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Federal Communications Commission
Office of Secretary

January 28, 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 for filing is an original and eleven (11) copies of the New York State Department of Public Service Reply Comments in Support of Petition for Waiver of 47 C.F.R.(c)(3)(ii) submitted in the above-captioned matter.

Sincerely,

Lawrence G. Malone per DD

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Enclosure

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JAN 28 1998

Federal Communications Commission
Office of Secretary

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

In the Matters of	)	NSD File No. L-98-03
	)	
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 and Ameritech-Illinois	)	IAD File No. 94-102

NEW YORK DEPARTMENT OF PUBLIC SERVICE REPLY COMMENTS IN SUPPORT OF PETITION FOR WAIVER OF 47 C.F.R. 52.19(c)(3)(ii)

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: January 28, 1998
Albany, New York

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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
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NEW YORK DEPARTMENT OF PUBLIC SERVICE
REPLY COMMENTS IN SUPPORT OF PETITION
FOR WAIVER OF 47 C.F.R. 52.19(c)(3)(ii)

INTRODUCTION AND SUMMARY

With two exceptions, all commenters, including the Public Utilities Commission of Ohio and industry (Bell Atlantic, RCN Communications and SBC Companies [Southwestern Bell Telephone Company, Pacific Telephone and Nevada Telephone]), have supported the New York Department of Public Service (NYDPS) Petition for Expedited Waiver of 47 C.F.R. 52.19(c)(3)(ii) (Waiver Petition). Only MCI Telecommunications Corporation (MCI) and WinStar Communications, Inc., (WinStar) have filed comments in

opposition.[1]

MCI and WinStar contend that an area code overlay cannot be implemented in a competitively neutral manner unless there is also 10-digit dialing. As discussed below, CLECs are currently assigned over one million numbers in Manhattan but are using only about 15%, or 150,000. For this and various other reasons addressed below, and in the Waiver Petition, there is absolutely no question that the unique circumstances in New York City will allow all local exchange carriers to compete, unfettered, in an area code overlay with 7-digit dialing.

DISCUSSION

MCI and WinStar make three basic arguments that the NYDPS Waiver Petition should be denied: (1) the Commission denied a similar waiver request by Pennsylvania (MCI p. 4,7); (2) any relaxation of the 10-digit dialing requirement in an area code overlay will impose technical constraints on some new market entrants (WinStar p. 4-5); and (3) the imposition of the 10-digit dialing requirement is necessary to avoid alleged anti-competitive effects of an area code overlay (MCI p. 4-8 and WinStar p. 5-8). Each of these contentions is either without merit or incorrect.

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[1] MCI opposes the request for waiver of the Commission's 10-digit dialing requirement but agrees that expedited action on the NYDPS petition is warranted. WinStar supports the area code overlay but believes 10-digit dialing is necessary when an overlay is used.

POINT I

MCI AND WINSTAR HAVE FAILED TO ANSWER THE NYDPS SHOWING THAT CIRCUMSTANCES IN NEW YORK CITY DIFFER MARKEDLY FROM THOSE IN PENNSYLVANIA

The NYDPS Waiver Petition demonstrated that the vastly differing number of rate centers between New York and Pennsylvania, the vastly different number utilization rates between CLECs and the ILEC in New York and the existence of permanent local number portability before activation of new overlay area code(s) and imminent availability of number pooling in New York sharply distinguished New York from Pennsylvania (Waiver Petition p. 4-7). Neither WinStar nor MCI has refuted these facts. Specifically, they have not answered the fact that there are only three rate centers in Manhattan compared to approximately 100 rate centers in the Pittsburgh metro area which were the subject of the Pennsylvania petition. As pointed out in the Waiver Petition (at 6), the small number of rate centers in Manhattan allows all competitors to obtain central office codes in all rate centers.

Secondly, MCI and WinStar have not responded to the fact that the CLECs in New York only utilize 15% of the numbers already assigned to them while the ILEC has used 80% of its assigned numbers. In Pennsylvania there was no showing that the CLECs had a significant amount of numbers available to them in the existing area code.

Third, MCI and WinStar have failed to refute the positive pro-competitive implications of the fact that New York has required permanent local number portability prior to activation of the new area code overlay. Pennsylvania had only

interim number portability available at the time of its waiver request.

Finally, the opposition failed to refute the significance of the fact that number pooling is expected to be implemented as soon as it becomes technically feasible. In contrast, number pooling was not part of the Pennsylvania plan (NYDPS Waiver Petition, 5-7). Therefore, the Commission's decision in Pennsylvania certainly should not be controlling for New York.

POINT II

THE TECHNICAL CONSTRAINTS ALLEGED BY WINSTAR ARE NOT RELEVANT TO WHETHER AN OVERLAY SHOULD REQUIRE 10-DIGIT DIALING

WinStar claims that 10-digit dialing should be required because "end user PBX and Key Telephone Systems, particularly those with call accounting capability are not capable under current software releases ... of supporting this new format (WinStar p. 4)." A certain level of software or system modification is often required, irrespective of the number of digits dialed, whenever a new area code is activated. In contrast, under a 10-digit home NPA dialing requirement, immediate and additional reprogramming of vintage PBXs and Key Telephone Systems would be necessary to implement 10-digit dialing.[2] Such additional reprogramming is not required under a

[2] In the five to six years since the adoption of the 917 predominantly wireless overlay there is no evidence that 7-digit dialing created any technical problems for wireless or wireline carriers.

7-digit home NPA dialing plan. WinStar's argument, therefore, is nothing more than a red herring.

