

Oct 13 10 23 AM '98

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling and	)	
Request for Expedited Action on the	)	NSD File No. L-97-42
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	)	CC Docket No. 96-98
of 1996	)	

**MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION**

**Adopted: September 11, 1998**

**Released: September 28, 1998**

By the Commission: Commissioners Furchtgott-Roth and Tristani issuing a Joint Statement.

**TABLE OF CONTENTS**

	<u>Paragraph No.</u>
<b>I. INTRODUCTION</b> .....	1
<b>II. BACKGROUND</b> .....	3
Overview .....	3
Jurisdiction .....	5
Pennsylvania Commission Orders .....	11
<b>III. SUMMARY OF PARTIES' POSITIONS</b> .....	18
<b>IV. DISCUSSION</b> .....	20
Delegation of Additional Authority to States .....	23
State Commission Authority .....	32
Compliance with Numbering Administration Regulations .....	36
Availability of Numbering Resources .....	37
Discrimination Against an Industry Segment .....	40
Technological Neutrality .....	45
Section 253 .....	46

Area Code Relief in Pennsylvania ..... 47  
Referral to the NANC ..... 51

**V. FINAL REGULATORY FLEXIBILITY CERTIFICATION ..... 52**

**VI. CONCLUSION ..... 54**

**VII. ORDERING CLAUSES ..... 55**

Appendix A List of the Parties  
Appendix B Rule Changes

## I. INTRODUCTION

1. In this Order we address a Petition for Declaratory Ruling challenging an Order of the Pennsylvania Public Utility Commission (Pennsylvania Commission) concerning area code relief.<sup>1</sup> Petitioners requested that the Commission: (1) declare that an Order issued by the Pennsylvania Commission on July 15, 1997, unlawfully exceeded state jurisdiction over numbering administration, unlawfully discriminated against Petitioners, and constituted an unlawful barrier to entry; and (2) require the Pennsylvania Commission to provide area code relief in the 215, 610, and 717 area codes.<sup>2</sup> Petitioners asserted that expeditious treatment was necessary due to the imminent exhaust of numbers for some wireless carriers.<sup>3</sup> As explained further below, since the filing of the Petition, the Pennsylvania Commission has acted to implement area code relief in the 215, 610, and 717 area codes. Nevertheless, we will address several issues Petitioners raise in order to provide guidance to state commissions as they make decisions on area code relief.

2. We are aware that the problems the Pennsylvania Commission has faced are representative of problems confronting other state commissions throughout the country. State commissions have the difficult task of assuring that adequate numbering resources are

---

<sup>1</sup> On November 17, 1997, five carriers filed a Petition for Declaratory Ruling and Request for Expedited Action with the Commission. The carriers are: (1) Nextel Communications, Inc. (Nextel); (2) Sprint PCS; (3) Vanguard Cellular Systems, Inc. (Vanguard); (4) 360 Communications Company (360); and (5) Bell Atlantic Mobile, Inc. (BAM) (collectively, Petitioners).

<sup>2</sup> The Common Carrier Bureau (Bureau) sought comment on the Petition in a Public Notice released November 18, 1997. See Common Carrier Bureau Seeks Comment On Petition For Declaratory Ruling And Request For Expedited Action Filed By Providers Of Commercial Mobile Radio Service In Pennsylvania, *Public Notice*, DA 97-2418, NSD File No. L-97-42 (rel. Nov. 18, 1997). Comments were received on December 1, 1997 and reply comments were received on December 8, 1997. Parties filing comments or reply comments include: (1) American Mobile Telecommunication Association, Inc. (AMTA); (2) AirTouch Communications (AirTouch); (3) AT&T Wireless Services, Inc. (AT&T Wireless); (4) Bell Atlantic; (5) Cellular Telecommunications Industry Association (CTIA); Citizens Utility Board, People of the State of Illinois, City of Chicago, and People of Cook County (CUB) (6) Colorado Public Utility Commission (Colorado Commission); (7) Comcast Cellular Communications, Inc. (Comcast); (8) GTE; (9) The Illinois Commerce Commission (Illinois Commission); (10) MCI Telecommunications Corporation (MCI); (11) The National Association of Regulatory Utility Commissioners (NARUC); (12) Nextel; (13) Omnipoint; (14) Paging Network, Inc. (PageNet); (15) The Pennsylvania Public Utility Commission (Pennsylvania Commission); (16) Pennsylvania Office of Consumer Advocate (PaOCA); (17) Personal Communications Industry Association (PCIA); (18) Sprint PCS; (19) United States Cellular Corporation (USCC); (20) United States Telephone Association (USTA); (21) Vanguard; and (22) 360. For ease of reference, all parties will be referred to by the abbreviated names.

