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January 12, 1998

Hon. Magalie Roman Galas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

RE: In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 et al., CC Docket No. 96-98, CC Docket No. 95-185, NSD File No. 96-8, CC Docket No. 92-237, and IAD File No. 94-102

Dear Secretary Galas:

Enclosed are twelve (12) copies of the New York Public Service Commission Opinion and Order Concerning New York City Area Codes (Opinion No. 97-18), which was advertantly omitted as an attachment to the Supplemental Petition for Reconsideration of the New York State Department of Public Service submitted in the above-captioned matter that was filed on Friday January 9, 1998.

Sincerely,

Cheryl A. Callahan

Cheryl L. Callahan
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Enclosure

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 97-18

CASE 96-C-1158 - Proceeding on Motion of the Commission, Pursuant to Section 97(2) of the Public Service Law, to Evaluate the Options for Making Additional Central Office and/or Area Codes Available in the 212 and 917 Area Codes of New York City.

OPINION AND ORDER
CONCERNING NEW YORK CITY AREA CODES

Issued and Effective: December 10, 1997

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

John F. O'Mara, Chairman
Maureen O. Helmer
Thomas J. Dunleavy

CASE 96-C-1158 - Proceeding on Motion of the Commission, Pursuant to Section 97(2) of the Public Service Law, to Evaluate the Options for Making Additional Central Office and/or Area Codes Available in the 212 and 917 Area Codes of New York City.

OPINION NO. 97-18

OPINION AND ORDER CONCERNING
NEW YORK CITY AREA CODES

(Issued and Effective December 10, 1997)

BY THE COMMISSION:

INTRODUCTION AND PROCEDURAL HISTORY

Telephone numbers within New York City (the City) now bear one of three area codes (technically known as "numbering plan areas" (NPAs)): 212 is assigned to landline service in Manhattan; 718 is assigned to landline service in the remaining boroughs, and 917 is assigned primarily to wireless service throughout the City.[1] The 212 area code is expected to run out of available central office codes as early as the first quarter of 1998; the 718 code is now expected similarly to exhaust early in 1999; and the 917 area code is expected to exhaust in fall of 1999.[2]

In an order issued December 31, 1996, we noted the impending exhaustion of central office codes (NXX codes) in area codes 212 and 917 and instituted this proceeding "to determine

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[1] The 718 code was established in 1985 and initially assigned to Brooklyn, Queens and Staten Island. In 1992, to further prolong the life of the 212 code, The Bronx was moved from 212 to 718, leaving only Manhattan in 212. The 917 code was introduced in 1992, also to provide relief for 212.

[2] These exhaust dates, based on latest estimates by the Communications Division, are sooner than those forecast earlier in the case.

the best way to provide additional central office and area codes in New York City."[1] We directed New York Telephone Company (New York Telephone or the company) to file a report setting out its proposals for achieving that goal and invited persons interested in receiving copies of that report to submit their names to the Secretary. The report, addressed primarily to area code 212, was duly filed on February 27, 1997. In response to requests by staff and a directive from Administrative Law Judge Joel A. Linsider,[2] New York Telephone on May 15, 1997 supplemented its report to provide additional proposals related to area codes 917 and 718, recognizing that 718 was not in imminent danger of exhaust.

To state the matter most generally, New York Telephone discussed two methods for providing the needed relief: a geographic split, which would divide the 212 area into two regions, and an overlay, which would assign all new central office codes in Manhattan to the new area code once 212 had been exhausted.[3] New York Telephone favored the overlay.

On March 5, 1997, a notice was issued convening an administrative conference to structure the proceeding; the notice was served on all parties who had requested copies of New York Telephone's report or had otherwise expressed interest in the case. The conference, held in New York City before Judge Linsider on March 25, 1997, was attended by representatives of the company; the New York City Mayor's Office and the New York

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[1] Case 96-C-1158, Order Instituting Proceeding (issued December 31, 1996).

[2] Case 96-C-1158, Ruling on Scope and Procedure (issued April 16, 1997) (the Scope Ruling), p. 4.

[3] The report also referred to a boundary realignment remedy, which would have assigned a portion of northern Manhattan to the 718 area. (Such a step would resemble that taken in 1992, when the 212 NPA was relieved by transferring The Bronx from 212 to 718.) Boundary realignment was clearly the least desirable remedy on many accounts, and the parties, at the collaborative conference described below, properly agreed that it should be considered no further.

