telecommunications carriers.

Respectfully submitted,

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