COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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November 19, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Via Federal Express

DOCKET FILE COPY ORIGINAL

Re: Implementation of the Local Competition
Provisions in the Telecommunications Act of 1996, et al.,
CC Docket No. 96-98, et al.

Dear Secretary Caton:

Enclosed are an original and seven copies of the Response of the Pennsylvania Public Utility Commission in Support of the Petition for Reconsideration Filed by the New York State Department of Public Service in the above-captioned case.

Please do not hesitate to contact the undersigned if you have any questions regarding this filing.

Very truly yours,

Maureen A. Scott /ms

Maureen A. Scott
Assistant Counsel

MAS/ms

cc: All Parties of Record

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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	DOCKET FILE COPY ORIGINAL
Interconnection Between Local Exchange Carriers and Commercial Mobile 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 and Ameritech-Illinois	)	IAD File No. 94-102

RESPONSE OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
IN SUPPORT OF THE PETITION FOR RECONSIDERATION
FILED BY THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

I. Introduction

On August 8, 1996, the Federal Communications Commission ("FCC") issued its Second Report and Order implementing certain provisions of § 251 of the Telecommunications Act of 1996 ("1996 Act" or "Federal Act"). The Second Report and Order addressed the issues of dialing parity; numbering administration; nondiscriminatory access to operator services, directory listings, directory assistance and other ILEC databases; and network disclosure requirements. Notice and a summary of the FCC's Second Report and Order were published in the Federal

Register on September 6, 1996. On October 8, 1996, the Pennsylvania Public Utility Commission ("PaPUC") along with approximately 20 other parties, filed Petitions for Reconsideration ("Petitions") of the FCC's Second Report and Order. Notice of the Petitions was published in the Federal Register on November 5, 1996. The Notice set November 20, 1996, as the deadline for responding to the Petitions. The PaPUC submits the following responsive comments in support of the Petition filed by the New York State Department of Public Service ("NYDPS").

In its original Petition filed on October 8, 1996, the PaPUC confined its arguments to nonjurisdictional issues in order to allow the jurisdictional issues, which are the subject of an appeal by the California Public Utilities Commission, to proceed expeditiously in the courts. The PaPUC, in its original Petition, asked the FCC to reconsider its decision to impose two additional requirements on overlay usage by state commissions.

However, as other parties including the NYDPS have raised the jurisdictional issues in their Petitions, this issue is now squarely before the FCC. Accordingly, the PaPUC desires to note for the record its support of the NYDPS' arguments regarding state jurisdiction over intrastate dialing parity issues and other issues involving the provision of intrastate communication services. We also reiterate our concern which was shared by the NYDPS with the mandatory 10-digit dialing requirement on overlay usage in the future.

II. Section 251 Does Not Give the FCC Authority Over Intrastate Interconnection Terms and Conditions Including Dialing Parity.

The PaPUC agrees with the NYDPS that the FCC lacks the authority to impose dialing parity requirements applicable to intrastate calls, in lieu of state commissions, which continue to have exclusive authority over intrastate communications under the Federal Act.

Section 152(b) gives the states exclusive jurisdiction over intrastate communications unless otherwise stated or if a state fails to act. The Commission is wrong in concluding that §§ 251 and 252 are exempted from § 152(b)'s application. Well-established principles of statutory construction do not support the Commission's interpretation as discussed in more detail below.

First, in the past when Congress has exempted provisions of Title 47 from § 152(b)'s application, it has done so expressly. Since the provision in the original versions of both the Senate and House bills which expressly exempted Part II of Title II from 152(b)'s application was ultimately eliminated from the Federal Act, it must be presumed that Congress did so deliberately and that it knew the effect of this change. Indeed, arguments to the contrary are disingenuous in that the exemption was the subject of considerable lobbying by all sectors of the industry and regulators alike.

Second, PaPUC agrees with the NYDPS that given the express language of the Federal Act, there is no doubt that the FCC was given jurisdiction over certain matters involving both intrastate and interstate calls. However, in those limited exceptions, Congress was careful to make express provision in the 1996 Act, including inter alia numbering portability (§251(b)(2)) and numbering administration (§251(e)(1)). Significantly, however, Congress addressed dialing parity and other issues contained in the Second Report and Order in separate provisions of § 251 which contain no such explicit grant of authority to the FCC. Consequently, when § 152(b)'s rule of statutory construction is applied in these instances, there is little doubt that the Commission exceeded its authority under the Federal Act.

