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

In the Matters 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 OF THE UNITED STATES TELEPHONE ASSOCIATION FOR RECONSIDERATION AND CLARIFICATION

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SUMMARY

USTA petitions for reconsideration or clarification of several important issues in the *Second Report and Order*. In complying with the requirement to provide nondiscriminatory access to directory listings, incumbent LECs should not be required to provide other carriers with their directory assistance databases. To do so misinterprets the requirements of the Telecommunication Act of 1996 and is unnecessarily burdensome for LECs.

Regarding the rule governing carrier contributions to cost recovery for numbering administration, the Commission should eliminate the provision that permits resellers to subtract their expenditures for telecommunications services and facilities that they have paid to other carriers. This rule in its present form severely distorts competition and will result in additional burdens on LEC subscribers.

USTA also requests clarification regarding application of Paragraph 81's requirement that new customers who do not affirmatively choose a toll provider must dial a carrier access code to route their intraLATA or intrastate toll calls. The Commission should clarify that this requirement, and Section 51.209(c) of the Rules, apply only to those customers that begin subscribing to a telephone exchange service provider, such as an incumbent LEC, after presubscription is implemented. USTA also requests clarification that those states that issued orders regarding intrastate toll presubscription prior to the date of release of the *Second Report and Order* are permitted to implement presubscription pursuant to those orders.

With respect to numbering plan areas ("NPAs"), the Commission should eliminate the requirement that, for an all-services NPA overlay to be permissible, all authorized carriers in the affected area 90 days before introduction of the overlay have been assigned at least one NXX in the

old NPA in the 90 day period before the overlay. Compliance with this requirement would require NXX warehousing and could permit reasonable overlay plans to be thwarted by competitors.

USTA also requests the Commission to clarify that states may accelerate the implementation schedule for dialing parity only to the extent specifically discussed in the *Second Report and Order*.

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PETITION OF THE UNITED STATES TELEPHONE ASSOCIATION
FOR RECONSIDERATION AND CLARIFICATION

I. INTRODUCTION

The United States Telephone Association ("USTA") hereby respectfully submits this Petition for Reconsideration and Clarification in response to the *Second Report and Order* adopted by the Commission in the above-captioned docket.[1/] The *Second Order* is a significant achievement which USTA believes will serve as an important step in implementing the statutory

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1/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, FCC 96-333 (August 8, 1996) [hereinafter *Second Order*].

framework crafted by Congress in the Telecommunications Act of 1996 (the "1996 Act").[2] USTA believes that, with adjustments to align the *Second Order* more closely with the statute and with sound public policy, the Commission will be able to ensure a viable framework for the introduction of competition and new services for consumers.

In the *Second Order*, the Commission sought to implement Congress' statutory mandate to create a pro-competitive, deregulatory framework designed to accelerate the rapid private sector deployment of advanced telecommunications and information technologies. The *Second Order*, while making significant progress towards these objectives, unnecessarily favors competitors at the expense of incumbent LECs. USTA believes that several issues should be reconsidered or clarified to fulfill better the Commission's oft-repeated admonition that the 1996 Act supports competition, not specific competitors.

II. RECONSIDERATION OR CLARIFICATION OF CERTAIN ASPECTS OF THE *SECOND ORDER* IS ESSENTIAL

A. Local Exchange Carriers Should Not Be Required To Turn Their Directory Assistance Databases Over To Other Carriers

In its effort to implement Congress' directive to lower operational barriers to entry in the local exchange market, the *Second Order* focuses on the need to create a framework for nondiscriminatory access to telephone numbers, operator services, directory assistance services,

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[2] Pub. L. 104-104 (Feb. 8, 1996), *to be codified* at 47 USC § 151 *et seq.*

and directory listings.[3] The *Second Order* defines such nondiscriminatory access to include rates, terms, and conditions of access as well as quality.[4] USTA requests that the Commission reconsider its implementation of nondiscriminatory access to directory listings.

In particular, Rule 51.217[5] expands the scope of the Commission's effort to ensure nondiscriminatory access beyond that required by the 1966 Act.[6] Most importantly, nondiscriminatory access to directory listings should not require LECs to transfer their directory assistance databases to competitors, under license agreements or otherwise.[7] The appropriate emphasis should be on ensuring that customers of new market entrants can obtain access to incumbent LECs' listings, in electronic and print formats.[8]

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[3] *Second Order* at paras. 141-145.

[4] *Id.* at para. 101.

[5] *Id.* at App. B-6, 47 CFR § 51.217.

