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

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FEDERAL COMMUNICATIONS COMMISSION
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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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NYNEX REPLY COMMENTS

The NYNEX Telephone Companies ("NYNEX")[1] hereby Reply to the Comments and/or Oppositions to their Petition for Reconsideration and/or Clarification in the above-captioned matter.

[1] The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

I. INTRALATA PRESUBSCRIPTION

Several parties asked the Commission to clarify that its Order allows LECs to default to themselves existing customers who do not affirmatively choose an intraLATA toll provider after the LEC has engaged in a State-approved customer education and notification program. In its Petition, NYNEX asked the Commission to reconsider its decision that prevents LECs from automatically defaulting to themselves new customers who do not affirmatively choose an intraLATA toll provider. NYNEX argued that the States should determine whether such default is appropriate.

Most parties agree that default of existing customers should be allowed. AT&T, for example, agrees that the "clear import of the Commission's framework is that existing customers ... will remain with their current intraLATA toll provider until they indicate otherwise."[2] Only TRA opposes this position. TRA argues that default of existing customers will give the LECs a competitive advantage. The Commission's Order, however, properly recognizes that the States should decide whether default after customer notification and education is preferable to balloting or to requiring customers to dial 10XXX on intraLATA toll calls.

On the other hand, AT&T, Sprint and others argue that default of new customers should not be permitted. AT&T argues that if default of new customers were allowed, LECs would not have any incentive to educate existing customers. Sprint also opposes default of new customers. Sprint argues that the intraLATA presubscription rules should be consistent with the interLATA rules and that 10XXX dialing should be required of new customers who do not choose an intraLATA toll provider. PacTel makes a similar argument, noting that prohibiting default of

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[2] See, e.g., AT&T, p. 5.

new customers will prevent such customers from being assigned to the LEC without having received notice of their options.

None of these arguments has merit. There is no legal requirement that the intraLATA presubscription rules be the same as the interLATA presubscription rules. Nor is there any basis for speculating that LECs will not follow whatever notification procedures are prescribed by State commissions. NYNEX believes that the States are in the best position to determine the notification, education and carrier selection procedures that a LEC should follow for both existing and new customers. Given the customer confusion and inconvenience that will result from forcing customers to dial carrier access codes, some States may view default as being preferable to 10XXX dialing.[3] The Commission should therefore reconsider its decision on this issue and allow States to promulgate notification procedures and default rules for new customers.

II. NETWORK DISCLOSURE

In its Petition, NYNEX asked the Commission to require all telecommunications carriers, not just incumbent LECs, to provide public notice of network changes. AirTouch and others argue that such a requirement is inconsistent with the Act and with public policy. NYNEX disagrees.

NYNEX believes it is sound regulatory policy to require such disclosure of all carriers. One of the objectives of the Act is the development of a seamless public switched telephone network operated by many carriers and accessible to the broadest number of users. Requiring

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[3] In addition, in some areas where 911 has not been deployed, customers may have to dial a toll call to reach emergency services. Thus, new customers may be delayed in reaching critical emergency services if 10XXX dialing is required. States are in the best position to evaluate these local circumstances.

network disclosure of all carriers will accomplish this objective and help protect against disruption of service for all customers.

It is important that incumbent LECs receive notification of changes in their competitors' networks since such changes could impact the incumbent LEC's service to its customers. NYNEX's network is just as susceptible to disruption by changes a competing carrier makes in its network, such as a changes to routing, transmission, signaling protocol and network configuration, as that carrier is to changes that NYNEX makes. NYNEX needs the same notification from other carriers that those carriers need from NYNEX before a change is implemented in the network that might affect the exchange of telephone calls and call control signals.

MCI claims that the disclosure requirement would "excessively burden non-dominant LECs."[4] This burden will be reduced if the Commission narrows the focus of its rules as NYNEX suggested in its Petition. The current rules are so broad[5] that virtually everything NYNEX does in its network could be the subject of the Commission's network disclosure. In addition, the Commission's proposed rules will interfere with industry practices. For example, NYNEX as well as other LECs have been cutting over new switches for years, using existing industry practices to provide notice of the cutover. The Commission's new process will simply overlay new requirements upon the existing process without adding any benefit.

