

RECEIVED

MAY 18 1998

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RM 9258

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

In the Matter of )  
 )  
Petition of the ) DA 98-743  
Connecticut Department of Public )  
Utility Control for Amendment )  
to Rule Making )

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner  
Vice President  
and Chief Regulatory Officer

Lawrence R. Krevor  
Director - Government Affairs

Laura L. Holloway  
General Attorney

Nextel Communications, Inc.  
1450 G. Street, N.W.  
Suite 425  
Washington, D.C. 20005  
202-296-8111

No. of Copies rec'd 015  
List A B C D E

Date: May 18, 1998

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

In the Matter of )  
 )  
Petition of the ) DA 98-743  
Connecticut Department of Public )  
Utility Control for Amendment )  
to Rule Making )

**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Pursuant to the April 17, 1998 Public Notice of the Federal Communications Commission ("Commission"), 1/ Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the Petition of the Connecticut Department of Public Utility Control ("DPUC").

On May 7, 1998, nearly 20 parties submitted comments on the Petition, the overwhelming majority of which opposed the initiation of a rule making to consider whether the Commission should allow states to impose service-specific overlays in area code exhaust proceedings.2/ Nextel, the Bell Atlantic Companies ("Bell Atlantic"), Omnipoint Communications, Inc. ("Omnipoint"), and the Personal Communications Industry Association ("PCIA") did not oppose a rule making, but did express concerns that any consideration of a service-specific overlay must ensure fair and

---

1/ DA 98-743, released April 17, 1998.

2/ See, e.g., Comments of Cellular Telecommunications Industry Association ("CTIA"); AT&T Wireless Services, Inc.; Teleport Communications Group, Inc.; MCI Telecommunications Corporation; TSR Wireless LLC; Airtouch Communications, Inc.; and SBC Wireless, Inc.

efficient access to numbers and cannot impose discriminatory burdens on the wireless industry.<sup>3/</sup>

Nextel submits these Reply Comments to respond to assertions of the Ad Hoc Telecommunications Users Committee ("Ad Hoc Group") and the State Consumer Advocates ("State Consumer Advocates") that wireless carriers are to blame for the increasing exhaust of telephone numbers and should be singled out to bear the burden of exhaust. As discussed below, these assertions are not supported by the facts or the information cited by the commenters. Even if these parties could establish that wireless services are primarily responsible for number exhaust, however, it would still not justify imposition of an undue and discriminatory burden on the wireless industry. All segments of the industry use telephone numbers and must obtain them through an outdated number assignment process that was developed for a monopoly environment that no longer exists. Attempting to place responsibility on one industry segment does not assist the Commission in resolving telephone number exhaust issues or reforming the number assignment process, and it offers nothing to the debate over service-specific overlays.

Additionally, contrary to the assertions of the Public Utility Commission of Texas ("PUCT"), wireless carriers would be unduly burdened by a take-back of telephone numbers, and such an undue burden is impermissible.<sup>4/</sup> The arguments of the Ad Hoc Group, the

---

<sup>3/</sup> See Comments of Bell Atlantic at pp. 7-8; Comments of Omnipoint at p. 2; Comments of PCIA; and Comments of Nextel at p. 5-6.

<sup>4/</sup> Comments of PUCT at p. 5.

State Consumer Advocates and the PUCT, therefore, do not justify imposition of retroactive wireless-only overlays and take-backs of wireless users' telephone numbers.

## II. DISCUSSION

### A. Wireless Carriers Are Not The Sole, Or Even The Primary, Cause Of Telephone Number Exhaust

The Ad Hoc Group and the State Consumer Advocates assert that wireless carriers are to blame for the on-going exhaust of telephone numbers.<sup>5/</sup> The Ad Hoc Group, in particular, claims that "wireless carriers are using assigned NXX's even more inefficiently than other carriers."<sup>6/</sup> This assertion, however, is made without any justification or support, and is irrelevant to the issues raised in the Commission's Public Notice. Even if wireless carriers were the primary cause of number exhaust, discriminating against them through dialing disparities or placing on them the undue burden of number take-back requirements would not be justified. All carriers are entitled to equal and non-discriminatory access to telephone numbers.<sup>7/</sup>

The Ad Hoc Group claims that wireless carriers are inefficient users of numbers based on the fact that wireless carriers nationwide have been assigned some 19,000 NXX codes (or 190 million

---

<sup>5/</sup> See State Consumer Advocates at p. 8; Comments of the Ad Hoc Users Group at p. 5.

<sup>6/</sup> Comments of the Ad Hoc Users Group at p. 5.

<sup>7/</sup> See Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996).

telephone numbers),<sup>8/</sup> while CLECs have been assigned only 7,593 NXX Codes (or 75,930,000 telephone numbers).<sup>9/</sup> Without more, however, these numbers are meaningless. First, wireless carriers have been assigned telephone numbers for more than 15 years, while CLECs have been assigned numbers primarily over the past few years. As a result, the wireless industry properly has been assigned more numbers than the CLEC industry as it has grown and expanded throughout the U.S.

