

DOCKET FILE COPY ORIGINAL

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

RECEIVED

OCT 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
Telephone Number Portability) CC Docket No. 95-116
) RM-8535
)
)

PETITION FOR RECONSIDERATION OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES
AND THE
UNITED STATES TELEPHONE ASSOCIATION

The Organization For The Promotion and Advancement Of Small Telecommunications Companies ("OPASTCO") and The United States Telephone Association ("USTA") hereby respectfully request that the Commission reconsider its *Second Report and Order* in the above-referenced proceeding.¹ Both OPASTCO and USTA have seats on the North American Numbering Council.

OPASTCO is a national trade association of more than 480 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its

¹ *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM-8535, *Second Report and Order*, FCC 97-289 (rel. Aug. 18, 1997) ("*Second Report and Order*"). Notice of the *Second Report and Order* appeared in the *Federal Register* on September 17, 1997.

No. of Copies rec'd 0+12
List ABOVE

members, which include both commercial companies and cooperatives, together serve over two million customers.

USTA has approximately 1,200 members, including large, mid-size and small LECs. USTA's large company members are the Regional Bell Operating Companies and GTE. Its mid-size members include 26 companies who generally serve anywhere from 50,000 to 2 million access lines. Several of these mid-size companies have operations in a number of states throughout the nation. The vast majority of USTA members, and all of OPASTCO's members, are small companies, typically serving 5,000 lines or less in a rural area of this country. In fact, over 400 of the small telephone companies in the U.S. serve less than 2,000 lines.

In its *Second Report and Order*, the Commission adopted a recommendation made by the North American Numbering Council (NANC) that oversight and management of the regional local number portability administrators shall be provided by regional Limited Liability Companies (LLCs).² The LLCs will exercise significant responsibilities and their decisions will impact all local exchange carriers. In addition to selecting and negotiating the contracts with the third party administrators, LLCs will ensure compliance by the administrators with the architecture requirements identified by NANC. The LLCs will

² *Id.*, at para. 114.

prioritize platform and software upgrades.³ They will establish service level requirements,⁴ and “maintain competitive neutrality.”⁵ The LLCs will attempt to resolve disputes that “can be expected to center precisely on competition issues.”⁶ Although the precise scope of LLC authority is still unclear, all of this means that the LLCs will certainly be called upon to make important policy decisions. The LLC’s will exercise these oversight responsibilities with no guidelines or rules from the FCC until the Commission concludes the rulemaking that it intends to initiate “no later than June 30, 1998.”⁷

Membership in the LLCs is open to any LEC intending to port numbers in the relevant region.⁸ But carriers wishing to become voting members must agree to accept responsibility for significant LLC costs. According to the recommendations of the NANC, which the

³ See *North American Numbering Council, Architecture and Administrative Plan, NANC - LNP Architecture Task Force* (rel. Apr. 25, 1997) (“*Architecture Task Force Report*”) at para. 12.2.1; FCC Public Notice, *North American Numbering Council Issues Recommendations Regarding the Implementation of Telephone Number Portability ... Common Carrier Bureau Seeks Comments on the NANC’s Recommendations*, DA 97-916 (Com. Car. Bur. rel. May 2, 1997).

⁴ *Id.*, at para. 12.5.3.

⁵ See *North American Numbering Council, Local Number Portability Administration Selection Working Group* (rel. Apr. 25, 1997) (“*Working Group Report*”) at para. 4.4.1; FCC Public Notice, *North American Numbering Council Issues Recommendations Regarding the Implementation of Telephone Number Portability ... Common Carrier Bureau Seeks Comments on the NANC’s Recommendations*, DA 97-916 (Com. Car. Bur. rel. May 2, 1997).

⁶ *Id.*, at para. 4.4.6.

⁷ *Second Report and Order*, at para. 114.

⁸ *Id.*, at para. 94.

Second Report and Order adopts with certain modifications, “to fund the LLC’s administrative expenses, capital contributions are imposed equally on LLC members (in modest allotments of \$10,000 to \$20,000).”⁹ USTA and OPASTCO have only lately learned that, in addition to the initial cost of membership, LLCs typically require either ongoing fixed contributions or periodic assessments on members to cover LLC expenses. These assessments are open-ended, and it is not at all unusual for each LLC member’s share of the assessments to be significantly more than the \$10,000 to \$20,000 initial contribution.