City Department of Information Technology and Telecommunications (the City); AT&T Communications of New York, Inc. (AT&T Communications); Cellular Telephone Company d/b/a AT&T Wireless Services (AT&T Cellular); Teleport Communications Group, Inc. (Teleport); MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (MCI); Bell Atlantic NYNEX Mobile[1] (BANM); and David Bronston, pro se. Staff of the Department of Public Service (staff) participated, as it has throughout the case, in an advisory capacity.

At the conference, in response to suggestions by various parties that the case involved factual issues warranting discovery and perhaps evidentiary hearings, the Judge invited parties to submit lists of issues on which they might want to conduct discovery. Four parties (MCI, Teleport, AT&T Communications, and BANM) did so. In the ensuing Scope Ruling, he determined that the case involved primarily policy issues and that, while policy judgments could not be made in a factual vacuum, no need had been shown for evidentiary hearings. At the same time, he recognized the need for parties to exchange information, and he therefore authorized the commencement of discovery, which continued throughout the case and elicited considerable information. He also invited written comments critiquing New York Telephone's report and proposing alternative arrangements, as well as replies to those comments, and he scheduled a collaborative conference of the parties, hoping thereby to achieve some consensus. Finally, with regard to the scope of the case, the Judge noted that in instituting the inquiry, we had sought to provide additional number resources throughout New York City, in area code 917 as well as 212. As already noted, therefore, he directed the company to respond more

[1] Now Bell Atlantic Mobile.

substantively than it had to a request from staff that it supplement its report with regard to 917 relief.[1]

Initial comments were duly filed by the City, the State Consumer Protection Board (CPB), BANM, MCI, Sprint Communications Company L.P. (Sprint), and AT&T Communications jointly with AT&T Cellular (jointly, AT&T). Replies were filed by the City, BANM, MCI, AT&T, Teleport, and New York Telephone. The collaborative conference, held in New York City on June 16 and 17, 1997, was attended by New York Telephone, BANM, AT&T Communications, AT&T Cellular, MCI, Sprint, Time Warner Communications Holdings, Inc. (Time Warner), Teleport, the City, the Manhattan Borough President's Office, and Alan Flacks, pro se. Judge Linsider facilitated the conference and staff representatives participated as advisors. Although no consensus could be reached on the fundamental issue,[2] the parties' discussions clarified many of the issues and underlying concerns, and most of the parties regarded the process as a useful one.

Following the conference, staff prepared an options paper (the Staff Paper), in which it reviewed the parties' positions and offered its own evaluation.[3] A copy of the Staff Paper is Attachment A to this opinion and order. On July 22, 1997, Judge Linsider issued the Staff Paper for comment; comments

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[1] Judge Linsider left open the schedule for considering eight-digit local dialing, a long-term remedy staff had requested the company to examine. The company had responded that this measure could be considered only on a nation-wide basis. The Judge questioned that premise, but agreed that the issues presented by eight-digit local dialing were too numerous and complex to be decided in time to provide the needed relief in the 212 NPA.

[2] As noted above, the parties did agree to remove boundary realignment from consideration. In addition, they agreed, whatever else was decided, that existing wireless customers in all five boroughs would be grandfathered in their 917 overlay. That result is adopted, since there is no reason to require those customers to change their area codes.

[3] "New Area Code(s) for New York City: A Description of Options (July 22, 1997).

were filed by New York Telephone, AT&T, MCI, Teleport, Time Warner, BANM, CPB, the City, and the Manhattan Borough President.

Public Statement hearings were held before Judge Linsider on July 23, 24, 29, and 30, 1997. Two such hearings were held in Manhattan and one in each of the other boroughs; a total of 18 people (other than active parties) spoke. Their comments are summarized below.

In addition to the formal proceedings just described, the Consumer Services Division conducted, over the course of the case, a City-wide outreach and education program. The program, described more fully below, provided an opportunity both to inform the general public about their issues and to receive their opinions in a context less formal than that of a public statement hearing.

