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October 27, 1998

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Chair
James Connelly
Commissioner
W. Robert Keating
Commissioner
Eugene J. Sullivan, Jr.
Commissioner
Paul B. Vasington
Commissioner

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Magalie Roman Salas, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

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re: NSD-L-97-42 In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 (CC Docket No. 96-98)

Dear Ms. Salas:

Enclosed for filing in the above matter please find one original and five copies of the Massachusetts Department of Telecommunications and Energy's Petition for Reconsideration of the FCC's September 28, 1998 Opinion. Kindly stamp one copy and return it to us in the enclosed stamped, self-addressed envelope.

Sincerely,

Karen J. Reed
Karlen J. Reed, Esq.

KJR/kr

Enc.

cc: M.D.T.E. Commission (w/enc.)
Thomas E. Bessette, Acting General Counsel, M.D.T.E. (w/enc.)
Attached Service List (w/enc.)

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

NSD-L-97-42
CC Docket No. 96-98

MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY'S
PETITION FOR RECONSIDERATION OF THE FCC'S SEPTEMBER 28, 1998 ORDER

Commonwealth of Massachusetts
Department of Telecommunications and Energy

Janet Gail Besser, Chair
James Connelly, Commissioner
W. Robert Keating, Commissioner
Paul B. Vasington, Commissioner
Eugene J. Sullivan, Jr., Commissioner

100 Cambridge Street, 12th Floor
Boston, MA 02202
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Dated: October 27, 1998

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Before the
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Washington, D.C. 20554

NSD-L-97-42
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MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY'S
PETITION FOR RECONSIDERATION OF THE FCC'S SEPTEMBER 28, 1998 ORDER

The Massachusetts Department of Telecommunications and Energy ("M.D.T.E.") respectfully requests that the Federal Communications Commission ("FCC") reconsider those portions of its September 28, 1998 Memorandum Opinion and Order and Order on Reconsideration ("Opinion") that require a state commission to decide on a specific form of area code relief and to establish an implementation date for that relief before imposing an NXX rationing plan. The M.D.T.E. also joins in the arguments presented in the Petition for Reconsideration by the Maine Public Utilities Commission and the New Hampshire Public Utilities Commission in this matter.

I. BACKGROUND

On September 28, 1998, the FCC issued its Opinion¹ in response to a petition for

¹ In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket No. 96-98, FCC 98-224, NSD File No. L-97-42.

declaratory ruling from several wireless carriers² and request for expedited action on the July 15, 1997 order of the Pennsylvania Public Utility Commission regarding four Pennsylvania area codes ("July 15, 1997 Order"). In the Opinion, the FCC concluded that

- (1) State commissions have the authority to order NXX code rationing only in conjunction with area code relief decisions where the industry has not reached a consensus on a rationing plan;
- (2) The Common Carrier Bureau ("CCB") of the FCC may delegate additional authority to state commissions to implement experimental number conservation efforts;
- (3) The Pennsylvania Commission exceeded its jurisdiction in its July 15, 1997 order;
- (4) The July 15, 1997 Order disfavored wireless carriers because these carriers could not participate in required number conservation measures (number pooling); and
- (5) North American Numbering Council ("NANC") must advise the FCC in 60 days whether the state commissions or Lockheed Martin IMS ("Lockheed") should decide whether a carrier subject to an NXX code rationing plan should receive NXXs outside of the rationing plan.

The FCC delegated the authority to implement new area codes and to determine the appropriate forms of area code relief to state commissions but retained broad authority over numbering administration. The FCC will permit states to introduce new area codes by (1) geographic split,³ (2) area code boundary realignment,⁴ or (3) an area code overlay.⁵ Opinion at

² The Petition for Declaratory Ruling was filed jointly by Nextel Communications, Inc., Sprint PCS, Vanguard Cellular Systems, Inc., 360 Communications Company and Bell Atlantic Mobile. Opinion at para. 55.

³ A geographic split involves dividing a geographic area served by an existing area code into two or more geographic parts and one part maintains the old area code, with the remaining parts receiving new area codes.

7-8. State commissions may perform those functions related to initiating and planning area code relief and adopting final area code relief plans, but these functions are assumed by the North American Numbering Plan Administrator for those states that do not want to assume these functions. This authority does not include NXX code allocation or assignment. Opinion at 8.