[6] The 1996 Act states that LECs, with respect to dialing parity, have:

> The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

47 U.S.C. § 251(b)(3).

[7] While some LECs sell subscriber lists to other parties for purposes such as directory publishing, such sales do not involve the transfer of directory assistance databases.

[8] Among other things, Section 251(b)(3)'s requirement of nondiscriminatory access to directory listings was intended to ensure that all carriers could arrange to have their customers' names listed in other carriers' directories, including the white pages books and directory assistance databases. Without assurance that their names could still be in the phone book, consumers might be reluctant to change carriers.

A plain reading of the 1996 Act supports this interpretation. In Section 251(b)(3), Congress created distinct requirements for nondiscriminatory access to directory assistance and directory listings. Nondiscriminatory access to directory listings means all carriers could arrange to have their customers' names listed in other carriers' directories and directory assistance data bases without discrimination. Nondiscriminatory access to directory listings does not mean that LECs must provide competitors their directory assistance databases.

Accordingly, the Commission's holdings in this area should be limited to ensuring nondiscriminatory access to subscriber listings, not the creation of measures, such as the transfer of directory assistance databases, that unnecessarily burden LECs. The Commission should narrow its reading of this requirement to specify that incumbent LECs must offer nondiscriminatory access to directory listings without having to transfer to others the LECs' actual databases of such information. Building on current paragraph 143 of the *Second Order*, the Commission should make clear that shared access through electronic gateways should be considered the standard way of implementing the nondiscrimination requirement.[2/] Such access, moreover, would address the concern expressed in the *Second Order* that competitors be spared the expense of entering the information in their systems.

Reconsideration of these matters will not limit the rights of carriers from accessing LECs' directory assistance service and providing that service to their customers. It will, however, also ensure that these other carriers can have information about their customers appear in the exchange carrier's directory listings.

[2/] The Commission has noted the need for flexibility in other areas, such as for operator services. *See Second Order* at para. 121. The variety of technical options available for operator services, according to the Order, required such flexibility. *Id.*

B. The Commission Should Reconsider Its Treatment Of Net Revenues In Determining Contributions To Cost Recovery For Numbering Administration

In a competitive telecommunications market, all participants should contribute to recovering the costs of numbering administration. The *Second Order* requires that telecommunications carriers' contributions to such cost recovery be based on gross revenues from their provision of telecommunications services.[10] However, apparently due to concerns about "competitive neutrality" for resellers, the *Second Order* provides that for this purpose, telecommunications carriers are to subtract from their gross telecommunications revenues their expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.[11] As a result, the *Second Order* significantly tilts the regulatory framework for numbering administration cost recovery to favor resellers, undermining the Commission's avowed goal of creating a competitively neutral framework.

The competitive disparity in this portion of the *Second Order* creates massive and mutually reinforcing competitive distortions. Section 251(c)(4) requires incumbent LECs to sell end user services to other carriers in order to enable resale competition.[12]

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[10] *Id.* at para. 342.

[11] *Id.* at para. 343 and n. 713.

[12] Section 252(d)(3) then establishes the price level the incumbent LEC may charge such resellers for these services. In this case, the price is the incumbent LEC's established end user rate, minus the costs the incumbent LEC avoids by selling the services at a wholesale level.

The *Second Order* requires incumbent LECs to contribute to the costs of numbering administration based on the total revenues from the sales of such wholesale services. The *Second Order*, in contrast, bases the contributions of the reseller on a fraction of the revenues that it receives -- the profit and other revenues over what it paid the incumbent LEC for the resold services. The only alternative for the incumbent LECs is to seek recovery from the incumbent LEC's subscribers.

The overall competitive distortion is therefore twofold. First, in competing for customers, the incumbent LEC will be at a meaningful cost disadvantage compared to the reseller. Second, and as important, the *Second Order* requires an incumbent LEC to recover from its overall customer base the contribution towards number administration cost recovery required from it on the services sold to the reseller under Section 252(c)(4). The *Second Order* therefore mandates that incumbent LECs will suffer from major cost disadvantages when competing to retain their existing customers.

The *Second Order's* treatment of cost recovery for numbering administration creates a regulatory environment inimical to efficient competition. The Commission forces incumbent LECs to bear the lion's share of the total contribution to numbering administration while restricting them unduly from competing with new market entrants on a reasonable basis. For these reasons, USTA urges the Commission to reconsider its approach. The Commission can best meet its goals by determining support for number administration based on each carrier's -- including each reseller's -- gross retail revenues from telecommunications services.