<sup>3</sup> Petition at 2.

available for carriers in their states, while protecting the interests of consumers who are understandably frustrated about the burdens associated with area code relief. We commend the Pennsylvania Commission's attempt to address these issues with innovation and creativity. These problems of area code exhaust underscore the need to explore ways to conserve and use more efficiently the numbering resources that carriers need to offer their services. As explained further below, efforts to develop such conservation measures are underway in different fora. State commissions have an important role to play in fostering the more efficient use of numbering resources. To that end, in this Order, on our own motion, we reconsider the portion of 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) (*Local Competition Second Report and Order*),<sup>4</sup> where we delegated authority to state commissions to implement area code relief. We delegate additional authority to state commissions to order NXX code rationing, under certain conditions, so that state commissions may have more flexibility to assure that the area codes they have will last until implementation of relief. In addition, we ask the North American Numbering Council (NANC) for a recommendation as to whether, in the future, the state commissions or the North American Numbering Plan Administrator (NANPA), Lockheed Martin IMS, should evaluate whether a carrier that is subject to an NXX code rationing plan should receive an NXX or multiple NXXs outside of the parameters of the state's rationing plan if the carrier demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service.<sup>5</sup>

## II. BACKGROUND

3. *Overview.* Numbering Plan Areas (NPAs) are known commonly as area codes, and are the first three digits of a ten-digit telephone number. The second three digits of a telephone number are known as the NXX code or central office code (CO code).<sup>6</sup> For some carriers, particularly wireline carriers, the NXX code is used for billing purposes. NXX codes

---

<sup>4</sup> See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*), *petitions for reconsideration pending, vacated in part, People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. Aug. 22, 1997), *cert. granted, sub nom. AT&T Corp. v. Iowa Util. Bd.*, 118 S.Ct 879 (Jan. 26, 1998).

<sup>5</sup> The NANC is a federal advisory committee that makes recommendations to the Commission on numbering issues.

<sup>6</sup> Typically there are 792 NXX codes available for assignment to carriers in an area code (every possible combination of three digits excluding numbers beginning with a 0 or a 1 and numbers ending with 11). See *Local Competition Second Report and Order*, 11 FCC Rcd at 19511 n.573. Each NXX code has approximately 10,000 numbers available for assignment to individual customers.

are assigned to particular switches or rate centers in an area code,<sup>7</sup> and carriers base charges for telephone calls, in part, on the distance between the rate center from which a call originates and the rate center at which the call terminates.<sup>8</sup> NXX codes are an integral part of addressing calls and routing them through the telephone network, and are normally associated with a specific geographic location within the area code from which they are assigned.<sup>9</sup> Usually, a whole NXX code that includes 10,000 line numbers is assigned to an entity for use at a switch or point of interconnection that the entity owns or controls, and the entity assigns the line numbers to its individual customers.<sup>10</sup>

4. In the United States, twelve regional NXX code administrators make NXX code assignments. The dominant local exchange carrier in a service area, in this instance Bell Atlantic-Pennsylvania (Bell Atlantic), serves as the NXX code administrator.<sup>11</sup> According to industry guidelines that govern the NXX code administrators, applicants must certify a need for North American Numbering Plan (NANP) numbers and must be licensed or certified to

---

<sup>7</sup> Rate centers are telephone company-designated geographic locations assigned vertical and horizontal coordinates within an area code. NEWTON'S TELECOM DICTIONARY, 11th Edition, at 498. See also Local Exchange Routing Guide (LERG), Volume 2, Section 1 at 24 (March 1997).

<sup>8</sup> Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*Number Portability Order*), recon. FCC 97-74 (rel. March 11, 1997) (*First Reconsideration Order*).

<sup>9</sup> See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997 at § 1.0 (the term CO code or NXX code refers to sub-NPA destination codes for addressing). See also *id.* at § 3.0 (NXX codes are to be assigned to identify initial destination addresses in the public switched telephone network).

<sup>10</sup> *Id.* at § 3.0. The code administrator assigns an entire NXX code to a local carrier because, currently, calls are routed to the correct carrier using the first six digits of the called number (NPA-NXX). A NXX code is associated with a particular carrier.

<sup>11</sup> See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997. The Commission determined in 1995 that NXX code administration should be centralized with a neutral NANPA. Administration of the North American Numbering Plan, *Report and Order*, CC Docket No. 92-237, 11 FCC Rcd 2588, 2619 (1995) (*NANP Order*). On October 9, 1997, the Commission released an order naming Lockheed Martin IMS as the new NANPA. Administration of the North American Numbering Plan, *Third Report and Order*, CC Docket No. 92-237, FCC 97-372 (rel. Oct. 9, 1997) at para. 1 (*NANP Order III*). The transition for the former NANPA's functions to be transferred to the new NANPA was substantially complete on January 19, 1998. See Plan for the Transition of Current NANPA Functions from Bellcore to Lockheed Martin IMS, December 5, 1997. The CO code assignment functions will be transferred to the new NANPA, no more than 18 months after the new NANPA has assumed all of the current NANPA functions. *NANP Order III* at para. 62 n.226.

operate in the area.<sup>12</sup> The code administrator assigns codes on a first-come, first-served basis, unless a jeopardy condition exists.<sup>13</sup> The guidelines further provide that, once an area code is in jeopardy, the code administrator will notify the appropriate regulatory authorities, the NANP Administrator (NANPA), and affected parties that the area code is in jeopardy and will invoke special conservation procedures.<sup>14</sup>

5. *Jurisdiction.* The Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), gives the Commission plenary jurisdiction over numbering issues that pertain to the United States. Specifically, section 251(e)(1) of the Act<sup>15</sup> provides as follows:

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

6. The Commission's regulations generally require, among other things, that numbering administration: (1) facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications

---

<sup>12</sup> See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997, at § 4.0. The NANP is the basic numbering scheme permitting interoperable telecommunications service within the United States, Canada, Bermuda, and most of the Caribbean. The NANP began when, in the early 1940s, American Telephone and Telegraph (AT&T) began to develop a numbering plan to ensure that the expansion of long distance calling would be guided by principles consistent with the ultimate incorporation of all networks into an integrated nation-wide network.