II. INTEREST OF THE M.D.T.E.

The M.D.T.E. is the administrative agency with general supervisory jurisdiction and control over telecommunications common carriers offering services within Massachusetts and is obliged to protect the customers' interests. Mass. G.L. c. 159 § 12(d). Consequently, the M.D.T.E. herein responds to issues arising before the FCC that have an impact on Massachusetts consumers. An initial jurisdictional question may arise as to whether the M.D.T.E. has a right to file a petition for reconsideration. The FCC chose to use this case to revise a portion of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, 11 FCC Rcd 19392 (1996) and 47 C.F.R. Section 52.19(a) in such a way as to affect states, like Massachusetts, that must find solutions to what appears to be the almost-constant need to introduce new area codes. The FCC should have the benefit of the M.D.T.E.'s perspective for the

⁴ A boundary realignment involves a shift of the boundary lines between two adjacent area codes to allow the transfer of some NXX codes from an area code for which many NXX codes remain unassigned to an area code for which few NXX codes are left for assignment.

⁵ An area code overlay occurs when a new area code is introduced to serve the same geographic area as an existing area code. Under current FCC rules, a consumer must dial 10 digits, not 7 digits, for all calls whenever overlay area code plans are implemented, even if the dialed number is located within the same exchange service area.

FCC's reconsideration deliberations. The FCC's intent to make the Opinion extend beyond Pennsylvania's state borders is clear, yet the FCC gave no warning of the scope of this adjudication-now-rulemaking.⁶ Bell Atlantic, the incumbent local exchange carrier ("ILEC") in Pennsylvania, is also the ILEC in Massachusetts and decisions affecting Bell Atlantic and other carriers in Pennsylvania may also affect Massachusetts. Accordingly, the M.D.T.E. respectfully requests that the FCC consider this petition for reconsideration.

III. DISCUSSION

A. The Massachusetts Experience with Area Codes

On January 23, 1997, the M.D.T.E. ordered a geographic split of the 617 and 508 area codes to create two new area codes, 781 and 978, to be fully implemented beginning May 1, 1998. These new area codes were expected to alleviate the need for further area code relief for several years. However, the Numbering Plan Area Code Administrator for Massachusetts, Lockheed, notified the M.D.T.E. on March 4, 1998, that, because of an unexpectedly high demand for new exchange codes, the supply of exchange codes in the 617 and 508 area codes is again in jeopardy of being exhausted. On April 24, 1998, the M.D.T.E. opened an investigation into exchange code conservation measures to evaluate ways to delay the need to

⁶ The FCC issued the following public notice in this matter on October 26, 1998 (DA No. 98-2150): "On September 28, 1998, the Federal Communications Commission (Commission) released an order addressing a Petition for Declaratory Ruling challenging an Order of the Pennsylvania Public Utility Commission (Pennsylvania Commission) concerning area code relief. ... Because the Order was, in part, a reconsideration of an order in the Commission's *Local Competition* rulemaking proceeding, pursuant to 47 CFR §§ 1.4(b) and 1.429, petitions for reconsideration of the Order shall be filed within thirty days of publication of a summary of the Order in the *Federal Register*."

introduce new area codes in Massachusetts. On May 12, 1998, Lockheed notified the M.D.T.E. that the new 781 and 978 area codes are also in a jeopardy condition.

On June 1, 1998, the M.D.T.E. held a technical conference with Lockheed to discuss whether one exchange code conservation measure, "virtual pooling" (initially proposed by Lockheed), would be useful in extending the lives of the existing area codes in eastern Massachusetts. Under virtual pooling, carriers would divide exchange codes into 1,000 number blocks and assign phone numbers from one 1,000 number block at a time, using numbers from the next 1,000 number block only when the current block is nearly exhausted. By preserving as many "free" 1,000 number blocks as possible, virtual pooling may serve as a "bridge" to when actual number pooling is expected to be universally available.

On June 3, 1998, the Attorney General of the Commonwealth of Massachusetts, the rate-payer advocate in Massachusetts, filed a motion for an emergency ruling which asked the M.D.T.E. to order the interim use of virtual pooling for exchange codes assigned after June 1, 1998 in area codes 617, 508, 781, and 978. On July 14, 1998, several telecommunications carriers filed with the M.D.T.E. their own virtual pooling proposal, which was intended to preserve numbering resources for the time when 1,000 number block pooling is implemented.

To date, the M.D.T.E.'s investigation has focused on the measures that could be implemented to conserve exchange codes in eastern Massachusetts. While our work on this and other issues (such as where and how the existing telephone numbers have been used) continues, the range of options for exchange code conservation is the most pressing issue, as prompt implementation of appropriate measures holds the key to prolonging the life of the four

areas codes in eastern Massachusetts. This investigation has stalled because of the FCC's Opinion, leaving the M.D.T.E. in a quandary over whether to proceed as planned and implement code conservation efforts which may run counter to the FCC's pronouncements in the Opinion, or select an area code relief plan without fully exploring code conservation efforts. The primary purpose of code conservation efforts is to forestall the need for area code relief. The FCC has placed Massachusetts in a difficult position.