Second, the Ad Hoc Group claims that the wireless industry is serving only 59 million customers with these 190 million telephone numbers, resulting in a usage of approximately 30% of the total outstanding number assignments. What the Ad Hoc Group fails to address is the fact that CLECs are using a far smaller percentage of the numbers they have been assigned. Industry estimates typically place CLEC subscribership at approximately one percent of the Incumbent LEC ("ILEC") subscribership of 166 million access lines. Even assuming that the CLEC industry is currently serving two percent of the ILEC market -- approximately three million access lines or customers -- the CLEC usage rate for its total assigned numbers would be approximately 4.5%. Even doubling or tripling the CLECs' customer base would leave them far behind the wireless industry's usage rate of approximately 30%. The Ad Hoc Group's own data, therefore, establishes that wireless carriers do not, as it asserts, use phone numbers "more inefficiently than

---

<sup>8/</sup> *Id.* at pp. 4-5.

<sup>9/</sup> *Id.*

other carriers."<sup>10/</sup> On the contrary, the wireless industry uses numbers far more efficiently than CLECs and at comparable efficiency to the ILECs.

Additionally, recent demand for telephone numbers has come disproportionately from the CLEC community as it competes with ILECs using a number assignment procedure designed for a monopoly carrier environment. Under the existing code assignment guidelines, CLECs are entitled to assignment of at least one NXX code in each and every wireline (ILEC) rate center in a market in order to compete with the ILEC's local calling areas and non-toll rates, regardless of the actual or projected usage in that rate center. Because NXXs are assigned in blocks of 10,000 individual telephone numbers, this typically results in the assignment of far more telephone numbers than the CLEC has customers. In the Illinois 847 area code, for example, there are 42 rate centers. Regardless of the number of customers it has or expects to have, a CLEC entering that Illinois market could obtain an NXX in each of those 42 rate centers -- a total of 420,000 telephone numbers -- to initiate service and compete with the ILEC. Under this number assignment process, many NXXs are assigned that will go largely unused for long periods of time. What is apparent is that a number assignment process designed for a monopoly LEC environment cannot efficiently assign numbers in a competitive carrier environment.

---

<sup>10/</sup> See Comments of the Ad Hoc Group at p. 5. Additionally, the Local Exchange Routing Guide shows that ILECs usage rates are approximately 28%. The evidence establishes that wireless carriers are the most efficient users of telephone numbers -- not, as the Ad Hoc Group asserts, the most inefficient.

This problem is being addressed by the North American Numbering Council ("NANC") through its Number Resource Optimization Working Group ("NRO-WG") and will require industry-wide cooperation and reform of the number assignment process. Allowing states to establish wireless-only overlays with wireless number take-backs will not resolve the fundamental problem.11/

In a recent survey of wireline and wireless carriers operating in the 847 area code, wireline companies -- both ILECs and CLECs -- forecasted a need for 36 NXXs in the second quarter of 1998, 52 NXXs in the third quarter of 1998 and 42 NXXs in the fourth quarter of 1998. Comparatively, wireless companies forecasted a need for 7 NXXs, 15 NXXs and 7 NXXs in the same three quarters.12/ In other words, wireline companies anticipate requesting five times as many numbers as wireless carriers in the second quarter, three times as many in the third quarter and six times as many in the fourth quarter, despite the fact that the wireless industry's growth rates

---

11/ As noted above, the Commission has charged the NANC, through the NRO-WG, with providing management oversight and drafting a report to the NANC on National Number Pooling Standards by September 23, 1998. Nextel is an active participant in the NRO-WG. At the last meeting of the NRO-WG on May 11, 1998 in Washington, D.C., the Moderator of the Industry Numbering Committee (INC) provided a readout of the INC's efforts to complete Number Pooling Guidelines. To date, the INC has identified and is working to resolve a total of 51 technical issues regarding the development of National Number Pooling Assignment Guidelines. Thus, not only have the guidelines for number pooling not been completed, but also the analysis of options among the various alternatives has only just begun by the NRO-WG.

12/ See Wallace Data Comp. Code Activation Forecasts (May 6, 1998) prepared on behalf of the Code Administrator for the 847, 773, 630, 312 and 708 NPAs and presented at the May 7, 1998 meeting of the Chicago Area Telecommunications Industry Team.

far surpass those of the ILECs and CLECs. Significantly, these estimates were developed in an area with a numbering situation very much like that presented in Connecticut -- an area which only a few years ago undertook area code relief that was expected to last much longer, but which has become insufficient largely due to CLEC market entry. These statistics demonstrate that, contrary to the Ad Hoc Group's assertion, the wireless industry is not solely -- or even primarily -- responsible for the code exhaust problems facing states today. The exhaust has been created by all telecommunications participants, both wireline and wireless, as well as the breakdown of the number assignment process, and any assertions to the contrary are simply not supported by the facts.