<sup>13</sup> *Id.* at § 4.4. According to the guidelines, a jeopardy condition exists when the forecasted or actual demand for NXX resources will exceed the known supply before the end of the period required to plan and implement area code relief. The guidelines further state that pending depletion of NXX resources within an NPA does not represent a jeopardy condition if area code relief has been or can be planned and the additional NXXs associated with the area code will satisfy the need for new NXX codes. *Id.* at § 12.0. An area code is considered to be depleted when nearly all of the NXXs within that code have been assigned, even if individual customer numbers associated with the NXXs are still available for assignment.

<sup>14</sup> *Id.* at § 8.3.

<sup>15</sup> 47 U.S.C. § 251(e)(1).

technology over another.<sup>16</sup> Further, the regulations specify that, if the Commission delegates any telecommunications numbering administration functions to any state, the states must perform the functions in a manner consistent with these general requirements.<sup>17</sup> If a state acts inconsistently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, parties wishing to dispute a proposed area code plan may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission.<sup>18</sup>

7. In the *Local Competition Second Report and Order*, the Commission delegated the authority to implement new area codes to the state commissions, but retained broad authority over numbering.<sup>19</sup> Specifically, the Commission stated:

We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act....<sup>20</sup>

We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration....<sup>21</sup>

8. The authority delegated to the states was thus limited to implementing appropriate forms of area code relief. The Commission stated that "states are uniquely situated to determine what type of area code relief is best suited to local circumstances."<sup>22</sup> Under our rules, states can introduce new area codes through the use of: (1) a geographic split, which occurs when the geographic area served by an area code is split into two or more

---

<sup>16</sup> 47 C.F.R. § 52.9(a).

<sup>17</sup> 47 C.F.R. § 52.9(b).

<sup>18</sup> The Commission delegated authority to the Common Carrier Bureau to act on such petitions. *Local Competition Second Report and Order*, 11 FCC Rcd at 19520.

<sup>19</sup> *Id.* at 19512.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 19517.

geographic parts and one part maintains the old area code and one (or more) receive a new area code; (2) an area code boundary realignment, which occurs when the boundary lines between two adjacent area codes are shifted to allow the transfer of some NXX codes from an area code for which NXX codes remain unassigned to an area code for which few or no NXX codes are left for assignment; or (3) an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code.<sup>23</sup> The Commission noted that certain localities may have circumstances that would support the use of area code overlays, and that states "may make decisions regarding the relative merits of area code splits and overlays so long as they act consistently with the Commission's guidelines."<sup>24</sup>

9. Based on their unique familiarity with local circumstances, the Commission authorized state commissions to perform functions associated with initiating and planning area code relief as well as adopting final area code relief plans.<sup>25</sup> The Commission stated that the delegation of functions associated with initiation and planning of area code relief was made only to those states wishing to perform those functions, and that those functions would be performed by the new NANPA for those states that did not wish to perform such functions.<sup>26</sup> The Commission emphasized that all state commissions would continue to be responsible for making the final decision on how new area codes will be implemented, subject to Commission guidelines.<sup>27</sup>

10. The Commission specifically declined to delegate to states the task of NXX code allocation or assignment, stating that to do so would vest in fifty-one separate commissions oversight of functions that the Commission centralized in the new NANPA.<sup>28</sup> The Commission noted that a uniform, nationwide system of numbering, including allocation of NXX codes, is essential to the efficient delivery of telecommunications services in the United States.<sup>29</sup>

11. *Pennsylvania Commission Orders.* In 1996, the NXX code administrator for Pennsylvania filed petitions with the Pennsylvania Commission requesting that the

---

<sup>23</sup> See 47 C.F.R. § 52.19.

<sup>24</sup> *Id.*

<sup>25</sup> *Local Competition Second Report and Order*, 11 FCC Rcd at 19532.

<sup>26</sup> *Id.* at 19533.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

Pennsylvania Commission address the depletion of NXX codes in area codes 412, 215, 610, and 717.<sup>30</sup> Although the record is not clear as to the precise date that the code administrator declared jeopardy in the area codes, the Pennsylvania Commission stated that the petitions reported that the available supply of NXX codes would be exhausted in the near future.<sup>31</sup> On July 15, 1997, the Pennsylvania Commission entered an order addressing NXX code depletion in the four Pennsylvania area codes 412, 610, 215, and 717 (Pennsylvania Commission Order).<sup>32</sup> On July 28, 1997, the Pennsylvania Commission issued a letter to the NXX code administrator requiring the rationing of NXX codes in the 215, 610, and 717 area codes at the rate of three per month.<sup>33</sup> Under the jeopardy procedures' lottery provisions, carriers that did not obtain a NXX code in the month they requested one could have their code request filled using a future month's jeopardy code allocation.<sup>34</sup>