Activation of new codes is an example where the Commission's new rules could even result in less timely disclosure. Notification of the activation of new codes has for years taken

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[4] MCI, p. 7.

[5] For example, the rules require notification of changes that <u>might</u> affect another carrier's business plan.

place through the Local Exchange Routing Guide. Recently the industry agreed to reduce the activation time line from 90 days to 45 days.[6] Under the Commission's new rules, these new code activations will now require a "Short Term Notification of Network Change" proceeding. The alternative is to unnecessarily delay the activation of a new code simply to avoid the Commission's cumbersome process.

To avoid these problems, NYNEX suggests that the Commission narrow its rules and only require network disclosure of information necessary for the transmission and routing of services using a local exchange carrier's facilities or networks, as well as other changes that would affect the interoperability of those facilities and networks.[7] The Commission should allow the industry to utilize existing industry guidelines and practices wherever possible. Finally, all carriers, not just incumbent LECs, should be required to make reasonable disclosure of network changes.

In its Petition, NYNEX also requested that the Commission modify its requirement that the notification period be tolled while carriers negotiate non-disclosure agreements. NYNEX noted that this requirement might allow a competing carrier to unreasonably delay a network change. No party opposed NYNEX's request in this regard. The Commission should therefore reconsider its decision on the issue.

III. BRANDING

In its Petition, NYNEX asked the Commission to clarify that incumbent LECs should not be required to brand or unbrand Operator Services and Directory Assistance services ("OS/DA")

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[6] INC 95-0407-008 Central Office Code (NXX) Assignment Guidelines, Appendix D, p. 5.

[7] See Section 251(c)(5) of the Act.

offered to resellers. Additionally, NYNEX asked that the timing to provide rebranding to resellers be left to negotiation and/or State arbitration. In order to rebrand a reseller's operator and directory assistance service, NYNEX needs to provide a separate route for each reseller. These are the same resources that are needed to provide customized routing for parties seeking OS/DA as unbundled network elements. Because of resource limitations, NYNEX cannot accommodate both resellers and purchasers of unbundled network elements at this time.

AT&T claims that it would be discriminatory for LECs to not offer branding to resellers while offering it to purchasers of unbundled network elements. NYNEX does intend to offer branding to resellers when it becomes technically feasible.[8] NYNEX is working with its switch vendors to develop a solution. As NYNEX suggested in its Petition, this issue should be left to the States to resolve in the arbitration proceedings, as contemplated by the Order.

IV. THE COMMISSION SHOULD NOT MANDATE 10 DIGIT DIALING FOR AREA CODE OVERLAYS

The New York Department of Public Service and the Pennsylvania Public Utility Commission in their petitions asked the Commission to reconsider its rule mandating 10 digit dialing for overlays. Those parties argued that in the first instance State commissions should have control over local dialing patterns. Further, they argued that mandatory 10 digit dialing is unwarranted since any anti-competitive effects of overlays will be mitigated by interim and permanent number portability. The petitions by these State commissions have been opposed by a number of carriers.[9] These carriers merely recycle unsubstantiated arguments that: overlays are anti-competitive; CLECs will not be able to attract customers to the new, "undesirable" NPA;

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[8] In the interim, NYNEX can offer unbranded OS/DA to resellers.

[9] COX, p. 3; MFS, p. 7; AT&T, p. 15; MCI, p. 2; NCTA, p. 5; TCG, p. 8; Sprint, p. 8.

and therefore that mandatory 10 digit dialing must be imposed to mitigate the supposed anti-competitive effects of overlays.

NYNEX continues to support the well-substantiated position of these State commissions. NYNEX believes that State commissions are best positioned to evaluate local conditions -- including balancing consumer dialing convenience and any competitive impacts -- and make a fair determination as to whether 10 digit dialing is necessary. For example, the Maryland State commission determined that 10 digit dialing is the right choice for the State of Maryland, while the Pennsylvania State commission decided it is not required for Pittsburgh. NYNEX is confident that in both cases these State commissions gave careful consideration to all sides of the issue, and that carriers and others had ample opportunity to comment and argue their respective positions before the State commissions. Unless the FCC is in the position of evaluating local conditions in Maryland and Pittsburgh as knowledgeably and carefully as these State commissions, and will continue to do so with respect to other local areas in the future, the FCC should leave the determination of this type of issue with the State commissions. Under this approach, the FCC can intervene on an as-needed basis, without an inflexible 10-digit dialing requirement.

