

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)

CC Docket No. 96-98
Phase II

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COMMENTS ON PETITIONS FOR RECONSIDERATION

The National Cable Television Association, Inc. ("NCTA"), by its attorneys and pursuant to section 1.429(f) of the Commission's rules, hereby submits these comments regarding certain of the petitions for reconsideration of the Second Report and Order filed in the above-captioned proceeding.^{1/}

I. AREA CODE OVERLAYS SHOULD ONLY BE PERMITTED IN NPAs WHERE FULL NUMBER PORTABILITY HAS BEEN IMPLEMENTED

In the Second Report and Order, the Commission expressly recognized the anticompetitive effects associated with the use of area code overlays.^{2/} When an overlay area code is introduced in a particular numbering plan area ("NPA"), incumbent carriers enjoy a competitive advantage over new entrants by virtue of their ability to control the vast majority

^{1/} In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98 (rel. Aug. 8, 1996) ("Second Report and Order").

^{2/} Second Report and Order at ¶¶ 287-89 & n.614.

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of NXX codes associated with the "old, desirable" area code.^{3/} The Commission sought to allay the adverse competitive consequences of overlays by requiring that every competitor be granted at least one NXX code in the old NPA.^{4/}

As MFS points out, however, the Commission's proposal does little to address the anticompetitive consequences identified by the Commission in those areas where NXX codes are associated with a particular geographic "rate center" for billing purposes.^{5/} In such instances, the NXX code generally can serve only the rate center with which it is associated.^{6/} Thus, in NPAs that contain multiple rate centers,^{7/} a competitor's ability to obtain one NXX code in the

^{3/} See id. at ¶¶ 288-89; "Area Code Red: What About the Customer," Telephony, October 28, 1996, at 24 (quoting consumer advocacy official who states, "With an overlay area code, new customers get the new area code. The stigma for businesses is very negative because everyone knows they are new"); MFS Petition at 3-4.

^{4/} Second Report and Order at ¶ 289.

^{5/} MFS Petition at 8-9 ("unless the Commission reserves an NXX for new entrants in every rate center, merely reserving one NXX in an NPA effectively requires modifications or even abandonment of existing rate centers so that the NXX assigned to new entrants can be used throughout the NPA"); Teleport Communications Group (TCG) Petition at 5 (noting that in State proceedings "ILECs have advocated that CLECs must match traditional ILEC rate centers" meaning that CLECs "assigned one NXX code will be able to provide service using the existing area code in only one rate center"); Cox Petition at 4-5.

^{6/} See AT&T Petition at 6-7 (single NXX code enables a new entrant to serve only one rate center while the ILEC continues to possess disproportionate share of NXX codes for all rate centers in that NPA); "Area Code Red," Telephony, October 28, 1996 at 24-25 (CLECs "can take advantage of newer technologies that eliminate the need for so many [central offices]. To interoperate with existing telco billing systems, however, each new competitor must obtain an NXX prefix for each of the incumbent telco rate centers from which it draws customers. The multiple NXX prefixes are required not for routing but for billing").

^{7/} See MFS Petition at 9 (noting that the 303 area code in northern Colorado covers an area extending 500 miles east to west, and that the 201 area code in New Jersey encompasses 55 rate centers); TCG Petition at 5 ("In large metropolitan areas comprised of multiple rate centers, the effect of the FCC's proposal is that competitive LECs cannot serve customers outside that one

old NPA is of limited practical utility, since "new entrants will be limited to assigning numbers in a single rate center in the 'desirable' NPA."^{8/}

Instead of relying on half-measures to address the anticompetitive effects of overlays, the Commission should revise the Second Report and Order^{9/} and permit overlays only in NPAs in which full number portability has been implemented.^{10/} As AT&T notes, "the Commission's decision not to condition the use of an overlay NPA on the availability of permanent number portability conflicts with its finding that 'permanent number portability is essential to ensure meaningful competition in the provision of local exchange services.'^{11/} During the transition to full number portability, States could still rely on geographic splits and boundary realignments to address area code exhaustion issues, neither of which implicate the same competitive concerns as overlays.^{12/}

The Second Report and Order fails to articulate a persuasive basis for permitting States to utilize overlays in lieu of splits.^{13/} First, the Commission regards it as "most significant[]"

rate center using the existing area code").

^{8/} MFS Petition at 9.

^{9/} Cf. Second Report and Order at ¶ 290 (declining to adopt rule that would "permit area code overlays only if permanent number portability has been implemented in the applicable NPA").

^{10/} MFS Petition at 2, 9-10; AT&T Petition at 8-9; TCG Petition at 8-12; Cox Petition at 3.

^{11/} AT&T Petition at 8, quoting In the Matter of Telephone Number Portability, First Report and Order, CC Docket No. 95-1160 (rel. July 2, 1996) ("Number Portability Order") at ¶ 28.

^{12/} See Second Report and Order at ¶ 284.