12. The Pennsylvania Commission Order required a geographic split for area code 412 but did not order traditional area code relief for the 610, 215, and 717 area codes. Instead, the Pennsylvania Commission Order required implementation of transparent area code overlays and, eventually, number pooling, to relieve the need for additional NXX codes in area codes 215, 610, and 717.<sup>35</sup> The Pennsylvania Commission Order defined a transparent area code as the use of NXX codes from a "temporary, transparent and fictitious" new area code for any new NXX codes needed.<sup>36</sup> Numbers from the transparent area codes would be reached by using remote call forwarding (RCF).<sup>37</sup> The Pennsylvania Commission described

---

<sup>30</sup> Petition at 3, citing *Petition of NPA Relief Coordinator to Resolve 412 Area Code Relief Plan Issues*, filed March 8, 1996; *Petition of NPA Relief Coordinator to Resolve 215/610 Area Codes Relief Plan Issues*, filed May 24, 1996; and *Petition of NPA Relief Coordinator to Resolve 717 Area Code Relief Plan Issues*, filed June 28, 1996.

<sup>31</sup> Pennsylvania Commission Order at 1.

<sup>32</sup> Pennsylvania Public Utility Commission Order, Docket Nos. P-00961061 and P-00961071, entered July 15, 1997. Area code 412 is in the Pittsburgh area, and area code 717 is in the Harrisburg area. Area code 215 is in the central Philadelphia area, while area code 610 is in the Philadelphia suburbs.

<sup>33</sup> Letter from James J. McNulty, Acting Secretary of the Pennsylvania Commission, to D. Wayne Milby, Bell Atlantic, dated July 28, 1997. Mr. McNulty's letter indicates that the code administrator had been assigning NXX codes at the rate of six or seven per month under the previous jeopardy declaration. *Id.* at 2.

<sup>34</sup> See Letter from D. Wayne Milby, Bell Atlantic, to James J. McNulty, Pennsylvania Commission, dated June 25, 1997.

<sup>35</sup> Pennsylvania Commission Order at 31-37.

<sup>36</sup> Pennsylvania Commission Order at 28.

<sup>37</sup> The first three digits of the NPA-NXX would be from a "transparent" area code that is not in public use. *Id.* The number given to the customer would be from an existing, assigned NXX in the "old" or "non-transparent" area code, but calls to that number would be "forwarded" to the switch with the "transparent" NPA-NXX. *Id.* This

the use of the transparent area codes as an interim measure to help relieve the need for additional NXX codes, and stated that this relief was optional for competitive local exchange carriers (CLECs) and for wireless carriers, who could choose to participate or wait for assignment of NXX codes in the old area code under the lottery procedure.<sup>38</sup> The Pennsylvania Commission Order called for implementation of a number pooling solution, known as "NXX-X/LRN," once local number portability (LNP) became available, and stated that, when carriers implement LNP, the transparent NPAs would be returned to the NANPA.<sup>39</sup> The Pennsylvania Commission also imposed certain restrictions on NXX code assignment and mandated the return of certain NXX codes.<sup>40</sup>

13. On December 18, 1997, the Pennsylvania Commission adopted an Order that, among other actions, established a Joint Task Force for the implementation of the Pennsylvania Commission's directives on NPA/NXX code relief and related conservation measures (Pennsylvania Commission Order II).<sup>41</sup> On February 5, 1998, the Pennsylvania Commission adopted an Order (Pennsylvania Commission Order III) clarifying certain portions of the July 15, 1997 Order and requiring carriers in the 215, 610, and 717 area codes by March 6, 1998, to provide to the Pennsylvania Commission copies of documentation supporting their applications for NXX codes in the last two years.<sup>42</sup>

---

proposal effectively would permit sharing of NXX codes by allowing a carrier to assign to its customers unassigned line numbers from another carrier's NXX code.

<sup>38</sup> Pennsylvania Commission Order at 40.

<sup>39</sup> *Id.* at 40-41. The Pennsylvania Commission Order describes the NXX-X/LRN method, stating that it assigns an NXX to a particular rate center and allows assignments of 1,000 number blocks to different carriers, but uses the mechanisms and infrastructure provided by LNP. *See also* Letter from Members of the Number Pooling Subcommittee of the Illinois Number Portability Workshop to A. Richard Metzger, Jr., FCC, dated October 8, 1997, which states that, with NXX-X/LRN number pooling, carriers would receive numbers in blocks of 1,000 identified by NXX-X, allowing up to ten carriers to share a single central office code. According to the Number Pooling Subcommittee, the NXX sharing is made possible through the use of the permanent number portability solution the Commission has mandated, the Location Routing Number (LRN) method. Number portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment to quality, reliability, or convenience when switching from one telecommunications carrier to another. *Number Portability Order*, 11 FCC Rcd at 8357, citing 47 U.S.C. § 153 (30).

<sup>40</sup> Pennsylvania Commission Order at 38.

<sup>41</sup> Pennsylvania Public Utility Commission Order, Docket Nos. P-00961061 and P-00961071, entered December 19, 1997.

<sup>42</sup> Pennsylvania Public Utility Commission Order, Docket Nos. P-00961061, P-00961071, and P-00961027, adopted February 5, 1998.