Following our initial consideration of this case at our session on September 30, 1997, staff and various parties met on several occasions, pursuant to our directive, to give further consideration to matters related to number pooling and number portability. (These terms are defined and discussed below.) The meetings, held at our New York City offices on October 9, October 23, and November 7, 1997, were attended by staff, New York Telephone, BANM, AT&T, MCI, Time Warner, and Lockheed Martin IMS. (The first two meetings were a direct outgrowth of this case; the third was under the auspices of the New York Local Number Portability Steering Committee.) The meetings resulted in the formation of several subcommittees that will expedite the implementation of number pooling, as discussed below.

Because the Staff Paper fully describes the basic alternatives and their pros and cons, as well as staff's reasons for favoring an overlay, we do so here only briefly, in a description of the issues. We then consider the reaction to the Staff Paper, on the part of both the parties and the public, and present and discuss our determination that area code relief should be provided via suitably conditioned overlays.

THE ISSUES

The Nature of the Issues

General background on the North American Numbering Plan, and on the exponential growth in demand for telephone numbers, were set forth in the staff memorandum that recommended institution of this proceeding; for the reader's convenience, pertinent excerpts from that document are reproduced as Attachment B. As already noted, the two forms of code relief under consideration are a geographic split, which divides the 212 NPA into two areas, one retaining the 212 code and the other designated 646[1]; and an overlay, which would superimpose the 646 code on the entire 212 area and assign newly issued phone numbers to 646 once 212 was exhausted. It should be noted that the overlay would apply to all telephone numbers, regardless of service, in contrast to the existing 917 overlay, which applies almost exclusively to wireless service; Federal Communications Commission regulations currently preclude service-specific overlays.[2] (Analogous arrangements would be made for the 718 code, via split or overlay, in time for its exhaust.)

In the comments that preceded the collaborative conference, and at the conference itself, New York Telephone's overlay was supported only by BANM. The competing local exchange companies (CLECs) for the most part favored a geographic split. In reaching their positions, the parties identified three principal groups of issues: the degree of relief provided by each alternative, the potential for imposing inconvenience, confusion, and expense on customers, and the potential for anticompetitive effects on New York Telephone's competitors in the local service market.

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[1] The North American Numbering Plan Administrator, in response to New York Telephone's application, has designated that code for use in relieving 212.

[2] CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order (August 8, 1996), ¶285.

1. Degree of Relief

For a geographic split to provide the maximum degree of relief, the two zones into which the original area is divided must reach exhaustion at the same time; otherwise, a further split (or other relief) will be required in one area before it is needed in the other. Achieving that result requires accurate estimates of growth in each area and is subject to the associated forecasting pitfalls. An overlay avoids that issue entirely, in that a further additional code would be assigned only when growth throughout the entire area so required. New York Telephone emphasized that advantage of an overlay; parties opposing it maintained New York Telephone had underestimated the degree of relief available through geographic splits, thereby overstating the advantage of an overlay. No one, however, contested the *a priori* point that the relief provided by a split could not exceed that of an overlay.

2. Effects on Customers

Both alternatives entail potential inconvenience, confusion, and expense for customers; when compared, they sometimes emerged as mirror images in this regard. For example, geographic splits are said to provide a recognizable boundary between the zones, preserving their identity and avoiding the confusion of an overlay's potential assignment of different area codes to residents of the same building. But the same comparison is expressed, from the point of view of an overlay advocate, by saying that the overlay treats all customers equally, avoiding potentially invidious geographic divisions that can be seen as red-lining. Similarly, advocates of a split spoke of preserving the ease with which a caller knowing the location of the party being called can determine the area code; overlay advocates pointed to the meaninglessness of a Manhattan street boundary to most callers from out-of-town and many even within the City.

Other points of comparison included the need for forced number changes (none under an overlay; many area code changes and some entire-number changes under a split); and the need for 11-

digit dialing (only from one NPA to another under a split; universally, even within the same NPA, under an overlay, given current FCC requirements[1]). The parties disputed the significance of the expense and inconvenience that might be occasioned by the alternatives.

3. Effects on Competitors

A fundamental concern in the case was the claim that an overlay could disadvantage CLECs by making it more likely that their customers would be assigned to the putatively less-desirable 646 NPA than to 212. The concern arises because new entrants are said to have a disproportionately large share of their numbers in the new area code, assignments to which would be chronologically rather than geographically determined.