OPASTCO and USTA submit that capital contributions of \$10,000 to \$20,000 are not “modest” when viewed from the perspective of a small or mid-size LEC. A small LEC with 2,000 access lines, for example, would incur costs equal to 42 cents to 82 cents per customer per month just to be able to participate as a voting member of an LLC. Those figures are conservative because they assume only **one** assessment in a year.

A number of mid-size LECs operate in many states throughout the country. These companies could be forced to make separate capital contributions to as many as 7 LLCs should they wish to represent their interests in each of the regions in which they operate through membership in the LLCs. For example, if TDS wishes to participate in the number portability decisions affecting its operations, it would need to join and financially support all 7 LLCs.

⁹ *Working Group Report*, at para. 4.4.1. As discussed *infra*, earlier drafts of the underlying NANC document contained no discussion of LLC costs and later drafts contained amounts that were only half as large as the ones in the final report.

OPASTCO and USTA have become increasingly concerned about the barriers to LLC membership for two reasons. In an April 1, 1997 draft of the report of the Local Number Portability Administration Selection Working Group, the capital contribution figures were only half those contained in the final report.¹⁰ And even the NANC's final report does not make clear that these assessments are ongoing and open-ended. Second (and more importantly), it was not until the recent release of the *Second Report and Order* that the FCC delegated important functions to the LLCs with no FCC guidance to be issued until the second half of 1998, at the earliest.

The capital contribution requirement is as inappropriate as it is unrealistic. If the Commission mandates that small and mid-size LECs shall be bound by decisions of the LLCs, these carriers have a right to cast votes in the matters that the FCC has delegated to the LLCs. The Commission has imposed what can only be described as a "poll tax." Anything less than unrestricted voting rights could not possibly be described as competitively neutral. Small and mid-size LEC membership in the LLCs, which is virtually nonexistent, should therefore be encouraged. The present capital contribution requirements are a barrier to small and mid-size company participation. One must also assume that these concerns are not unique to incumbent LECs. Small and mid-size competitive LECs might well also consider these fees a barrier.

¹⁰ A February 11, 1997 draft contained no mention of financial assessments in the LLC discussion. This is not to suggest that there was any problem with the drafting process. There was not, and the document evolved just as one might expect. But these drafts do demonstrate that the LLC financial commitments were not made clear until late in the process.

The situation is exacerbated because the Commission has yet to issue guidelines ensuring that all of the costs of local number portability will be shared by all carriers pursuant to Section 251(e)(2) of the Telecommunications Act,¹¹ which provides that: “The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” Management and oversight costs, such as those incurred by the LLCs, clearly fall in this category. In its *Order on Reconsideration* in this proceeding,¹² the Commission stated:

[W]e plan to adopt a *Second Report & Order* in this proceeding in the near future implementing the statutory provision that expenses incurred as a result of number portability be “borne by all telecommunications carriers on a competitively neutral basis....” We anticipate that the *Second Report and Order* will be adopted well before a LEC is required by the deployment schedule to commence the provision of long term number portability to the public in the Phase I markets.¹³

The FCC has yet to adopt a cost recovery mechanism. Particularly in light of the changes which will soon occur on the Commission, it is uncertain when such a mechanism will be adopted.

¹¹ 47 U.S.C. §251(e)(2).

¹² *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM-8538, *First Memorandum Opinion and Order on Reconsideration* (rel. Mar. 11, 1997) (“*Order on Reconsideration*”).

¹³ *Id.*, at para. 146.

It is vital for the Commission to reconsider the requirement that capital contributions and assessments be paid by any carrier wishing to participate in the LLC process. No carrier who is certified to provide local exchange service in a given region should be forced to pay **anything** to exercise its right to vote on any question which is properly before the respective LLC pursuant to the FCC/NANC action in the *Second Report and Order*.

For the reasons stated herein, OPASTCO and USTA respectfully urge the Commission to reconsider its *Second Report and Order* in accordance with this petition.