14. Between July 18 and July 30, 1997, BAM, Vanguard, and Nextel filed motions for reconsideration of the Pennsylvania Commission Order with the Pennsylvania Commission. On August 14 and 15, 1997, Vanguard, Nextel, and BAM also appealed the Pennsylvania Commission Order to the Commonwealth Court of Pennsylvania.<sup>43</sup> On February 23, 1998, the Pennsylvania Commission petitioned the Commonwealth Court of Pennsylvania to remand the proceeding to the Pennsylvania Commission. On February 26, 1998, the Commonwealth Court of Pennsylvania remanded the case to the Pennsylvania Commission for further proceedings. The court stated that the remand was conditioned on the Pennsylvania Commission entering a subsequent Order on or before May 29, 1998, addressing all issues necessary for implementation of conventional area code relief in area codes 215, 610, and 717. Failure to do so by the Pennsylvania Commission would be sufficient cause for the reinstatement of the appeal before the Commonwealth Court.<sup>44</sup>

15. On February 26, 1998, the Pennsylvania Commission adopted two Orders that tentatively approved a geographic split of the 717 area code (Pennsylvania Commission Order IV)<sup>45</sup> and the creation of a new area code that would overlay the 215 and 610 area codes (Pennsylvania Commission Order V).<sup>46</sup> The Pennsylvania Commission directed that the rationing of NXX codes in all three area codes be increased from three NXX codes per month to ten. The Pennsylvania Commission also asked the NXX code administrator to schedule an industry meeting for discussion of the allocation of remaining NXX codes pending the availability of additional codes.<sup>47</sup> In both Orders, the Pennsylvania Commission reiterated its commitment to implementing a more efficient means of allocating telephone numbers in order to delay significantly the need to create additional area codes. It expressly stated that the provisions of its first three Orders shall remain in force and effect, to the extent not rescinded or modified in the Orders.<sup>48</sup> The Pennsylvania Commission sought comment on the two

---

<sup>43</sup> Petition at 7, citing 42 Pa C.S. § 763(a)(1). The Commonwealth Court consolidated the appeals on September 24, 1997.

<sup>44</sup> See Order of the Commonwealth Court of Pennsylvania, No. 2241 C.D. 1997, No. 2255 C.D. 1997, and No. 2297 C.D. 1997, February 26, 1998 and Stipulation on Terms of Remand of Consolidated Appeal at 1-2.

<sup>45</sup> Petition of NPA Relief Coordinator Re: 717 Area Code Relief Plan, Docket No. P-00961071, Tentative Opinion and Order on Reconsideration, adopted February 26, 1998.

<sup>46</sup> Petition of NPA Relief Coordinator Re: 215/610 Area Code Relief Plan, Docket No. P-00961061, Tentative Opinion and Order on Reconsideration, adopted February 26, 1998.

<sup>47</sup> Pennsylvania Commission Order IV at 15; Pennsylvania Commission Order V at 17.

<sup>48</sup> Pennsylvania Commission Order IV at 17; Pennsylvania Commission Order V at 18.

orders, and stated that it would approve final Orders by May 29, 1998.<sup>49</sup> The area code changes would be implemented in nine to twelve months.<sup>50</sup>

16. In the Pennsylvania Commission Orders IV and V, the Pennsylvania Commission stated that the advent of number exhaust compelled it to reconsider its earlier position and to initiate conventional relief for area codes 717 and 215/610. The Pennsylvania Commission asserted that the success of number pooling depends on the availability of sufficient NXXs when it is implemented, which had become a problem in the area codes at issue.<sup>51</sup> The Pennsylvania Commission stated that preliminary reports from its Joint Task Force show that, although industry representatives are working to achieve number usage improvements, progress is slower than the Pennsylvania Commission had hoped, and that number pooling solutions cannot be implemented in time to avoid conventional relief.<sup>52</sup> The Pennsylvania Commission stated that there is substantial agreement that necessary software will not be available until the second half of the year, and that answers to complex architectural and administrative questions necessary to preserve a reliable and efficient numbering scheme are not immediately available.<sup>53</sup> The Pennsylvania Commission also asserted, however, that it was possible that the lives of the 215 and 610 area codes might be extended and that creation of the new overlay code might not be necessary because of LNP technology, which will allow number pooling.<sup>54</sup>

17. On May 21, 1998, the Pennsylvania Commission adopted two additional Orders approving area code relief plans for area codes 717 (Pennsylvania Commission Order VI),<sup>55</sup> and area codes 215 and 610 (Pennsylvania Commission Order VII).<sup>56</sup> The Pennsylvania Commission approved a geographic split for area code 717<sup>57</sup> and approved two overlays to

---

<sup>49</sup> Pennsylvania Commission Order IV at 18; Pennsylvania Commission Order V at 20.

<sup>50</sup> Pennsylvania Public Utility Commission, News Release, P-00961071 (L-15), February 26, 1998.

<sup>51</sup> Pennsylvania Commission Order IV at 7-8; Pennsylvania Commission Order V at 8.

<sup>52</sup> Pennsylvania Commission Order IV at 11; Pennsylvania Commission Order V at 11-12.

<sup>53</sup> Pennsylvania Commission Order IV at 11-12; Pennsylvania Commission Order V at 12.

<sup>54</sup> See Pennsylvania Public Utility Commission, News Release, P-00961071 (L-15), February 26, 1998.

<sup>55</sup> Petition of NPA Relief Coordinator Re: 717 Area Code Relief Plan, Docket No. P-00961071, Opinion and Order on Reconsideration, adopted May 21, 1998.