The Staff Paper

After reviewing the alternatives, the Staff Paper concluded that an overlay suitably conditioned to mitigate anticompetitive effects offered the best form of relief, for "it appears to provide greater relief with less disruption and inconvenience."[2] The conditions proposed in the Staff Paper were strict adherence to the provisions of the central office code (NXX) assignment guidelines that bar discrimination among

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[1] To carry out the local competition provisions of the Telecommunications Act of 1996, the FCC has required that where an overlay is used, all calls within the area, even within the same NPA, must dial the area code. (47 C.F.R. §52.19(c)(3)(ii).) As noted below, competitors of New York Telephone in the local service market indeed see this as an important pro-competition measure. It should be noted that parties have been inconsistent in referring to this as 11-digit dialing or 10-digit dialing; this opinion refers to it as 11-digit dialing, recognizing that the NPA is currently preceded by "1."

[2] Staff Paper, p. 20.

carriers[1]; universal 11-digit dialing (as already required by the FCC), which would mean that no customers would be more likely than any others to have to use 11 digits for a local call; and the availability of Local Number Portability (LNP),[2] which enables a subscriber of one LEC to retain its telephone number even upon moving to another. The Staff Paper noted that LNP was scheduled to be available in New York City by the end of the first quarter of 1998. If that deadline were missed, the Staff Paper would require some other mechanism to ensure that all central office code users had equal access to any remaining 212 numbers. It suggested, as one possibility, reserving unused numbers in 212 for use by existing customers at existing locations.

Should an overlay be rejected in favor of a geographic split, staff would favor dividing Manhattan at 23rd Street. That dividing line, not among those considered in New York Telephone's initial report, was proposed by AT&T and quickly became widely recognized as the geographic split that stood to provide the greatest degree of relief and impose the least disruption on customers. AT&T had suggested that the 212 NPA be retained north of 23rd Street and that 646 be assigned to the south; the Staff Paper, however, suggested 212 be retained south of 23rd Street and 646 be introduced to the north.[3]

Looking beyond the 212 NPA, the Staff Paper would continue to assign new wireless customers City-wide to the 917 NPA until it, too, was exhausted. From that point on, no

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[1] Industry Number Committee (INC) Guideline 95-0407-008 requires that central office codes be assigned to all qualified applicants in a non-discriminatory manner.

[2] Sometimes referred to by the parties as "Permanent Number Portability" (PNP), to distinguish it from certain interim arrangements that are inadequate for these purposes.

[3] An exchange of letters between AT&T and staff confirmed that the Staff Paper intended only to credit AT&T with proposing the 23rd Street line and did not mean to imply, as it might have been taken to, that AT&T also proposed assigning 646 to the northern area.

distinction would be drawn between new wireline and new wireless customers with regard to NXX assignment.

Once the 718 NPA became exhausted, a four-borough overlay (NPA 347) would be applied. Should a geographic split be preferred, staff would divide The Bronx and Queens on the one hand from Brooklyn and Staten Island on the other. Because the Bronx NPA had been changed as recently as 1992, staff would assign the new 347 NPA to Brooklyn and Staten Island.

Finally, the Staff Paper pointed out that regardless of which alternative were selected, it would be necessary to ensure that all callers to Directory Assistance bureaus, City-wide, receive all the information they need (including area codes) to complete their calls. To this may be added the universal premise that no area code change within New York City would have any effect on rates, a sound assumption not only on policy grounds but also because Public Service Law §91(2)(b) requires it.

General Positions of the Parties and the Public

The parties filing comments on the Staff Paper fall into four groups: those favoring an overlay (New York Telephone, BANM, Time Warner, Manhattan Borough President); those regarding it as acceptable if suitably conditioned but otherwise favoring a split (MCI, AT&T); those favoring a geographic split and apparently regarding an overlay as problematic under any circumstances (Teleport); and those emphasizing the interest in examining ways to postpone any form of code relief, (New York City, CPB).

Public sentiment in general tended to favor the overlay, though some support was expressed for the split as well.

PARTIES' COMMENTS

New York Telephone

New York Telephone continues to press strongly for adoption of an overlay. It begins with the argument that an overlay would provide relief for at least as long as any possible geographic split and for longer than any split that fell short of

constructing two areas that would exhaust simultaneously--a difficult task at best, and one made harder by the absence of readily available information on the CLECs' projections of demand. Noting the staff estimates that a 23rd Street geographic split would provide five years of relief, in contrast to the six and one-half years of relief provided by an overlay, New York Telephone emphasizes the importance of code longevity, given the increasing demand for telecommunications services.