V. THE COMMISSION SHOULD NOT MAKE IMPLEMENTATION OF LOCAL NUMBER PORTABILITY A PREREQUISITE FOR NPA OVERLAYS

A number of parties continue to urge the Commission to reconsider its decision not to require permanent Local Number Portability ("LNP") before an area code overlay can be implemented.[10] These parties make no new arguments, but repeat the unsubstantiated claims that overlays are anti-competitive and that permanent LNP is needed to offset these supposed anti-

[10] E.g., Sprint, p. 6.

competitive effects. The Commission made the right decision and should again reject these arguments.

The Commission has already established a very ambitious deployment schedule for permanent LNP,[11] and should not create pressure towards accelerating that deployment schedule by linking permanent LNP to overlay relief plans. While the Commission has recognized that permanent LNP will mitigate any anti-competitive effects of overlays,[12] it should be noted that interim LNP, which is currently available, will mitigate any such effects as well. Therefore the Commission should not prevent States from considering overlay relief plans by imposing permanent LNP as a prerequisite to overlays.

VI. THE COMMISSION'S ONE NXX PER CARRIER RULE FOR OVERLAY PLANS SHOULD BE ELIMINATED

There was virtually no support for the Commission's well-meaning but flawed "one NXX per carrier rule," i.e., that overlay plans provide at least one NXX code from the existing area code to every carrier 90 days before introduction of the overlay. Various LECs and State commissions have demonstrated that the rule will interfere with the timely implementation of NPA relief, and will require the unproductive warehousing of NXXs.[13] CLECs object to the rule on the grounds that one NXX code assigned in a single rate center provides little benefit to CLECs.[14] Some carriers have proposed unworkable alternatives that appear to be primarily designed to prevent overlays from being considered at all, since the "conditions" for considering

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[11] Number Portability Order, CC Docket No. 95-116, released July 2, 1996.

[12] Order, para. 290.

[13] NYNEX Petition, pp. 11-12; BellSouth Petition, p. 8; USTA Petition, pp. 9-11; PA PUC Petition, pp. 5-6.

[14] MFS Petition, p. 8; AT&T Petition, p.6; TCG Petition, p. 5; COX Petition, p.4

an overlay (i.e., satisfying every carrier's request for NXX codes from the existing NPA) could not possibly be met.[15] Given the total lack of support for the one NXX per carrier rule, NYNEX suggests that the Commission delete that rule and permit the States to oversee the distribution of NXX codes pursuant to industry guidelines while NPA relief plans are being implemented. States are particularly knowledgeable about local conditions, and are in the best position to oversee the fair and efficient distribution of the remaining NXX codes in the old NPA.

VII. RECOVERY OF NUMBERING ADMINISTRATION COSTS

In its Petition, NYNEX asked the Commission to reconsider its proposed mechanism for recovering the costs of numbering administration. We recommended that the Commission use total telecommunications service retail revenues (both intrastate and interstate) to allocate numbering administration costs, and that these costs be recovered through an explicit uniform surcharge on retail rates.

MCI and others, however, continue to support the Commission's proposal even though it fails to meet the Act's requirement of competitive neutrality.[16] The Commission's proposal results in a disproportionate amount of costs being placed on facilities-based carriers and providers of wholesale services. The Commission should reconsider its decision on this issue.

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[15] TCG Petition, p. 7.

[16] MCI, p. 7.

VIII. CONCLUSION

The Commission should reconsider and/or clarify its Second Report and Order in this proceeding as set forth herein and in NYNEX's Petition for Reconsideration and/or Clarification.

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CERTIFICATE OF SERVICE

I, Yvonne Kuchler, hereby certify that copies of the foregoing **REPLY COMMENTS** in CC Dockets No. 96-98, 95-185, 92-237; NSD File No. 96-8 and IAD File No. 94-102 were served on the parties listed on the attached service list, this 4th day of December, 1996, by first class United States mail, postage prepaid.

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