Respectfully submitted,

BY 
United States Telephone Association

Mary McDermott
Linda Kent
Keith Townsend
Hance Haney

1401 H Street, NW
Suite 600
Washington, DC 20005
202-326-7247

BY 
Organization for the Promotion and
Advancement of Small
Telecommunications Companies

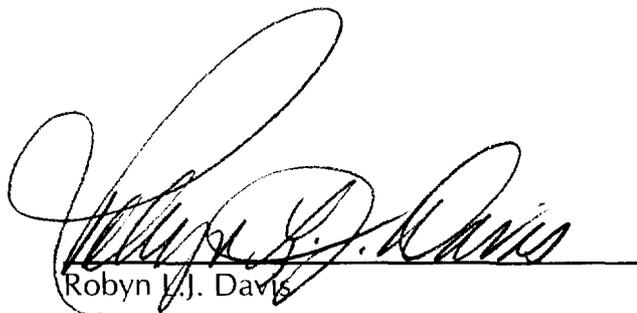
Lisa M. Zaina
General Counsel

21 DuPont Circle
Suite 700
Washington, DC 20036
202-659-5990

October 17, 1997

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on October 17, 1997 the Petition for Reconsideration 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.



Robyn L.J. Davis

Matt Hartun
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Jason Karp
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Robert Schoonmaker
GVNW Inc.
2270 La Montana Way
Colorado Springs, CO 80918

Saul Fisher
Thomas J. Farrelly
NYNEX
1095 Avenue of the Americas
New York, NY 10036

Richard A. Askoff
NECA
100 South Jefferson Road
Whippany, NJ 07981

Harold L. Stoller
Richard S. Walters
Illinois Commerce Comm.
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794

Sydney R. Peterson
Niagara Telephone Co.
1133 Main Street
Niagara, WI 54151

Carol Matthey
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Jeannie Su
Federal Communications Commission
1919 M Street, NW
Room 544
Washington, DC 20554

Richard J. Metzger
Association for Local Telecommunications
Services
1200 19th Street, NW
Suite 560
Washington, DC 20036

Andrew D. Lipman
Russell M. Blau
Swidler & Berlin, Chtd.
3000 K Street, NW
Washington, DC 20007

Stephen G. Kraskin
Thomas J. Moorman
Kraskin & Lesse
2120 L Street, NW
Suite 520
Washington, DC 20037

Frank W. Krogh
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Leon M. Kestenbaum
Jay C. Keithley
Sprint
1850 M Street, NW-Suite 1110
Washington, DC 20036

David J. Gudino, HQE03F05
GTE
P.O. Box 152092
Irving, TX 75015

Edward D. Young, III
Michael E. Glover
Randal S. Milch
Bell Atlantic
1320 N. Court House Road
Arlington, VA 22201

T. Fleming
SWB
One Bell Central
Oklahoma City, OK 73102

Robert M. Wienski
Sam LaMartina
ITN Legal & Regulatory Affairs
8500 W. 110th Street
Suite 600
Overland Park, KS 66210

Dennis C. Brown
Brown and Schwaninger
1835 K Street, NW
Suite 650
Washington, DC 20006

Jonathan E. Canis
Reed Smith Shaw & McClay
1301 K Street, NW
Suite 1100 - East Tower
Washington, DC 20005

J. Christopher Dance
Kerry Tassopoulos
Excel Telecommunications, Inc.
9330 LBJ Freeway
Suite 1220
Dallas, TX 75243

Gail L. Polivy
GTE
1850 M Street, NW
Suite 1200
Washington, DC 20036

Lawrence W. Katz
Bell Atlantic
1320 N. Court House Road
Arlington, VA 22201

Lisa M. Zaina
OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036

Theodore Case Whitehouse
Michael F. Finn
Willkie Farr & Gallagher
1155 21st Street, NW
Washington, DC 20036

Albert Halprin
Joel Berstein
Halprin, Temple, Goodman and Sugrue
1100 New York Avenue, NW
Suite 650E
Washington, DC 20005

Michael B. Adams, Jr.
Law Office of Thomas K. Crowe, PC
2300 M Street, NW
Suite 800
Washington, DC 20037

Michael J. Shortley, III
Frontier
180 South Clinton Avenue
Rochester, NY 14646

Teresa Marrero
Teleport Communications Group, Inc.
One Teleport Drive
Suite 300
Staten Island, NY 10310

Mark J. Golden
Robert L. Hoggarth
Personal Communications Industry Assn.
500 Montgomery Street
Suite 700
Alexandria, VA 22314

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
NARUC
1201 Constitution Avenue, NW - Suite 1102
Washington, DC 20044

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Philip F. McClelland
Irwin A. Popowsky
Office of Attorney General
Office of Consumer Advocacy
1425 Strawberry Square
Harrisburg, PA 17120