Turning to effects on customers, New York Telephone notes that an overlay would permit all existing customers to keep their current telephone numbers. In contrast, a geographic split would require approximately 1.1 million customers in Manhattan to adopt new area codes and approximately 25,000 "pocket" customers to change their seven-digit telephone numbers as well.[1] New York Telephone notes the expense that would be incurred by customers in changing their printed materials and advertising and to the difficulties the change would impose on customers who are handicapped or speak little or no English. It suggests the geographic split is favored by the "winners," who keep their existing area code, but that the benefit to them is outweighed by the expense and inconvenience imposed on the "losers."

Pointing as well to the difficulty of drawing boundary lines within Manhattan, which lacks easily recognized geographic or political boundaries, New York Telephone asserts that a geographic split would divide communities and entail a risk of perceived red-lining of the area to which the new code is

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[1] The "pocket customer" phenomenon exists because central office boundaries are not identical to the street boundaries that provide the most convenient geographic dividing lines. If, as staff suggests, the area north of 23rd Street is to be served by a new area code, about 25,000 customers located on one side of 23rd Street but served by central offices on the other side would have to change their seven-digit numbers as well as their area codes. The problem could be avoided by a geographic split following central office lines, but the public is not familiar with those lines and using them as the dividing line would be unacceptably confusing. (Occasional references in various documents to 70,000 pocket customers include those created by a 718 geographic split as well.)

assigned. Moreover, it continues, an overlay could be more easily replicated than a geographic split once further relief is needed, particularly given Manhattan's small size and lack of internal natural boundaries.

Recognizing the universal 11-digit dialing associated with an overlay, New York Telephone notes that it has asked the FCC to reconsider this requirement.[1] But, it continues, universal 11-digit dialing is not so onerous as to warrant abandoning an overlay. It notes, as did the Staff Paper, that approximately one-third of all intraLATA calls originating in Manhattan already require 11-digit dialing, inasmuch as they terminate in area codes other than 212; that 11-digit dialing may someday be required on all calls; and that its effects are often mitigated by such devices as speed dialers and voice dialing. And, like staff, New York Telephone believes any confusion associated with an overlay can be mitigated by effective outreach and education.

New York Telephone points as well to successful experience with overlays, pointing to the 917 wireless overlay in New York City and more recent overlay decisions in Maryland (statewide), Georgia (the Atlanta area), and Colorado (the Denver area). It cites, among other things, a reported statement by the chairman of the Georgia Commission, that "I don't believe we can continue to carve up Atlanta. This is the long-term solution. When area codes are needed in the future, the overlay establishes the framework to add a new area code without debate or disruption."[2]

Finally, New York Telephone disputes the concerns regarding the overlay's potential anticompetitive effects. It asserts that carriers obtaining new numbers will be treated on a

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[1] The request in fact had first been made by Department of Public Service staff and was then supported by New York Telephone.

[2] New York Telephone's Comments, p. 16, quoting an Atlanta newspaper account of the Georgia decision.

non-discriminatory basis (regardless of whether the carrier is seeking additional numbers for customer growth in general or for a particular customer that requires a large block of additional numbers) and that New York Telephone's competitors would have no greater or lesser access to 212 numbers than New York Telephone itself. It points to the forthcoming availability of LNP, which will provide all carriers equal access to all previously assigned numbers as well as to related reserved numbers. Number portability, according to New York Telephone, obviates Sprint's suggestion, made during the course of the proceeding, that any unassigned central office codes in the 212 area code be reserved for use by CLECs; it adds that Sprint's suggestion is inconsistent with industry guidelines precluding such reservations. New York Telephone also objects to any suggestion that returned telephone numbers be pooled. It notes that number pooling is being considered on a national basis under the auspices of the North American Numbering Council with the cooperation of the INC, and it warns against the risk of adopting state standards that conflict with national guidelines that might be set later.