B. Effect of Opinion on Massachusetts

The FCC's Opinion on September 28, 1998, regarding four Pennsylvania area codes will have serious ramifications for the citizens of Massachusetts. The FCC concluded that states, through their state public utility commissions, have the authority to order NXX code rationing only in conjunction with area code relief decisions where the industry has not reached a consensus on a rationing plan. This ruling greatly interferes with Massachusetts' ability to implement its own current area code conservation efforts. Of particular applicability to the M.D.T.E., the FCC held that:

"If the state commission has not yet chosen a relief method and established a relief date, the NXX code administrator and the industry should devise the jeopardy conservation or rationing measures, consistent with current industry practice. We encourage the state commissions to participate in the discussions on the rationing plan through attendance at industry meetings, but a state commission may not impose a rationing plan on its own to avoid making a decision on area code relief."

· Opinion at 19. This provision applies squarely to Massachusetts because Massachusetts has not yet implemented an area code relief plan; members of the telecommunications industry have voluntarily engaged in a self-imposed, self-regulated rationing plan; and the M.D.T.E. is

considering imposing various area code and exchange code conservation measures in order to avoid the need for disruptive area code relief measures.

Even before the most recent area codes were fully implemented, the code administrator for Massachusetts notified the M.D.T.E. that, due to an unexpectedly high demand for new exchange codes, the available supplies of exchange codes in the 617, 508, and the new 781 and 978 area codes were in jeopardy of exhaustion. To fulfill our obligations to our consumers, on April 24, 1998, the M.D.T.E. opened an investigation into code conservation measures to evaluate ways to delay the need to introduce new codes in Massachusetts. Massachusetts must have as many options as possible to delay or avoid the need for a second area code relief plan, and the Opinion threatens to take away almost all of Massachusetts' options, except rate center consolidation. State commissions are in the best position to decide whether and when to implement area code conservation measures because state commissions are most familiar with local conditions. Massachusetts is now faced with the insurmountable task of solving its area code dilemma without the proper tools.

The FCC's allowance for states to ask the CCB for a delegation of authority to implement experimental number conservation efforts is not sufficient. Such a request may delay our current investigation to a point where it is an irrelevant exercise, given the extraordinary speed with which our area codes are being consumed.

IV. CONCLUSION

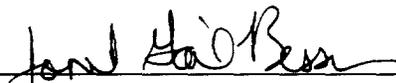
The M.D.T.E. is in the midst of investigating measures to conserve existing telephone numbers, but the FCC's Opinion may halt that process. The M.D.T.E. has been gathering

information on the existence and use of phone numbers, number pooling, and other code conservation measures in an effort to avoid or delay the need for area code relief. If the FCC Opinion is allowed to stand, the M.D.T.E. may not be able to engage in any other area code conservation efforts without first getting FCC approval, a lengthy process that may take more time than Massachusetts has to avoid the need to introduce new area codes. For the foregoing reasons, the M.D.T.E. requests that the FCC reconsider its September 28, 1998 order in this matter and strike those portions of the Opinion which restrict states from imposing number conservation methods until after the state commission makes a final decision regarding area code relief. We urge the FCC to act quickly on this Petition for Reconsideration given the need for action now in Massachusetts to conserve phone numbers and to avoid or delay implementation of area code relief plans. Furthermore, the M.D.T.E. joins in the Petition for Reconsideration

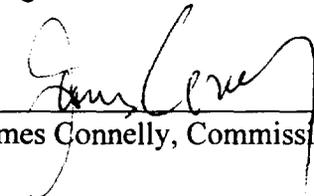
filed by the Maine Public Utilities Commission and the New Hampshire Public Utilities Commission in this matter.

Respectfully submitted,
Commonwealth of Massachusetts
Department of Telecommunications & Energy

By:



Janet Gail Besser, Chair



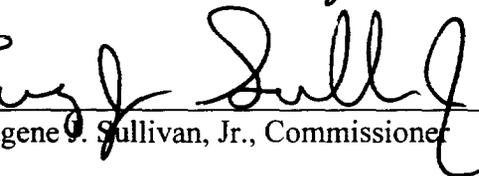
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

In the Matter of the Pennsylvania)
Public Utility Commission Order)
Dated July 15, 1997 Regarding Area) NSD File No. L-97-42
Code Relief in the 610, 215, 717)
and 412 Area Codes)

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