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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Connecticut Department of Public Utility Control Files Petition for Rulemaking	)	RM No. 9258
	)	DA 98-743
	)	

REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] submits its Reply Comments in the above-captioned proceeding.[2]

I. INTRODUCTION AND SUMMARY

The Commission has undertaken notably successful efforts to reduce regulatory barriers to the growth of wireless services nationwide. Of these regulatory reforms, one of the most significant has been the Commission's insistence on the fair and economically efficient distribution of telephone numbers among all service providers. In several decisions, the Commission has stressed the importance of impartial numbering assignment and it has prohibited State efforts to implement discriminatory plans.

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 Connecticut Department of Public Utility Control Files Petition for Rulemaking, Public Comment Invited, RM No. 9258, DA 98-743 (released April 17, 1998).

For the CMRS industry to reach its competitive potential, the Commission must maintain this policy.

All commenters agree that the Connecticut numbering proposal is, inter alia, facially discriminatory. Without any ambiguity, the Commission has concluded that service specific area codes, such as the one proposed by Connecticut, are prohibited by the Act.[3] The issue before the Commission, then, is whether the previously barred discriminatory action should now be permitted to provide very limited relief from the number exhaust problem in Connecticut. An examination of the Petition, along with all of the comments, demonstrates that there is no justification for departure from the Commission's existing rule.

The comments filed in response to Connecticut's request to implement a wireless-only area code overlay reveal the many faults of a numbering plan that is premised upon service provider discrimination. Overwhelmingly, commenters agree that the Connecticut proposal is not only without any supporting justification, but it: (1) will effectively bar any potential competition between wireless services and any other carriers; (2) will unduly discriminate against consumers of wireless services who will have to shoulder the entire burden of number exhaust in

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[3] See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596 at ¶ 27 (1995) ("Ameritech Order"); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et. al., Second Report and Order and Memorandum Opinion and Order, CC Docket Nos. 96-98, 95-185, NSD File No. 96-8, CC Docket No. 92-237, IAD File No. 94-102, 11 FCC Rcd 19392 at ¶ 281 (released August 8, 1996) ("Second Report and Order").

Connecticut; and (3) will not provide any true long-term solution to the problem of number exhaust.

Any gains a State may seek to realize through a discriminatory numbering policy will be only short-term, while the loss of the benefits to competition will be long-term and permanent. As Chairman Kennard recently noted

> some wireless providers are gearing up to compete against wireline providers. We should explore every available opportunity to promote that competition. Our exploration should include using the regulatory authority we now have to hasten the day when consumers begin to view wireless as a real substitute for wireline, and not just a complement.[4]

Permitting States to implement discriminatory numbering administration, however, would be irreconcilable with the Chairman's conclusions. Such a decision would also be a reversal the Commission's pro-competitive regulatory policies and would render the Chairman's vision for wireless and wireline competition unattainable.

Granting the Petitioner's request for a rulemaking proceeding would inevitably cause all present area code relief efforts to come to a standstill pending the outcome of such a proceeding. Moreover, a rulemaking proceeding would inject ambiguity into the Commission's existing standards, encouraging some States to deviate from established principles. The Commission has spoken decisively on the issue of numbering

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[4] FCC Adopts Third Annual Report to Congress on State of CMRS Competition, Report No. WT 98-13, Separate Statement of Chairman William E. Kennard.

administration. Nothing in the record in this proceeding warrants a departure from that policy.

II. IMPLEMENTATION OF A WIRELESS-ONLY AREA CODE WILL SEGREGATE CMRS SERVICES, STIFLING COMPETITION WITH WIRELINE CARRIERS.