New York Telephone adds that an overlay is consistent with the Telecommunications Act of 1996 and that the parties objecting to it on competition-related grounds are simply unable to accept the limitations that exist on numbering resources. It adds that a geographic split creates competitive inequity among telephone users, by burdening enterprises that are forced to change their phone numbers while exempting those of competing enterprises remaining in the 212 area code.

Teleport

In starkest contrast to New York Telephone's view is that of Teleport, which strongly disagrees with the Staff Paper's tentative preference for an overlay. In its view, the Staff Paper gave inadequate weight to the extremely serious anticompetitive consequences of an overlay and underestimated the overlay's attendant confusion and customer dissatisfaction.

According to Teleport, only a geographic split assigns customers to area codes on the competitively neutral basis of geographic location. An overlay, in contrast, by and large gives customers of the incumbent LEC access to the pre-existing area code while stigmatizing customers of new firms by assigning them the new, assertedly inferior, code. Citing expressions of concern on this score by the FCC and noting recent geographic splits in Illinois, California, and Massachusetts, it warns that, given the need to change its area code, "a business would be very reluctant to switch local carriers or choose a competitive carrier as the initial service provider."[1]

Relatedly, Teleport suggests that an overlay would make it more difficult for a CLEC to serve additional demand within the original area code. Even if a customer could use number portability to retain the numbers for its lines already in use, the CLEC would be unable to accommodate that customer's growth by assigning additional numbers within the original area code. Teleport suggests that the ILECs' recent enthusiasm for overlays is tied to the advent of competition in the local exchange market.[2]

Teleport disputes the value of the measures identified by staff as mitigating the anticompetitive effects of an overlay. While staff saw the problem as alleviated by "strict adherence to the nondiscriminatory provisions of the central office code assignment guidelines," Teleport is less concerned about future code assignments than about New York Telephone having retained for its own use a very large portion of the numbers in the 212 area code, thereby making it much more likely that a new customer now could obtain a desirable 212 telephone number if it took service from New York Telephone instead of taking it from a CLEC. It suggests that New York Telephone has misused its scarce

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[1] Teleport's Comments, p. 6.

[2] Ibid., p. 8.

numbering resources in order to provide itself this advantage,[1] and that it has "a vast warehouse of numbering resources at [its] disposal," "enough numbers to assign customers well into the 21st century."[2]

Teleport acknowledges that staff's second ameliorating measure--universal 11-digit dialing--would mitigate one anticompetitive effect but notes once again the disadvantages of such dialing.

Staff's third ameliorating measure--implementation of permanent number portability during the first quarter of 1998--is derided by Teleport as unduly optimistic. It sees no basis for the premise that LNP will be implemented on schedule and argues that "the economic survival of competitors cannot be left hanging on the assumption that New York Telephone will accomplish the implementation antithetical to [its] own best interests."[3] It cites delays in similar projects; questions whether portability would be available throughout the territory; and notes the provision in the applicable FCC rules for up to a nine-month delay in the implementation deadline. Relatedly, Teleport asserts that staff has confused permanent number portability with number pooling. It explains that LNP applies solely to the transfer of numbers previously used by a New York Telephone customer, and that only number pooling would allow unreserved or unassigned telephone numbers to be obtained for use by any carrier. In the absence of pooling, this could be achieved only by having a would-be CLEC customer first subscribe to the additional numbers from New York Telephone, at considerable service connection expense, and then port to the CLEC the numbers it had been assigned. In Teleport's view, eliminating the anticompetitive effects of an overlay would require, in advance of the overlay, both LNP and number pooling; but there are no

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[1] Ibid., p. 15.

[2] Id.

[3] Ibid., p. 16.

plans to introduce number pooling before the proposed effective date of the overlay.

Teleport adds that staff gave insufficient weight to the overlay's other disadvantages, such as universal 11-digit dialing. It notes that communities of interest based on geographical proximity mean that under a geographic split, much seven-digit dialing would remain. It also challenges staff's reliance on New York Telephone's allegedly self-serving estimates of relief duration; asserts that an overlay, which would assign different area codes to customers in the same street or building, would divide communities more than would a geographic split; argues that adoption of a split now would not rule out an overlay in the future, thereby belying staff's reliance on the asserted replicability of an overlay; and contends that the 917 precedent does not mean that New York City customers already are familiar with overlays, inasmuch as the 917 code is limited to wireless service, readily identified as distinct.