Peter Arth, Jr.
Edward W. O'Neill
Mary Mack Adu
People of the State of Calif. and PUC of Calif.
505 Van Ness Avenue
San Francisco, CA 94102

Glenn S. Rabin
ALLTEL Corporate Services, Inc.
655 15th Street, NW
Suite 200
Washington, DC 20005

Ann P. Morton
Cable & Wireless, Inc.
8219
Vienna, VA 22182

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro & Morin, LLP
2101 L Street, NW
Suite 601
Washington, DC 20036

Assemblyman Anthony J. Genovesi
Legislative Office Building
Room 456
Albany, NY 12248

Jackie Follis
PUC of Texas
7800 Shoal Creek Boulevard
Austin, TX 78757

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1301 K Street, NW
Suite 1100 - East Tower
Washington, DC 20005

David L. Meier
Cincinnati Bell
201 E. Fourth Street
P.O. Box 2301
Cincinnati, OH 45201

Kathryn Marie Krause
U S WEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

Mark C. Rosenblum
Leonard J. Cali
Judy Sello
AT&T Corp.
295 North Maple Avenue - Room 3244J
Basking Ridge, NJ 07920

William B. Barfield
M. Robert Sutherland
A. Kirven Gilbert III
BellSouth
1155 Peachtree Street, NE - Suite 1700
Atlanta, GA 30309

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
Worldcom, Inc. d/b/a LDDS WorldCom
1120 Connecticut Avenue, NW - Suite 400
Washington, DC 20036

Compuserve Inc.
5000 Arlington Centre Boulevard
P.O. Box 20212
Columbus, OH 43220

Bradley Stillman
Consumer Federation of America
1424 16th Street, NW
Suite 604
Washington, DC 20036

Cindy Z. Schonhaut
Intelcom Group (USA), Inc.
9605 East Maroon Circle
Englewood, CO 80112

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications Inc.
175 E. Houston - Room 1254
San Antonio, TX 78205

Genevieve Morelli
The Competitive Telecommunications Assn.
1140 Connecticut Avenue, NW
Suite 220
Washington, DC 20036

Margaret E. Garber
Pacific Telesis Group
1275 Pennsylvania Avenue, NW
Fourth Floor
Washington, DC 20004

Joseph P. Markoski
Marc Berejka
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
P.O. Box 407
Washington, DC 20044

Randolph J. May
Bonding Yee
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Charles C. Hunter
Hunter & Mow, PC
1620 Eye Street, NW
Suite 701
Washington, DC 20006

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N Street, NW
Suite 800
Washington, DC 20036

Pamela Riley
AirTouch Communications, Inc.
One California Street
San Francisco, CA 94111

David N. Porter
MFS Communications Company, Inc.
3000 K Street, NW
Suite 300
Washington, DC 20007

Virginia J. Taylor
California Department of Consumer Affairs
400 R Street
Suite 3090
Sacramento, CA 95814

David A. Irwin
Irwin, Campbell & Tannenwald, PC
1730 Rhode Island Avenue, NW
Suite 200
Washington, DC 20036

Marlin D. Ard
Nancy Woolf
140 New Montgomery Street
Room 1530A - 15th Floor
San Francisco, CA 94105

Charles V. Gerkin, Jr.
Chorey, Taylor & Feil, PC
3399 Peachtree Road, NE
Suit 1700 - The Lenox Building
Atlanta, GA 30326

Cynthia B. Miller
Florida PSC
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Carl W. Northrop
Christine M. Crowe
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, NW
10th Floor
Washington, DC 20004

Andrew D. Lipman
Erin M. Reilly
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 300
Washington, DC 20007

Betty D. Montgomery
Ann E. Henkener
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Michael Altschul
Randall S. Coleman
Cellular Telecommunications Industry Assn.
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

Mark J. Tauber
Mark J. O'Connor
Piper & Marbury, LLP
1200 19th Street, NW
Seventh Floor
Washington, DC 20036

Eric Witte
Missouri PSC
P.O. Box 360
Jefferson City, MO 65102

Maureen O. Helmer
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223

Larry A. Peck
Frank M. Panek
Ameritech
2000 West Ameritech Center Drive
Room 4H86
Hoffman Estates, IL 60196

Bruce Beard
Southwestern Bell Mobile Systems
17330 Preston Road
Suite 100A
Dallas, TX 75252

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Comms., Inc.
800 Connecticut Avenue, NW - Suite 1001
Washington, DC 20006