<sup>56</sup> Petition of NPA Relief Coordinator Re: 215/610 Area Code Relief Plan, Docket No. P-00961061, Opinion and Order on Reconsideration, adopted May 21, 1998.

<sup>57</sup> Pennsylvania Commission Order VI at 20.

relieve area codes 215 and 610, respectively.<sup>58</sup> In both Orders, the Pennsylvania Commission again declared its commitment to implementing a more efficient means of allocating numbering resources in Pennsylvania.<sup>59</sup> It stated that, while the lack of any available NXXs mandates immediate conventional area code relief, the Pennsylvania Commission anticipates that number pooling will be implemented in the foreseeable future and that could delay further need for disruptive area code relief.<sup>60</sup> To that end, the Pennsylvania Commission directed the NXX code administrator to reserve 15 NXX codes in the 717 NPA and 15 NXXs in the new area code created by the 717 split to be available for pooling or porting, either on a long-term or trial basis, in Pennsylvania.<sup>61</sup> Similarly, it directed the code administrator to reserve 15 NXX codes in the new codes that will overlay area codes 215 and 610, to be available for pooling or porting, either on a trial or a long-term basis.<sup>62</sup>

### III. SUMMARY OF PARTIES' POSITIONS

18. Petitioners and commenters in support of Petitioners<sup>63</sup> made several arguments in support of their claims that the July 15, 1997 Pennsylvania Commission Order was unlawful. First, they argued that the Order exceeded the authority over telephone numbering that the Commission delegated to state commissions under section 251(e)(1) of the Act.<sup>64</sup> Second, Petitioners argued that the Order discriminated against wireless carriers and customers

---

<sup>58</sup> Pennsylvania Commission Order VII at 19.

<sup>59</sup> Pennsylvania Commission Order VI at 19, Pennsylvania Commission Order VII at 18.

<sup>60</sup> Pennsylvania Commission Order VI at 20.

<sup>61</sup> Pennsylvania Commission Order VI at 20.

<sup>62</sup> Pennsylvania Commission Order at 19.

<sup>63</sup> Generally, AirTouch, AMTA, Comcast, CTIA, GTE, PageNet, PCIA, USCC, and USTA support the wireless carriers' petition. *But cf.* USTA comments at 3 (stating that the Commission should not rule on Petitioners' discrimination, jurisdictional, or section 253 arguments, but should simply allow the Pennsylvania Commission to adopt a split or an overlay). PageNet filed reply comments on December 10, 1997, along with a Request for Acceptance of Late-Filed Reply Comments. The Citizens Utility Board (CUB), People of the State of Illinois, City of Chicago, and People of Cook County also filed joint reply comments on December 10, 1997, two days past the date reply comments were due. In the interest of having as complete a record as possible with respect to the significant and novel issues raised, we will accept the late-filed reply comments into the record.

<sup>64</sup> 47 U.S.C. § 251(e)(1). *See* Petition at 12-14.

in violation of section 52.9 of our rules.<sup>65</sup> Third, Petitioners argued that, because the Order eliminated numbering resources that wireless carriers could use effectively, and because numbers are necessary to provide service, the Order constituted an unlawful barrier to entry in violation of section 253 of the Act that the Commission is required to preempt.<sup>66</sup>

19. The Pennsylvania Commission, the PaOCA, NARUC, the ICC, and MCI opposed the petition. The Pennsylvania Commission argued that: (1) its Order provided both interim and long-term solutions to the "runaway" demand for NXX codes;<sup>67</sup> (2) Petitioners' section 253 argument was improper because section 253 is unrelated to section 251(e)(1), which addresses jurisdiction over numbering;<sup>68</sup> (3) the Commission should not intercede in this matter of local concern because "jurisdiction over numbering issues has been delegated to the states;"<sup>69</sup> and (4) principles of "comity and abstention" dictate forbearance where the state appellate process has been initiated by petitioners.<sup>70</sup>

#### IV. DISCUSSION

20. The actions taken by the Pennsylvania Commission in its two most recent Orders resolve certain issues raised by the Petitioners. We commend the Pennsylvania Commission for ensuring that all carriers have numbering resources to provide service by ordering area code relief in the affected area codes. As events have unfolded in Pennsylvania, however, it has become apparent that state commissions need additional guidance and clarification as to the limits of their authority over area code relief and number conservation as they address decisions in this area.<sup>71</sup> We are taking the opportunity afforded by the Petition to provide that necessary clarification.

21. We are sympathetic to the concerns of the Pennsylvania Commission and PaOCA that continued use of geographic splits and overlays as the only solutions to NXX

---

<sup>65</sup> *Id.* at 14; *see also* AirTouch comments at 2-3, 7; AMTA comments at 3-6; CTIA comments at 2-7; Omnipoint comments at 1-3; PCIA comments at 2; PageNet reply comments at 2-3; USCC reply comments at 1-4.

<sup>66</sup> Petition at 17, *citing* 47 U.S.C. § 253(d). *See also* AirTouch comments at 8-9; PCIA comments at 2-3; CTIA comments at 8-9.

<sup>67</sup> Pennsylvania Commission comments at 15-16.

<sup>68</sup> *Id.* at 17-18.