^{13/} See id. at ¶ 283.

that area code overlays do not require existing customers to change their telephone numbers.^{14/} But this "most significant" consideration is precisely the reason why, absent full number portability, overlays are problematic for CLECs. If during the transition to permanent number portability the inconvenience associated with changing area codes is disproportionately borne by customers of new entrants -- each of which must already persuade customers to change carriers and telephone numbers -- the prospects for robust and expeditious competition will be dampened.

Second, the Commission suggests that overlays may be preferable in those instances in which "splitting area codes will result in area codes not covering even single neighborhoods."^{15/} But that result, which likely will be encountered rarely in a split situation, will be far more prevalent in overlay areas, since next door neighbors taking service from competing carriers will have to dial a different area code in order to reach one another.

Third, the Commission notes that overlays "can be implemented quickly."^{16/} In many instances, however, existing NXX codes will not be exhausted for several years,^{17/} providing more than enough time to make the transition to a geographic split. This suggests that competitive considerations, rather than timeliness, underlie ILEC support of overlays. As the foregoing demonstrates, splits clearly represent the most fair and effective interim measure for addressing area code exhaustion during the transition to full number portability.

^{14/} Id.

^{15/} Id.

^{16/} Id.

^{17/} See "Dialing Dilemma in N. Va.," Washington Post, November 15, 1996 at A4 (noting that Bell Atlantic is advocating an overlay for the 703 NPA, which is expected to reach exhaustion by late 1999).

If the Commission declines to condition the introduction of NPA overlays upon the implementation of full number portability, it must at a minimum require that overlays may not be used "unless each certificated carrier has sufficient NXXs from the existing NPA to serve its entire service territory."^{18/} The Commission should also reject State commission requests to introduce overlays without ten-digit dialing parity throughout the overlay area.^{19/} Such a proposal would only aggravate the anticompetitive effects of overlays.^{20/} The Pennsylvania PUC errs by suggesting that the eventual implementation of full number portability obviates the need in the meantime for ten-digit dialing in overlay areas.^{21/} CLECs are starting to enter the local service market now, and the competitive obstacles they face would only be exacerbated if their customers were required to accept ten-digit dialing while ILEC customers enjoyed seven-digit dialing. Indeed, such a scenario would strengthen ILEC incentives to delay implementation

^{18/} TCG Petition at 7. Other CLECs have offered similar proposals. See MFS Petition at 9 (overlay area codes may be introduced only if all the remaining old NXX-NPA pairs are assigned to new entrants); AT&T Petition at 7 ("when an NPA overlay is implemented, all remaining NXXs must be equitably distributed among CLECs, according to their requirements"). The TCG formulation, however, ensures that ILECs do not benefit from the introduction of overlay area codes shortly before nearly all NXX codes have been exhausted, thus leaving few "remaining" NXXs for distribution among CLECs.

^{19/} Pennsylvania Public Utilities Commission at 2-5; New York Department of Public Service (NYDPS) Petition at 2-9.

^{20/} The NYDPS' assertion that the Commission lacks jurisdiction to mandate ten-digit dialing for overlay areas is meritless. NYDPS Opposition at 3-5. The Commission has imposed this requirement in connection with its implementation of its numbering administration duties under Section 251(e)(1), which even NYDPS concedes are delegated expressly and wholly to the Commission by the Act. See *id.* at 5. More fundamentally, dialing parity requirements are part of Section 251(b), and the Act mandates that the Commission "establish regulations to implement the requirements" of Section 251. 47 U.S.C. § 251(d)(1).

^{21/} Pennsylvania PUC Petition at 4-5. See also NYDPS Opposition at 7-9.

of full number portability.^{22/} Likewise, suggestions that interim number portability can offset the effects of dialing disparities in overlay areas are unavailing.^{23/} The Commission itself has recognized that the current technically feasible interim number portability mechanisms "may impair to some degree either the quality, reliability, or convenience of telecommunications services when customers switch between carriers."^{24/} Thus, CLECs would still face substantial competitive disadvantages in overlay areas where interim number portability has been implemented, and these disadvantages would be aggravated by allowing dialing disparities in such areas.^{25/}

II. THE COMMISSION SHOULD NOT RECONSIDER ITS MECHANISM FOR RECOVERING THE COSTS OF NUMBERING ADMINISTRATION

The Commission should reject requests for revision of the numbering administration cost recovery method adopted in the Second Report and Order.^{26/} The "gross telecommunications revenues less payments to other carriers formula" represents the most competitively-neutral means of recovering numbering administration costs.^{27/}

^{22/} See Cox Petition at 6.

^{23/} Cf. NYDPS Opposition at 8.

^{24/} Number Portability Order at ¶ 110.

^{25/} TCG Petition at 10-11; Cox Petition at 5-6.

^{26/} NYNEX Petition at 2-5; SBC Petition at 19-20.