C. The Commission Should Clarify That Paragraph 81 And Rule 51.209(c) Apply Only To New Customers

Paragraph 81 of the *Second Order* requires that "new customers who do not affirmatively choose a toll provider," after being given a reasonable opportunity to do so, must dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a "permanent, affirmative selection."[13] Paragraph 81 describes such "new customers" as "new customers of a telephone exchange service provider."[14]

USTA requests clarification that the phrase "new customers" means only those customers that begin subscribing to a telephone exchange service provider, such as an incumbent LEC, after implementation of presubscription. "New customers" should not be construed to include existing local exchange service customers of incumbent LECs. Rule 51.209, adopted in the *Second Order*, supports this reading of Paragraph 81. Rule 51.209(c) specifies the conditions under which a LEC "may not assign automatically" a customer's intraLATA toll traffic.[15] By focusing on "assignment" of a customer's traffic, the Rule clearly does not apply to existing LEC customers, for which such assignment is unnecessary. Clarification of these points is requested.

If existing LEC customers were subject to these carrier selection requirements, major service disruptions would result. Incumbent LECs would have to provide carrier selection notifications to, or prepare balloting procedures for, all of their existing customers pursuant to this new Commission rule. Responses to such ballots have generally been received from a very low

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[13] *Second Order* at para. 81.

[14] *Id.*

[15] *See, e.g., id.* at App. B-3, 47 CFR § 51.209(c).

percentage of LEC subscribers. All current customers who do not respond would then have to dial carrier access codes and would be unable to compete "1+" intraLATA toll calls as usual. The resulting calls to LEC operators, billing centers, and repair operations would be extremely disruptive.

Clarifying that Paragraph 81, like Rule 51.209(c), applies only to customers that first subscribe to service from incumbent LECs after implementation of presubscription recognizes the realities of notification and carrier selection processes, consistent with other portions of the *Second Order*. For example, Paragraph 80 notes that consumer notification requirements already imposed by state commissions' intrastate, intraLATA toll dialing parity orders have required LECs to inform customers either once or twice of their selection opportunities, and that subsequent notification requirements should be no more burdensome.[16] The *Second Report* also acknowledges that the states are best positioned to determine the consumer education and carrier selection procedures that will meet the needs of consumers and providers in their states.[17]

Moreover, the *Second Order* recognizes that states are best able to evaluate dialing parity implementation plans in a way that avoids service disruptions and promotes intrastate toll competition.[18] USTA thus requests the Commission to clarify that state commissions that issued orders regarding intrastate toll presubscription prior to the date of release of the *Second Order* are permitted to implement presubscription pursuant to these orders. Such a clarification will minimize service disruption while recognizing state expertise in these matters.

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[16] *Id.* at para. 80.

[17] *Id.*

[18] *Id.* at para. 39.

D. The Commission Should Reconsider The 90 Day NPA Implementation Requirement For Area Code Overlays

USTA requests that the Commission reconsider its approach to implementing area code relief as set forth in Rule 52.19.[19] The Commission's emphasis on flexibility for state commissions to resolve numbering plan area ("NPA") matters involving introduction of new area codes is necessary for the prompt and efficient introduction of innovative services.[20] The Rule, however, introduces major uncertainties that will serve as impediments to area code relief.

The Rule states that an all-services NPA overlay is permissible if, among other things, all carriers authorized to provide telephone exchange service, exchange access, or paging service in the affected area 90 days before introduction of the overlay have been assigned at least one NXX in the old NPA within the 90-day period prior to overlay.[21]

So long as NXXs are available in an existing NPA, numbering administrators, with state oversight, should assign at least one NXX in the existing NPA to each authorized carrier prior to implementation of an all-services overlay. Such assignment should take place on a first-come, first-served basis.

USTA requests the Commission to eliminate the 90-day requirement. Typically, state commissions adopt NPA relief plans of at least one year, and in some cases two years or more, before implementation. This period of at least one year permits both industry and the public to prepare for the new NPA. The 90-day rule will impede competitively neutral area code reform

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19/ *Id.* at App. B-20, 47 CFR § 52.19.

20/ *Id.* at paras. 281, 282.

21/ *See id.* at paras. 286, 288, App. B-22.

because it will force code administrators, as well as the industry participants tasked with managing area code relief, to attempt to predict the number of NXXs that must be set aside for an unknown number of undeclared or yet-to-be-authorized carriers that may require NXXs 90 days prior to the implementation of an overlay.