The Petitioner, along with the State commenters supporting it, argue that the Commission erred in its previous decisions when it mandated technology neutral numbering administration. They contend that there is no competition between CMRS carriers and wireline carriers and that "[c]urrently, wireless is not a good substitute for wireline service."[5] The State of Texas believes that "[o]ne of the Commission's fundamental premises in its prior orders was that competition exists between wireless and wireline carriers and should be protected."[6]

A review of these decisions, however, reveals that the Commission's prohibition of discriminatory numbering policies is rooted in the belief that <u>all</u> carriers, including wireless carriers and other competitive carriers, should have equal, non-discriminatory access to telephone numbers, regardless of the instant state of inter-service competition.

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[5] State Advocates Comments at 9 (The State Advocates include: Missouri Office of the Public Counsel, New Jersey Division of Ratepayer Advocate, Illinois Citizens Utility Board, Pennsylvania Office of Consumer Advocate, and Connecticut Office of Consumer Counsel.)

[6] The Public Utility Commission of Texas Comments at 4 ("PUCT Comments").

In the Ameritech Order, the Commission relied upon Sections 201(b) and 202(a) to prohibit unreasonably discriminatory numbering administration.[7] The Commission concluded that

> [a]dministration of the NANP will significantly affect the ease with which new telecommunications services and enhanced services are introduced. . . . [A]dministration of the plan must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers. . . Thus, the NANP should be largely technology neutral.[8]

Contrary to the assertions of some commenters, the Commission did not base its decisions on the conclusion that CMRS services were competitors to local exchange service.[9] The founding principle for the Commission's policy is that all carriers -- including CMRS providers -- have a statutory right to non-discriminatory access to telephone numbers.[10] It is misleading to claim that

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7 Ameritech Order at ¶ 13, 20 ("[W]e note that under Title II, a carrier may not discriminate unreasonably in its 'charges, practices, classifications, regulations, facilities, or services.' . . . We find that Ameritech's proposed numbering plan would unreasonably discriminate. . . .")

8 Ameritech Order at ¶ 18.

9 It is unlikely that in 1995, prior to PCS licensing, the Commission would have concluded that wireline services and CMRS, especially paging services, were competitors. Yet the Commission unequivocally preserved the framework for fair numbering distribution for all CMRS providers. Obviously the Commission was interested in preserving an impartial framework and did not undertake an analysis of the state of competition between wireless and wireline services. See Second Report and Order at ¶ 285 ("Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.")

10 See 47 U.S.C. § 251(e)(1).

the Commission was simply interested in promoting competition between wireless and wireline service providers.[11]

Notwithstanding the fact that CMRS providers have a Congressionally mandated right to non-discriminatory numbering administration, such a policy is in fact a prerequisite to the realization of competition between wireless and wireline carriers.[12] The comments demonstrate that under the existing non-discriminatory framework established by the Commission, CMRS has advanced into a service offering which will, over time, likely offer competitive services with wireline carriers. As USTA concludes

> [d]ramatic price reductions for wireless service, improved service quality as a result of technological advances and conversion to digital equipment, and an increasingly mobile society seem to present a set of circumstances that strongly suggest that wireless service will ultimately prove to be a viable alternative or substitute for wireline service. . ."[13]

The Commission's decision in this matter, however, will assuredly affect the course over which competition will continue

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11 See AirTouch Comments at 3, n.9 ("Whether wireless and wireline carriers are direct market competitors is irrelevant to whether service-specific overlays are discriminatory with respect to access to numbering resources. . . . Congress directed that the Commission establish equitable access to numbering resources for all 'telecommunications carriers,' regardless of whether they are direct competitors or whether discriminatory access would distort market competition.")

12 See Nextel Comments at 4 ("Imposing significant and disproportionate burdens on the wireless industry raises the bar for wireless carriers attempting to position themselves as serious competitors within the wireless industry, as well as future competitors with the wireline industry.")

13 United States Telephone Association Comments at 5 ("USTA Comments").

to develop.[14] Stated differently, a change in policy which would permit discriminatory numbering administration will likely arrest future competition between these service providers and thwart the policy objectives the Commission has strived to achieve.[15] Were the Commission to grant the Petitioner's request, competition between CMRS providers and wireless carriers will not only be degraded, but will likely be brought to a halt.