^{27/} Second Report and Order at ¶¶ 342-43. See also In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM 8535, Reply Comments of the National Cable Television Association at 6-7.

A net revenue-based allocator equitably allocates costs relative to the size of each telecommunications provider, minimizes the incentive of carriers to gain an improper cost advantage over other service providers, and is relatively easy to administer.^{28/} The subtraction of gross payments made to other carriers prevents the imposition of a double payment burden on CLECs that both purchase services and facilities from ILECs and provide retail services.^{29/} By contrast, a cost recovery formula based solely on gross telecommunications retail revenues^{30/} would require CLECs to bear a disproportionate share of numbering administration costs relative to ILECs.

III. THE COMMISSION SHOULD NOT PERMIT RURAL TELEPHONE COMPANIES TO POSTPONE IMPLEMENTATION OF DIALING PARITY

The Commission should reject the Rural Telephone Coalition's (RTC) proposal that, absent a bona fide request, rural telcos be exempt from the requirement to provide toll dialing parity.^{31/} Congress intended that the Act's competitive benefits should be enjoyed equally by both urban and rural consumers.^{32/} The dialing parity requirements mandated by the Act are

^{28/} See id. For these reasons, the Commission also should reject an allocation methodology based on the number of access lines served by each carrier. See SBC Petition at 20.

^{29/} Second Report and Order at ¶ 343. See also Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, FCC 96-295 (rel. July 5, 1996) (calculating common carrier fees on the basis of net interstate revenues in order to "avoid imposing any double payment burden on resellers.").

^{30/} Cf. NYNEX Petition at 5; United States Telephone Association (USTA) Petition at 6.

^{31/} RTC Petition at 2-4.

^{32/} S. Rep. No. 23, 104th Cong., 1st Sess. 61 (Statement of Sen. Burns) ("Through sound legislation, we have jobs creation, while expanding the competitive choices available to all Americans, including rural and small town residents."); 141 Cong. Rec. S7888-7889 (daily ed. June 7, 1995) (Statement of Sen. Pressler) ("[This bill] establishes a process that will make sure

a critical precondition to the establishment of a competitive environment for telecommunications services in all markets.^{33/}

In effect, RTC would apply the rural exemption in section 251(f)(1) to numbering issues. By its terms, however, that section exempts rural telephone companies only from the duties imposed by section 251(c).^{34/} Congress did not excuse rural telephone companies -- or any local exchange carriers -- from dialing parity or any of the other fundamental obligations described in section 251(b).

By mandating that all local exchange carriers provide dialing parity,^{35/} Congress has already responded to RTC's assertion that network investments necessary to provide dialing parity offer rural customers "no benefit."^{36/} The Second Report and Order's rejection of RTC's request that rural telcos be exempt from dialing parity absent a bona fide request is thus

that rural and small-town America doesn't get left in the lurch."); id. at S8476 (daily ed. June 15, 1995) (Statement of Sen. Pressler) ("[C]ompetition and deregulation will bring great benefits to South Dakota and other States with small cities."); id. at S8004 (daily ed. June 8, 1995) (Statement of Sen. Dorgan) ("[A]nother part of this bill . . . are the protections . . . for rural America - not protections against competition, but protections to make sure we have the same benefits and opportunities in rural America for the build-out of infrastructure of this telecommunications revolution as we will see in Chicago, Los Angeles, New York, and elsewhere.").

^{33/} H.R. Rep. No. 204, 104th Cong., 1st Sess. 72 (1995) ("dialing parity is essential for a local customer to consider changing local service").

^{34/} 47 U.S.C. § 251(f)(1)(A) ("Subsection (c) of [section 251] shall not apply to a rural telephone company") (emphasis added).

^{35/} 47 U.S.C. § 251(b)(3).

^{36/} RTC Petition at 3.

fully consistent with Congressional intent.^{37/} There is no statutory or policy basis for delaying dialing parity in rural areas.^{38/}

CONCLUSION

For the foregoing reasons, the Commission should reject the proposals for reconsideration opposed above and reconsider and revise the Second Report and Order in accordance with the arguments set forth herein.

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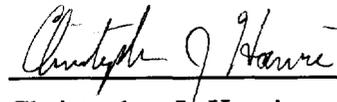
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^{37/} Second Report and Order at ¶ 61.

^{38/} RTC attempts to justify its bona fide request proposal by analogizing the dialing parity requirements of the Second Report and Order with the interexchange carrier equal access obligations previously imposed on rural telcos. RTC Petition at 2-3. The comparison is inapposite. As noted above, Congress could have made the provision of dialing parity contingent upon a bona fide request, but chose not to do so.

CERTIFICATE OF SERVICE

I, Christopher J. Harvie, do hereby certify that a copy of the foregoing Comments on Petitions for Reconsideration of The National Cable Television Association, Inc. was sent to the following by either first class mail, postage pre-paid, or by hand delivery, this 20th day of November, 1996.



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