Peter Arth, Jr.
Edward W. O'Neill
Mary Mack Adu
People of the California and the PUC of Calif.
505 Van Ness Avenue
San Francisco, CA 94102

J. Roger Wollenberg
John H. Harwood II
Jonathan J. Frankel
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037

Richard J. Metzger
Association for Local Telecommunications Services
1200 19th Street, NW
Suite 560
Washington, DC 20036

Thorvald A. Nelson
Colorado Office of Consumer Counsel
1580 Logan Street
Suite 610
Denver, CO 80203

Durward D. Dupre
Mary W. Marks
Southwestern Bell Telephone Co.
One bell Center
Room 3558
St. Louis, MO 63101

David Cosson
L. Marie Guillory
NTCA
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Mark C. Rosenblum
Roy E. Hoffinger
Clifford K. Williams
AT&T
295 North Maple Avenue - Room 325211
Basking Ridge, NJ 07920

Dan L. Poole
Jeffrey S. Bork
U S WEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

Michael J. Shortley, III
Frontier Corp.
180 South Clinton
Rochester, NY 14646

Anthony Marquez
Colorado PUC
1580 Logan Street
Office Level Two
Denver, CO 80203

James S. Blaszak
Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, NW
Suite 500
Washington, DC 20036

Dana Frix
Swidler & Berlin, Chtd.
3000 K Street, NW
Suite 300
Washington, DC 20007

Brian Conboy
Sue D. Blumenfeld
Thomas Jones
Willkie Farr & Gallagher
1155 21st Street, NW
Washington, DC 20036

Jody B. Burton
GSA
Office of General Counsel
Washington, DC 20405

Loretta J. Garcia
Donald J. Elardo
MCI
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren, LLP
1200 19th Street, nW
Suite 500
Washington, DC 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Guiterrez
1111 19th Street, NW
12th Floor
Washington, DC 20036

J. Scott Bonney
Nextlink Communications, LLC
155 108th Avenue, NE
Bellevue, WA 98004

Campbell L. Ayling
NYNEX
1111 Westchester Avenue
White Plains, NY 10604

M. Robert Sutherland
Richard M. Sbarata
Theodore R. Kingsley
BellSouth
1155 Peachtree Street, NE - Suite 1700
Atlanta, GA 30309

Charles C. Hunter
Catherine M. Hannan
Hunter & Mow, PC
1620 Eye Street, NW
Suite 701
Washington, DC 20006

Riley M. Murpny
James C. Falvey
American Communications Services, Inc.
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Jill Lyon
American Mobile Telecommunications Assn., Inc.
1150 18th Street, NW
Suite 250
Washington, DC 20036

John T. Scott, III
Crowell & Moring LLP
1001 Pennsylvania Aveue, NW
Washington, DC 20004

Daniel M. Waggoner
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101

Richard L. Cys
1155 Connecticut Avenue, NW
Suite 700
Washington, DC 20036

John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Susan Drombetta
SCG, Inc.
575 Scherers Court
Worthington, OH 43085

ITS
1231-20th Street, NW
Washington, DC 20036

Steve McLellan
Washington Utilities and Transportation
Commission
1300 S. Evergreen Park Dr. S.W.
P.O. Box 47250
Olympia, WA 98504

Christopher J. Wilson
FROST & JACOBS
2500 PNC Center
201 East Fifth St.
Cincinnati, OH 45202

Gregory Whiteaker
Caressa D. Bennet
Bennet & Bennet, PLLC
1019 Nineteenth St., NW
Washington, DC 20036

W. Kenneth Ferree
Jonathan Wiener
GOLDBERG, GODLES, WIENER & WRIGHT
1229 Nineteenth St., NW
Washington, DC 20036

John L. Bartlett
Wiley, Rein & Fielding
1776 K St., N.W.
Washington, D.C. 20006

Christopher J. Wilson
FROST & JACOBS
2500 PNC Center
201 E. Fifth St.
Cincinnati, Ohio 45202

Larry A. Peck
Ameritech
Rm. 4H86
2000 West Ameritecch Center Dr.
Hoffman Estates, IL. 60195 -1025

Brad E. Mutschelknaus
KELLEY DRYE & WARREN, LLP
1200 19th St., N.W.
Suite 500
Washington, D.C. 20036

Richard Ekstrand, Chairman
Government and Regulatory Committee
2120 L St., N.W.
Suite 520
Washington, D.C. 20554