<sup>69</sup> *Id.* at 18-24.

<sup>70</sup> *Id.* at 24-26.

<sup>71</sup> *See, e.g.*, Comcast comments at 5.

code depletion is unresponsive to the needs of telephone consumers, and we are aware of the need for improved NXX code conservation.<sup>72</sup> Concerns regarding the societal costs of area code relief are well-founded,<sup>73</sup> and consumers are understandably reluctant to undergo area code relief, particularly when there are inefficiencies in the allocation of numbering resources. Although we wish to support state commissions' efforts to develop innovative ways to address the problem of NXX code depletion, we are also mindful that the 1996 Act assigned to the Commission the responsibility for implementing a national numbering policy. As the Commission has stated, a nationwide, uniform system of numbering is essential to the efficient delivery of telecommunications services in the United States.<sup>74</sup> The Commission, the state commissions, and the industry should work together to bring about as quickly as possible national methods to conserve and promote efficient use of numbers that do not undermine that uniform system of numbering. Such attempts, however, cannot be made on a piecemeal basis without jeopardizing telecommunications services throughout the country. Substantial social and economic costs would result if the uniformity of the North American Numbering Plan were compromised by states imposing varying and inconsistent regimes for number conservation and area code relief. Such inconsistency could interfere with, or even prevent, the routing of calls in the United States.<sup>75</sup> The lack of uniformity also could hamper the industry's efforts to forecast and plan properly for exhaust of the North American Numbering Plan, and therefore ultimately could accelerate unnecessarily the introduction of a new nationwide numbering plan.<sup>76</sup> Introduction of a new plan would mean costly network

---

<sup>72</sup> Pennsylvania Commission comments at 3; PaOCA comments at 13. Specifically, the PaOCA states that businesses will have to reprint stationery and advertising materials, alarm monitoring companies will have to reprogram dialing devices located on their patrons' premises, and government agencies will have to advise citizens of new dialing requirements. *Id.* at 14.

<sup>73</sup> Such costs include the loss of a community's geographic identity, the risk that a business customer will dial an "old" number and not reach the intended business, the costs associated with reprogramming PBXs, and many other costs which are difficult to quantify. WHERE HAVE ALL THE NUMBERS GONE? LONG-TERM AREA CODE RELIEF POLICIES AND THE NEED FOR SHORT-TERM REFORM, Economics and Technology, Inc., March 1998, at 20-22.

<sup>74</sup> Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, *Declaratory Ruling and Order*, 10 FCC Rcd 4596, 4602 (1995).

<sup>75</sup> See *infra* at para. 39; see, e.g., Comcast comments at 2-3 (effect of wireless pooling in only a single state or single area code would be to deprive customers of ability to use service outside of a state or area code in which a pooled number was assigned); Industry Numbering Committee, Initial Report to the North American Numbering Council (NANC) on Number Pooling, INC 97-1017-019, at § 5.0 (dated Jan. 16, 1998, revised June 1998) (stating that pooling represents a major change in number assignment and administration, requiring changes in network infrastructure, operations support systems, and variations in call processing, including call routing and rating).

<sup>76</sup> Currently, out of approximately 800 different three-digit combinations for area codes, 249 codes are assigned for all purposes. Two hundred thirty-five codes are set aside for future area code relief, and 174 are set aside for various special purposes. One hundred forty-two general purpose codes remain that could be used for general area code relief.

upgrades to accommodate a new dialing scheme that would be confusing to consumers.<sup>77</sup> Upgrades would be necessary for carriers' networks as well as for privately owned systems such as private branch exchanges (PBXs).<sup>78</sup>

22. Industry groups, at the direction of the NANC, are working to develop number conservation measures and more efficient means of allocating and using numbers, particularly number pooling.<sup>79</sup> The NANC will make recommendations to the Commission on number pooling, and those recommendations will have the benefit of industry expertise and will be in large part the product of industry consensus. The Commission recognizes that number pooling should result in significant efficiencies in NXX administration and use, and anticipates using the NANC recommendations to conduct a rulemaking to establish national standards and regulations for number pooling architecture, administration, and implementation, and possibly other number conservation methods.<sup>80</sup> We look forward to the states' input in that process, and also look forward to working with the states to ensure that the process results in uniform, non-discriminatory, and procompetitive regulations in the area of number pooling and efficient

---

<sup>77</sup> The Industry Numbering Committee (INC) is working to identify the procedures required to expand the NANP to meet the long term needs of the telecommunications industry and end users in the geographic area served by the NANP. The INC will document expansion options and process requirements for the current 10-digit NANP environment and for expansion beyond that format. See Draft Industry Numbering Committee NANP Expansion Report.

<sup>78</sup> Upgrades to PBXs usually are phased in over time by ordering prospectively changes to equipment that is connected to the public switched telephone network.

<sup>79</sup> See Letters from Alan C. Hasselwander, NANC, to A. Richard Metzger, Jr., FCC, dated November 5, 1997 and December 22, 1997 (NANC November 5 Pooling Letter and NANC December 22 Pooling Letter). The NANC has concluded that number pooling is in the public interest and that national guidelines for number pooling architecture, implementation, and administration are appropriate. See NANC November 5 Pooling Letter. Further, the NANC has concluded that number pooling is not a substitute for appropriate area code relief in exhaust situations, but that it can improve number utilization and enhance local competition. See NANC December 22 Pooling Letter.