Commenters opposing the Petition accurately demonstrate the anti-competitive effects of discriminatory numbering administration. For instance, AT&T Wireless notes that "[u]nder the DPUC's proposal . . . how many digits a caller has to dial is technology dependent, with wireless callers having to make far more ten digit calls, than wireline customers. . . ."[16] The Commission itself concurs and has mandated 10-digit dialing for

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14 See SNET Wireless Companies Comments at 7 ("The CTDPUC's suggestion that Commission policy need not be technology neutral because wireline and wireless telecommunications services do not compete with each other is a self-fulfilling prophecy. If policies are established that inhibit the two technologies from competing, they will never have a chance to compete with each other.") (emphasis added)

15 See Northcoast Communications Comments at 4 ("Precisely because of the fact that the two segments of the telecommunications marketplace are not yet direct competitors, the Commission should continue its prohibition against unreasonable and discriminatory numbering provisions that would impede, rather than promote, competition.")

16 AT&T Wireless Comments at 9; see Sprint Spectrum Comments at 6 ("Placing wireless carriers in a separate category that requires 10-digit dialing to and from its numbers will put them at a competitive disadvantage to the incumbent carriers whose subscribers will not be subject to the same dialing requirements.")

all services overlay plans.[17] Yet the State Advocates, along with the Petitioner, request the Commission ignore its rationale and permit them to implement dialing disparity.[18]

The State Advocates support a policy which seeks to accommodate the interest of one category of new entrants at the expense of another.[19] Their contention that CLECs should maintain an advantage over existing wireless carriers and that CMRS subscribers have no vested interest in maintaining their telephone numbers is contrary to the Commission's regulatory objectives and should be rejected. All potential competitors, including CMRS carriers and their subscribers, should maintain equal access to numbering resources, regardless of the technology they utilize.

Consistent with the Commission's previous conclusions, many commenters also oppose the Petition because it will place the entirety of the burdens of number exhaust on wireless

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17 Second Report and Order at ¶ 287 ("Customers would find it less attractive to switch carriers because competing exchange service providers [similar to CMRS] . . . would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers. . . . Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-services area code overlays.")

18 State Advocates Comments at 13-14.

19 Id. at 10 ("State Advocates emphasize that the prohibition against a wireless overlay has served to delay the provision of area code relief to many wireline CLECs. . . . The application of a wireless overlay would provide wireless carriers additional NPA-NXX codes and allow CLECs a greater opportunity to use NPA-NXX codes otherwise available in existing NPAs.")

consumers.[20] Again, the Commission has properly found that such numbering proposals violate the Act.[21] While proponents of discriminatory numbering proposals have either tried to make light of the burdens with little support,[22] or have dismissed these hardships as irrelevant,[23] the Commission has properly concluded that no one category of telecommunications customer should be required to bear all of the costs for number exhaust. The Petitioner's attempt to make wireless subscribers shoulder these burdens is unreasonable and incorrectly implies that wireless usage is the cause for the shortage of telephone numbers.

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20 See, e.g., Sprint Spectrum Comments at 6-7 ("New NXXs must be loaded in the handset and issued to each subscriber at an approximate cost of $20-25.00 per unit. The administrative and technical burden of reprogramming every phone is costly to the carrier and inconvenient to the subscriber who must surrender her number, endure the inconvenience of reprogramming, and pay for the costs of reprinting stationary and business cards.")

21 Ameritech Order at ¶ 27 ("[P]aging and cellular companies would be placed at a distinct disadvantage . . . because their customers would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new number.")

22 See Ad Hoc Telecommunications Users Committee Comments at 11 ("Ad Hoc Comments") ("[P]rogrammable wireless phones can be reprogrammed with a new area code or telephone number in a matter of a few seconds, and in most cases customers can perform this task themselves. . . .") Notwithstanding this claim, the affidavit of Senior Network Engineer Scott M. Ludwikowski, attached to Sprint Spectrum's Comments, discusses the difficulties and costs of implementing numbering take back requirements.