The 90-day rule in essence requires inefficient "warehousing" of NXX codes on speculative and contingent grounds. The 90-day requirement will only reduce the number of codes available for carriers -- new market entrants and incumbent LECs alike -- already authorized and seeking to introduce service. In areas where code availability reaches "exhaust status," mandatory warehousing of codes in an effort to meet the 90-day requirement will particularly exacerbate these shortages.[22]

Adding to numbering shortages is not the only effect of this Rule. In areas where NXXs are exhausted, unless warehousing as described above occurs, the 90-day requirement also creates a loophole for almost perpetual invalidations of any overlay plans. Any single new carrier would be able to exercise a veto right over an overlay plan by requesting a NXX in the existing NPA 90 days prior to implementation. If an NXX is unavailable in this situation, both the code administrator and the industry would be forced to undo months of work and attempt an alternative, such as a geographic split. In light of the long lead times for NPA relief, a change in implementation plans at that time to a geographic split, for example, would be too late.

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[22] USTA notes, for example, that the California Public Utility Commission has ruled that lotteries will be held to assign remaining codes because demand exceeds supply. The set-aside requirements of the Rule will only exacerbate such critical shortages.

USTA therefore requests that the 90-day requirement be eliminated. It creates incentives for inefficient utilization of scarce and valuable resources while failing to achieve its purported objective of fair and non-discriminatory access. The Commission would be better advised to allow code administrators and the LEC industry to continue their efforts to ensure the prompt introduction of code reform that is fair and efficient for both incumbents and new market entrants.

E. The Commission Should Clarify The Means By Which States Can Accelerate The Implementation Schedule For Dialing Parity

The Commission requires all LECs to provide intraLATA and interLATA toll dialing parity no later than February 8, 1999.[23] LECs, including BOCs, must provide toll dialing parity throughout a state based on LATA boundaries coincident with provision of in-region, interLATA or in-region, interstate toll services in the state.[24] This time frame is a rigorous one for addressing the myriad of issues that confront industry, state commissions and the Commission.

The Order provides that if a state commission has issued an order prior to December 19, 1995 requiring a BOC to implement toll dialing parity in advance of the Commission's implementation deadline, that state requirement remains in effect.[25] Similarly, prior to the release of the *Second Order*, if a state commission issued an order requiring a LEC other than a

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[23] *See id.* at para. 59.

[24] The *Second Order* also provides a grace period for non-BOC LECs that are currently providing, or, within one year of release of the *Second Order*, will provide in-region, interLATA or in-region, interstate toll service.

[25] *Id.* at para. 60.

BOC to implement dialing parity in advance of the implementation deadlines in the *Second Order*, the state deadline shall be determinative.[26]

USTA requests clarification that the foregoing conditions are the only ones in which dialing parity implementation can be required prior to the implementation schedule of the *Second Order*. Many of USTA's members face substantial financial and technical challenges in implementing the dialing parity requirements throughout their networks. Any additional acceleration of the implementation schedule would further burden these LECs.

As noted above, the *Second Order* also provides a grace period for non-BOC LECs that are currently providing, or, within one year of release of the *Second Order* (that is, August 8, 1997), will provide in-region, interLATA or in-region, interstate toll service.[27] Because of the financial and technical factors mentioned above, the availability of such a grace period is essential to ensure reasonable implementation of the dialing parity requirements.[28]

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[26] *Id.*

[27] Specifically, if a non-BOC LEC is unable to implement intraLATA and interLATA toll dialing parity based on LATA boundaries by August 8, 1997, it must notify the Common Carrier Bureau by May 8, 1997, stating the date by which it will be able to implement toll dialing parity and providing justification for that date.

[28] Pursuant to Section 251(f)(2) of the 1996 Act, smaller LECs may petition their state commissions for a suspension or modification of the application of the dialing parity requirements. Further, where there is only one provider in a particular state-defined market, whether a smaller LEC or some other carrier, there is no other provider for which dialing parity can be offered. In that situation, the sole determining factor in mandating the provision of numbering parity should be the presence of competition under state auspices as evidenced by a bona fide request to provide competing toll services. *Cf.* Conference Report at 121 (stating that Section 251(b) obligations only make sense in the context of a request from another carrier or other person seeking to connect with the LEC's network).

III. CONCLUSION

USTA respectfully requests the Commission to reconsider or clarify the *Second Order* as discussed above.

Respectfully submitted,

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October 7, 1996

Certificate of Service

I, Ann S. Park, do certify that on October 7, 1996 copies of the Petition for Reconsideration of the Second Report and Order (CC 96-98) of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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