POINT III

ALTHOUGH TEN-DIGIT DIALING IN NEW YORK CITY WILL HARM CUSTOMERS, IT WILL NOT BENEFIT COMPETITION

MCI concedes that mandatory 10-digit dialing will create significant discomfort and confusion (MCI p. 2). In fact, during the course of an extensive public involvement process customers overwhelmingly favored an area code overlay without 10-digit dialing. Nonetheless, MCI and WinStar claim there should be 10-digit dialing because it will ameliorate potential anti-competitive effects of an area code overlay. They are incorrect for several reasons.

First, CLECs collectively have available approximately 85% of the numbers assigned to them for use by new customers in the 212 area code. It is unlikely, therefore, that any CLEC will be competitively disadvantaged in attracting customers who desire telephone numbers in the 212 area code. As a matter of fact, the CLECs' markets can grow by more than 500% within the 212 area code without the CLECs needing to resort to number portability or number pooling. In contrast, the ILEC's market can only grow by less than 25% within the 212 area code. There is no competitive disadvantage to the CLECs in Manhattan.

Second, MCI's claims regarding number portability and number pooling are factually unfounded and illogical (MCI p. 4-7). Once again, MCI's claims are based on the incorrect assumption that new market entrants will be exclusively served by

the new area code. Given the number utilization rate for the ILEC in comparison to the number utilization rate for the CLECs, the new area code is more likely to serve ILEC customers than CLEC customers.[3] In fact, WinStar concedes that number portability significantly advances the Commission's and the NYDPS's pro-competitive policies (WinStar p. 6).[4]

Third, MCI assumes, without support, that it will be unable to attract ILEC customers without the customer first testing its service (MCI p. 5). There is no basis for this claim <u>if</u> MCI offers a competitive service. However, even if customers prefer to test a new market entrant's services by augmenting their existing service with additional lines from the new market entrant, as MCI claims, MCI and the other CLECs have a significant percentage of unused numbers in the existing area code. With these unused numbers, coupled with permanent number portability and number pooling, CLECs can permit customers to test their services using existing NPAs and NXXs.

Fourth, MCI argues that number pooling will not further the pro-competitive policies advanced by the Commission and the

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[3] WinStar mischaracterizes the NYDPS position as suggesting that the ILEC "does not have an overwhelming presence in the 212 NPA" (WinStar p. 5). That presence would exist in any industry that changes from a regulated monopoly environment to a competitive market environment.

[4] WinStar argues that permanent number portability is only available in two of the three rate centers and therefore is not available on a widespread basis (WinStar p. 6). Its claim simply is incorrect. Permanent local number portability will be available throughout New York City by March 31, 1998 with the exception of three central offices (Belle Harbor, Far Rockaway and Kingsbridge Ave.) where number portability is scheduled to become available by April 30, 1998. These dates are well before the scheduled implementation of the overlay for these areas.

NYDPS. Again, this claim ignores the CLEC utilization rate in New York City.[5] Further, if the CLECs actually require additional numbers, number assignments in blocks of 1,000 instead of 10,000 will satisfy their demand.[6] MCI concedes that if the plan in New York includes all unassigned numbers[7] in the pool and make them available to all carriers, it will ensure equal access to number resources (MCI p. 6).[8]

Finally, MCI claims that the non-discriminatory application of the central office code assignment guidelines does not mitigate the anti-competitive effects of an area code overlay without 10-digit dialing (MCI p. 7). This position is incorrect inasmuch as the importance of fair number assignment to ensuring equal access to number resources is self evident. To suggest otherwise ignores the significance of the conditions proposed for

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[5] MCI's assertion that there are "precious few numbers" available for pooling in the 212" area code is incorrect. There are approximately two million more numbers available in the 212 NPA. A majority of these numbers are poolable based on the guidelines being developed with the industry.

[6] MCI notes the anticipated June 1998 exhaust date for the 212 area code (MCI p. 6). The NYDPS and industry have developed a plan to conserve central code assignments to avoid exhaust in advance of the activation of the new area code. An extraordinary jeopardy rationing plan developed by the industry is now in place in Manhattan. Only three NXXs per month are now being assigned to carriers.

[7] These unassigned poolable numbers include unassigned NXXs, all uncontaminated 1,000 number blocks in assigned NXXs and all 1,000 number blocks with less than 10% contamination in assigned NXXs.

[8] Contrary to most thinking in the industry, WinStar believes that number pooling is a "competitive disadvantage" (p. 7). It claims that number pooling reduces the level of "vanity numbers" available. Such an argument cannot justify inconveniencing millions of customers.

the New York City overlay, including permanent number portability and number pooling.

CONCLUSION

Under a permissive -- as opposed to mandatory -- 10-digit dialing approach, customers would have the option of dialing seven or ten digits for intraNPA calls, and each could choose the method that was most convenient and/or least confusing. Competition is all about customer choice, and there is no reason to limit that choice here. For all the reasons stated herein, the comments in opposition to the NYDPS Waiver Petition should be rejected.

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In the Matters of

CC Docket No. 96-98	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
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IAD File No. 94-102	Proposed 708 Relief Plan and 630 Numbering Plan Area Code and Ameritech-Illinois

CERTIFICATE OF SERVICE

I, Cheryl L. Callahan, hereby certify that an original and eleven copies of the Reply Comments in Support of Petition for Waiver of 47 C.F.R. 52.19(c)(3)(ii) filed by the New York State Department of Public Service was hand delivered to Ms. Magalie Roman Galas. Copies were sent by First Class United States Mail, postage prepaid, to all parties on the attached service list.

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