23 See PUCT Comments at 6 ("The relative burdens and benefits of a service-specific overlay do not appear disproportionate in comparison with other forms of NPA relief.")

III. DISCRIMINATING AGAINST WIRELESS CARRIERS WILL PROVIDE LITTLE RELIEF FROM TELEPHONE NUMBER EXHAUST AND OFFERS NO LONG TERM SOLUTION TO THE PROBLEM.

The rate of NPA exhaust in all regions of the nation has grown exponentially. One commenter's analysis notes that "less than 15 new area codes were introduced in the US [from] 1961 . . . through the end of 1994. . . [I]n the three years since . . . the number of operational and assigned area codes in the US has jumped from 118 to 195."[24] CTIA does not dispute the nationwide significance of NPA exhaust. The solution proffered by Petitioner, however, does not adequately address the problem.

At the outset, whether a State proposes a discriminatory numbering administration plan or a more reasonable area code split or overlay, the Commission should insist that any proposal realize actual relief from the claimed jeopardy situation. The Petitioner, in this instance, has not made an attempt to quantify the benefits of segregating CMRS subscribers into a separate area code.[25] Without such analysis, it would be especially imprudent for the Commission to permit a discriminatory plan to go forward.

First, even a cursory examination into the broad distribution of numbers suggests that CMRS firms make relatively

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24 *Where Have All the Numbers Gone? Long-term Area Code Relief Policies and the Need for Short-term Reform*, requested by the Ad Hoc Telecommunications Users Committee and the International Communications Association, prepared by Economics and Technology, Inc. at iii (March 1998) ("Area Code Analysis").

25 See USTA Comments at 7 ("The Petition does not, though, address: how the problem of number exhaustion . . . would be affected by moving to a wireless-specific area code overlay.")

efficient use of the available resource.[26] The Ad Hoc Telecommunications Users Committee contends that there are 13,055 NXX codes exclusively assigned to wireless carriers.[27] Out of approximately 1.5 billion assignable numbers nationwide,[28] 130,550,000 are exclusively wireless.[29] Thus, wireless carriers are in exclusive possession of less than nine percent of all of the assignable telephone numbers nationwide. With 59 million subscribers,[30] however, CMRS subscribers represent approximately 22% of the total population.[31]

Second, the Comments of the Public Utility of Texas show that wireless only area codes will offer little long-term relief from number exhaust. In its analysis of the Houston area, Texas argues that "[i]f the wireless carriers could be reassigned to a service-specific overlay, 232 NXX codes [out of 1540 total

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26 See AirTouch Comments at 5 ("[W]ireless carriers typically use NXX codes much more efficiently than wireline carriers. AirTouch Cellular averages above 80% utilization rates.")

27 Ad Hoc Comments at 1, n.1. Only those NXX codes that are exclusively assigned to wireless carriers can be segregated into a new wireless-only area code overlay. Thus, it is the appropriate figure to examine when making a quantitative inquiry to measure the true benefits of a discriminatory numbering policy.

28 Area Code Analysis at 7.

29 Each assigned NXX code has 10,000 numbers.

30 Ad Hoc Comments at 1 (citing CTIA estimate of 59 million wireless customers).

31 While the Petitioner provides no data concerning wireless usage of NXX codes in Connecticut, several commenters conclude that CMRS carriers in Connecticut hold 10-14 percent of the total available codes. See AT&T Wireless Comments at 14-15.

codes][32] would be available for assignment."[33] More importantly, Texas is able only to warrant that "NPA relief for the two existing Houston area NPAs could be deferred for a year or more."[34] Thus, in an area where 15% of the NPA codes qualify for discriminatory treatment, numbering exhaust will only be relieved for "a year or more."[35] In Connecticut, "it would appear that the return of all wireless numbers would extend the life of the 203 and 860 area codes by about one year, assuming that the numbers taken back could be immediately reused."[36]