Turning to the geographic split, Teleport asserts that the Staff Paper overstates its disadvantages. It argues that businesses are constantly reprinting stationery and other materials and that the expense of informing callers of the area code change would be reduced by the public education program and the general alertness of business customers. Teleport regards the successful implementation of splits elsewhere as a response to staff's concern about "pocket" customers; and it sees less likelihood of confusion in connection with the geographic split than with an overlay, inasmuch as calling parties will be able, in most cases, to associate the called party's locations with a particular NPA. As already noted, Teleport challenges staff's reliance on New York Telephone's estimates of when geographic splits will require further relief, and it attributes to the general increase in telecommunications usage, rather than to the use of a split instead of an overlay, the faster-than-anticipated exhaust of many new area codes recently established.

Finally, Teleport supports AT&T's specific geographic split (that is, a 23rd Street boundary with customers north of

the line retaining the 212 code) rather than staff's variation that would have assigned 212 to customers south of the line. Teleport notes that allowing the northern zone to retain 212 would mean changing the area codes of only about 40% of Manhattan customers, and that the sophisticated businesses south of 23rd Street would be better able to manage the change. It suggests, among other things, that "the very size of the business community in southern Manhattan will make the association between that geographical location and the new area code readily recognized both within the City and throughout the country."[1]

AT&T

AT&T favors a geographic split, maintaining that it would best serve customers, competition, and the public interest. It asserts that the split is supported by an "array of parties representing diverse interests,"[2] in contrast to the overlay, supported most strongly by New York Telephone and its affiliate, BANM. The Staff Paper, in its view, misconceives and mischaracterizes both the overlay and the geographic split.

AT&T first challenges staff's judgment that the overlay is simple, convenient, and efficient. It denies that the overlay would provide substantially longer relief, maintaining that its six and one-half years should be compared to the six years AT&T calculates for a 23rd Street split rather than to staff's assertedly erroneous five-year calculation. It sees no advantage with regard to replicability, noting that a split could be followed by an overlay more readily than an overlay could be followed by a split; and, like Teleport, it denies that a 917 service-specific overlay has familiarized New Yorkers with the operation of an overlay in general.

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[1] Teleport's Comments, p. 28.

[2] AT&T's Comments, p. 2. It may be noted that the array of diverse parties cited by AT&T comprises, in addition to CLECs, only the City. The City's comments, moreover, endorse neither split nor overlay, urging only that any relief be delayed as long as possible.

More serious, in AT&T's judgment, is the Staff Paper's underestimation of the anticompetitive effect of the overlay. AT&T sees local number portability as insufficient to insure that all carriers have equal and non-discriminatory access to telephone numbers and, like Teleport, insists that number pooling is needed to achieve that result. AT&T suggests that the Staff Paper confuses the two and notes that while LNP is a technology needed for number pooling, pooling requires, in addition, various rules and procedures that the Commission may adopt. Although AT&T believes the schedule for numbers portability can be met, it sees no indication that it will be met and it warns against relying on it. Finally, AT&T notes that the Staff Paper suggests no mechanism for enforcing New York Telephone's adherence to the FCC's Central Office Code Assignment Guidelines and no explanation of how discrimination in those assignments would be prevented or deterred. Nor, it adds, are enforcement mechanisms specified for implementing permanent number portability.

Turning to the geographic split, AT&T acknowledges that the Staff Paper correctly identifies most of its advantages but charges that it exaggerates its disadvantages. It first corrects the potential implication, already noted, that AT&T had proposed to retain the 212 area code south of 23rd Street and stresses that the split AT&T in fact proposed would require only 40%, rather than 60%, of Manhattan customers to change their area code. AT&T also expresses uncertainty about the Staff Paper's estimate of 70,000 pocket customers, noting that the figure developed at the collaborative conference when the 23rd Street split was discussed was only 25,000.[1] AT&T goes on to discount the Staff Paper's statement that a geographic split would diminish the value of permanent number portability inasmuch as numbers would be portable only within the new smaller area codes; it notes that, in any event, even within an area code a number is

[1] As already explained, the 70,000 figure includes the effect of a 718 split.

portable only within a rate center.[1] Finally, AT&T sees no need for concern that customers outside New York City would be confused about which side of the boundary a particular party is on. It notes that distant customers would be unlikely to recognize any geographic boundaries and either know the number they are calling or do not; meanwhile, customers within New York are likely to be able to tell whether a particular party is north or south of 23rd Street.