The Ad Hoc Group also blames the wireless industry for its current inability to participate in telephone number pooling, which would allow NXX codes to be assigned in 1,000 number blocks rather than 10,000 number blocks, asserting that wireless carriers have merely chosen not to expeditiously implement local number portability ("LNP"), a prerequisite for pooling.<sup>13/</sup> The Ad Hoc Group recognizes that a "regulatory decision" delayed LNP implementation on wireless systems, but fails to address the reasons for that decision, i.e., LNP deployment was delayed for wireless systems due to the additional complexities and technological developments that would be necessary for providing

---

<sup>13/</sup> See Comments of Ad Hoc Users Group at pp. 7-8.

LNP in the wireless marketplace.<sup>14/</sup> Thus, while it was the Commission's "regulatory" decision to delay implementation, that decision was based on the reality that LNP solutions were not available for wireless systems at the time, and would therefore require additional research, development and implementation time.

Finally, both the Ad Hoc Group and the PUCT claim that taking back telephone numbers from wireless users would not place an undue burden on the wireless industry.<sup>15/</sup> The Ad Hoc Group argues, for example, that changing a wireline phone numbers creates more hardships than changing a wireless phone number due to the costs associated with changing business stationary and signage. This argument defies credibility. Wireless users also use stationary, business cards or other signage and would have to change them if their telephone numbers were reassigned.

Additionally, the Ad Hoc Group's and the PUCT's arguments presuppose that reprogramming a mobile telephone is not an inconvenience to the customer or a cost to the carrier. Neither is true. As a provider of wireless services to numerous business users, Nextel's customers depend on mobile communications in their daily activities, as do non-business mobile communications users. The cost, inconvenience and administration of reprogramming wireless telephones would be a significant burden on wireless users, contrary to the PUCT's comments, and imposing them only on

---

<sup>14/</sup> See First Report and Order and Further Notice of Proposed Rule Making, CC Docket No. 95-116, 11 FCC Rcd 8352 (1996).

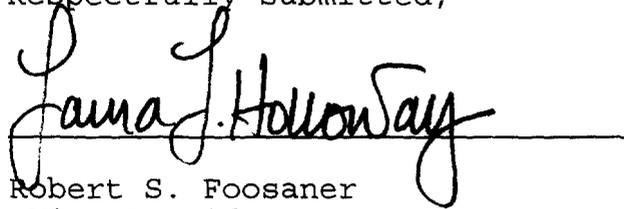
<sup>15/</sup> Comments of the Ad Hoc Users Group at p. 11; Comments of the PUCT at p. 5.

the wireless industry would result in unlawful discrimination.<sup>16/</sup>

**III. CONCLUSION**

Nothing raised in the comments justified a departure from the Commission's earlier conclusion that a take-back of wireless telephone numbers is discriminatory and places an undue burden on the wireless industry. To the extent the Commission initiates a rule making to investigate the lawfulness of any service-specific overlay, therefore, it should consider such overlays only on a prospective basis.

Respectfully submitted,



Robert S. Foosaner  
Vice President  
and Chief Regulatory Officer

Lawrence R. Krevor  
Director - Government Affairs

Laura L. Holloway  
General Attorney

Nextel Communications, Inc.  
1450 G. Street, N.W.  
Suite 425  
Washington, D.C. 20005  
202-296-8111

Date: May 18, 1998

---

<sup>16/</sup> That the Ad Hoc Group -- an entity professing to represent the interests of telecommunications users -- would seriously advocate a plan to reprogram and thereby inconvenience and disrupt service to 59 million wireless telecommunications users, fully 20% of the U.S. population, indicates a total insensitivity to the needs and interests of wireless telecommunications users.

## CERTIFICATE OF SERVICE

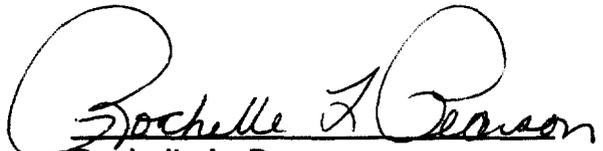
I, Rochelle L. Pearson, hereby certify that on this 18th day of May 1998, I caused a copy of the attached Reply Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

Geraldine Matise, Chief  
Network Service Division  
Federal Communications Commission  
Room 235-A  
2000 M Street, N.W.  
Washington, D.C. 20554

Steve Weingarten, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Room 700  
2100 M Street, N.W.  
Washington, D.C. 20554

Erin Duffy, Esq.  
Network Service Division  
Federal Communications Commission  
Room 235-E  
2000 M Street, N.W.  
Washington, D.C. 20554

Jeannie Grimes  
Paralegal  
Network Service Division  
Federal Communications Commission  
Room 210-G  
2000 M Street, N.W.  
Washington, D.C. 20554

  
Rochelle L. Pearson