As noted, one explanation for the minimal gains that would be realized through wireless only area codes is grounded in the efficient distribution of telephone numbers by CMRS carriers. In addition, the proliferation of CLECs, which require many more numbers regardless of their subscribership, diminishes the value of a numbering policy that distinguishes between service

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32 See Area Code Analysis at 7-8 (There are roughly 770 NXX codes available for use in each NPA and there are two NPAs in the Houston Metropolitan area.)

33 PUCT Comments at 2-3.

34 Id. at 3 (emphasis added).

35 See also Sprint Spectrum Comments at 3 ("Given the demand for numbers generated by the CLEC and LEC, it was estimated that the relief derived from the proposed take-back [in Colorado] would likely not last more than a year or two."); State Advocates Comments at 6 (In Missouri, the Office of Public Counsel was able to forecast demand for wireless NXX codes and concluded that wireless carriers would only demand 49 NXX codes over the next two years. Considering the rapid growth of wireless usage, and that each NPA code has 770 NXX codes, this demand rate does not appear significant.)

36 USTA Comments at 7.

providers.[37] Because they distribute numbers over broader geographic areas, wireless carriers require fewer NXX codes. Sprint Spectrum notes that "[t]he benefits to be derived from service-specific overlays are short-lived given wireless carriers' frugal use of their numbering resources. In contrast, LECs and CLECs are inefficient users of numbering resources since they are moored in the rate center regime for purposes of number assignment."[38] Moreover, "given the CLECs' relatively small subscriber base, the majority of these numbers are warehoused rather than assigned to subscribers."[39]

Short-term temporizing in addressing numbering administration issues does not warrant the implementation of discriminatory numbering plans.[40] The Commission should not

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37 See Paging Network, Inc. Comments at 3 ("For competitive reasons, the CLECs must have at least one full NXX code -- 10,000 numbers -- in each of the ILEC rate centers in which they intend to provide local exchange service, regardless of how many subscribers they expect to have within the rate center. . . . This competitive necessity, however, results in a grossly inefficient use of numbers because the CLECs may not -- and probably will not -- assign the bulk of these numbers to customers in the foreseeable future. . . . In Connecticut alone there are 86 rate centers, which means that each CLEC needs at least 860,000 numbers no matter how few customers it might serve.")

38 Sprint Spectrum Comments at 2-3; see also CTIA Comments at 11, n.26 ("Wireless carriers . . . distribute numbers within a particular NXX code over a much broader area without limitation to the geographic location of the subscriber. . . . 'Once NPA-NXXs are assigned to a wireless carrier, wireless carriers may select any one of their NPA-NXXs when allocating numbers to a subscriber.")

39 Sprint Spectrum Comments at 4.

40 At a minimum, the Commission should not permit the Petitioner to proceed with its proposal until the NANC report is released in September 1998. The report will

condone policies which contravene the Act, thwart competition, and contribute nothing to long-term solutions. CTIA's support for technology neutral numbering administration is consistent with the growing demand for telephone numbers by all carriers. Implementing geographic splits or area code overlays across all services is the most appropriate pro-consumer and non-discriminatory means of allocating the burdens caused by the growth of the telecommunications industry.

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likely address possible solutions to exhaust problems similar to those faced by the Petitioner.

IV. CONCLUSION

For these reasons CTIA respectfully requests that the Commission reject Petitioner's proposal to initiate a rulemaking proceeding to permit Connecticut to implement a wireless-only area code overlay which would discriminate between wireless and wireline service providers.

Respectfully submitted,

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I, Rosalyn Bethke, hereby certify that a copy of the foregoing Reply Comments of The Cellular Telecommunications Industry Association was delivered by hand upon the following:

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