Third, the states' continued authority over intrastate services is also supported by the

express language of § 251(d)(3) which provides:

> (3) PRESERVATION OF STATE ACCESS REGULATIONS.--In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State Commission that---
>
> > (A) establishes access and interconnection obligations of local exchange carriers;
> > (B) is consistent with the requirements of this section; and
> > (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Finally, implied preemption of areas traditionally the subject of state regulation is disfavored. See Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. 707, 713 (1985) (In cases where federal action preempts activities traditionally regulated by the states, the Court "start[s] with the assumption that the historic police powers of the States were not to be superseded ... unless that was the clear and manifest purpose of Congress.") (Emphasis added). Moreover, such implied preemption is specifically prohibited by § 601(c)(1) which provides:

> (1) NO IMPLIED EFFECT.--This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

Consequently, the PaPUC strongly supports the position of the NYDPS that the Commission has exceeded its authority under the Federal Act to the extent it has preempted state

authority and/or requirements pertaining to intrastate dialing parity matters and other matters of an intrastate nature.

III. The Legal Arguments Aside, PaPUC Agrees that a Mandatory 10-Digit Dialing Requirement Is Not in the Public Interest.

Consistent with the PaPUC's original Petition for Reconsideration, the PaPUC also supports the NYDPS position that "[i]n addition to the legal prohibitions against the 10-digit dialing rule, there are practical considerations that militate against imposing this condition on the use of overlay area codes." NYDPS Petition at p. 6. First, as NYDPS notes "mandatory 10-digit dialing of all local calls within areas served by overlay codes will cause extreme customer inconvenience and impose additional network cost, while producing few competitive benefits." NYDPS Petition at p. 6. Second, the competitive concerns used by the FCC to justify imposition of a mandatory 10-digit dialing requirement are not supported by the record in this proceeding or related proceedings. As NYDPS notes, and as PaPUC pointed out in its Petition for Reconsideration, the Commission's decision fails to consider other mitigating factors, such as the availability of number portability, or the added costs and burden upon the network that a mandatory 10-digit dialing requirement would impose. NYDPS, consistent with the PaPUC's initial Petition, provides ample reason why a mandatory 10-digit dialing requirement would not be in the public interest:

> If those customers are served through service resale, they will be able to retain their existing numbers, most likely within the old area code. If those captured customers are served by the competing carrier's facilities and/or unbundled elements, they may also retain use of their existing numbers through number portability. Interim number portability, as required by the Commission, will allow callers in the old area code to dial 7-

> digits to reach customers actually served by the new overlay code. Long term number portability, which is to be implemented in at least 10 of the nation's largest metropolitan areas with 18 months [footnote omitted], will allow customers to remain within their existing area codes..."

NYDPS Petition at pps. 7-8.

In summary, the FCC should reconsider its decision to impose a mandatory 10-digit dialing requirement on all customers in the overlay area. As discussed above, reconsideration is appropriate because of the significant adverse ramifications of this requirement including: 1) discouraging overlay use in the future by state commissions even where appropriate, 2) imposing significant additional burdens on all end users for local calling, and 3) providing no commensurate benefits to a competitive marketplace given the availability of number portability.

IV. Conclusion

The FCC should continue to respect traditional lines of state/federal authority which remain intact except in very limited instances where expressly set forth in the Federal Act as discussed above. The FCC should not impose a mandatory 10-digit dialing requirement on overlay usage by state commissions in the future.

Respectfully submitted,

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Dated: November 19, 1996.

CERTIFICATE OF SERVICE

I, Maureen A. Scott, hereby certify that on the 21st day of November, 1996, a true and correct copy of the foregoing RESPONSE of the Pennsylvania Public Utility Commission was mailed first class, postage prepaid to all known parties of record.

Maureen A. Scott/BT

Maureen A. Scott
Assistant Counsel

Attorney for the Pennsylvania
Public Utility Commission