Notwithstanding its strong preference for a geographic split, AT&T propounds a series of conditions that would have to be imposed on an overlay plan, were we to adopt one, "to preserve and promote opportunities for local exchange competition."[2] At a minimum, AT&T would call for the following:

- permanent number portability throughout Manhattan by the end of 1997, rather than by the current deadline of March 31, 1998, in order to allow adequate lead time for implementation of an alternate plan if the deadline is missed

- procedures for number pooling to be in place by the end of 1997; initially, pooling would take the form of assigning numbers to carriers in blocks of 1,000 rather than 10,000, and, in the longer term, any unassigned number in any NXX code should be available to any carrier

- arrangements for the assignment, to any requesting carrier, of at least one NXX-X Code (i.e., a block of 1,000 numbers) within the 212 area code for each rate center within Manhattan, and strict enforcement of number assignment guidelines with the possibility of ordering a geographic split if the guidelines are violated

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[1] Rate Centers are central offices grouped together for the purpose of pricing toll service.

[2] AT&T's Comments, p. 10.

- fees charged by the Central Office Code Administrator for opening a NXX code to be limited to forward-looking economically-efficient costs of numbering administration
- mandatory 11-digit dialing, consistent with FCC requirements
- the overlay to apply equally, "both on its face and in its operation,"[1] to all carriers and services

In regard to the final point, AT&T notes the Staff Paper's provision that only after the 917 area code was exhausted would new wireless and wireline customers be assigned to the same area code. But because the 212 area code will be exhausted before 917, the 646 code overlaid on 212 would be available, as a practical matter, only to wireline carriers until 917 ran out. During that interval, 646 would be a technology-specific area code (limited to wireline), in violation of the FCC rules precluding such arrangements. AT&T suggests we avoid the problem either by ordering an all-services overlay of 212 with 917, followed by an all-services overlay of 646 once 917 ran out, or by an immediate all-services overlay of 212 with 646, reserving the remainder of 917 for a non-technology-specific use, such as an all-services overlay of 718 when it is needed.

MCI

MCI, which earlier in the proceeding favored a geographic split, emphasizes in its comments the conditions that would make an overlay acceptable and says it would favor a geographic split if those conditions were not met. It acknowledges that its first two conditions--universal 11-digit dialing and permanent number portability on schedule--are included in the Staff Paper's recommendations. But MCI disputes the Staff Paper's suggestion that permanent number portability insures that all carriers have equal access to numbering

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[1] Ibid., p. 12.

resources and obviates pooling, noting that "number portability only allows carriers to access assigned numbers serving existing customers. Number pooling, on the other hand, allows more than one carrier to access unused and unassigned numbers in an NXX."[1] Without pooling, it continues, CLECs, with their limited supply of NXX codes in the 212 area code, would be disadvantaged in their ability to serve new customers and existing customers wanting to add lines.

MCI goes on to explain that under current practices, a carrier may reserve a block of 10,000 numbers and leave many of them unused. Number pooling would permit more than one carrier to use phone numbers from a single NXX block and, according to MCI, is regarded by the INC Central Office Code Assignment Guidelines as a device that should be considered when an area code is in a jeopardy situation. It suggests that the Central Office Code Administrator be required to assign numbers to carriers in blocks of 1,000 rather than blocks of 10,000 and that carriers holding assigned blocks of 10,000 numbers share unused or underutilized numbers in blocks of 1,000. Doing so would provide CLECs access to more numbers in the existing area code, thereby mitigating the competitive disadvantages of an overlay. MCI recognizes that pooling is being examined at the national level but notes that it is also being examined at the state level in Georgia, Illinois, and Pennsylvania, among others. It urges us to order carriers to develop a number pooling plan in New York City, noting our role in bringing carriers together at the state level to work on number portability and suggesting that we could play the same role with respect to number pooling.

MCI therefore urges that the Staff Report overlay plan be amended to include number pooling and that, in adopting any area code relief measures, we order all telecommunications carriers with NXX codes in the 212 and 718 area codes to develop a number pooling plan.

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[1] MCI's Comments, p. 5 (emphasis in original).