<sup>80</sup> The Common Carrier Bureau requested the NANC to provide a report on number pooling by September 23, 1998. The Bureau also requested the NANC to examine number conservation methods other than number pooling. See Letter from A. Richard Metzger, Jr., FCC, to Alan C. Hasselwander, NANC, dated March 23, 1998. We recognize that there are certain problems associated with number pooling that will have to be addressed. We note that the Number Pooling Subcommittee of the Illinois Number Portability Workshop, another group that is exploring number pooling as a means to conserve NXX codes, has informed the Commission that the NXX-X/LRN method, while promising, would "stretch the existing capabilities of number administration systems and LNP network routing databases." See Letter from Members of the Number Pooling Subcommittee of the Illinois Number Portability Workshop to A. Richard Metzger, Jr., FCC, dated October 8, 1997. The Number Pooling Subcommittee also states that number pooling would initially be limited to wireline carriers whose networks are LRN-capable, which means that wireless and other non-LRN-capable carriers would still need whole NXXs to ensure that numbering resources are available to all carriers in an equitable manner. *Id.* at 1 n.1. According to the Number Pooling Subcommittee, number pooling, if implemented using existing LNP processes and systems, would strain number administration systems and LNP network routing databases. *Id.* at 2.

use of numbering resources. Conservation methods are not, however, area code relief and it is important that state commissions recognize that distinction and implement area code relief when it is necessary.

23. *Delegation of Additional Authority to States.* As discussed above, in the *Local Competition Second Report and Order*, we did not delegate any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure, is, under the current regulatory structure, acting outside the scope of its delegated authority. We understand the exigencies of the situation in Pennsylvania and other states. We realize that, as the Pennsylvania Commission points out, NXX code rationing is common when an area code is facing relief, and we believe that state commissions may need flexibility to become involved in attempts to conserve NXX codes in order to extend the lives of area codes within their borders.<sup>81</sup> Therefore, we are reconsidering on our own motion the portion of the *Local Competition Second Report and Order* where we delegated authority to state commissions to implement new area codes, and we specifically delegate a limited amount of additional authority to state commissions that will allow them to order NXX code rationing in certain situations.<sup>82</sup> This authorization is effective immediately upon publication in the *Federal Register*. Because many state commissions are facing area code relief now, they need the ability to plan for the allocation of remaining NXX codes in the area codes that are being relieved and to ensure that the area codes will last until implementation of new codes. Therefore, there is good cause for this action to be effective upon publication pursuant to 5 U.S.C. § 553 (d)(3).

24. We agree with commenters asserting that the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan.<sup>83</sup> We therefore delegate authority to state commissions to order NXX code rationing only in conjunction with area code relief decisions, if the industry has been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief.<sup>84</sup> A state commission, therefore, may only impose an NXX rationing plan if the

---

<sup>81</sup> Pennsylvania Commission comments at 5.

<sup>82</sup> See Appendix B for rule changes.

<sup>83</sup> See, e.g., Petition at 18, Comcast comments at 4. See also PageNet reply comments at 4-6.

<sup>84</sup> Under the current industry guidelines, when the code administrator determines that an area code is in jeopardy, the code administrator will notify the NANPA and the affected parties of the established code relief date. Affected parties within the jeopardy NPA will be invited to attend a meeting that the code administrator will convene for an explanation of special conservation procedures that will be in effect until implementation of relief. At the meeting, the code administrator will also initiate discussion of extraordinary area code-specific conservation procedures. See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997 at § 8.3.

state commission has decided on a specific form of area code relief (*i.e.*, a split, overlay, or boundary realignment) and has established an implementation date. At that point, a state commission may work in partnership with the NXX code administrator to devise an NXX rationing plan based on whatever mechanisms the state commission and the NXX code administrator determine are most appropriate, including a lottery such as that used in Pennsylvania. State commissions and NXX code administrators also may consider imposing a usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center. We are granting this limited amount of additional authority because we recognize that in some situations the number of available NXX codes may be so few that the state may want to ensure that codes remain available on an equitable basis until the new area code is introduced, and that the industry may not reach consensus on a rationing plan when the situation is so extreme. We clarify that state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator. First, a state commission may not order such a return pursuant to a pooling trial. As discussed below, we decline to grant states the authority to order mandatory number pooling. Thus, states do not have the authority to order a return of a partial or entire NXX as part of a number pooling trial. Further, a state commission may not order the return of an NXX code or a 1,000 block pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan. Such actions fall outside of the authority granted the states to initiate traditional area code relief,<sup>85</sup> and would interfere with the code administrator's functioning pursuant to rules delegating to the code administrator the authority to manage the United States CO code numbering resource.<sup>86</sup>

25. If an area code goes into jeopardy, which industry guidelines define as that time when the forecasted or actual demand for NXX resources will exceed the known supply during the planning and implementation interval for area code relief,<sup>87</sup> the state commission's role with regard to NXX code rationing shall depend on where the state commission is in the process of making an area code relief decision and establishing an area code relief date. A state commission may order rationing only if it has ordered relief and established an implementation date, and the industry is unable to agree on a rationing plan. If the state commission has not yet chosen a relief method and established a relief date, the NXX code

---

<sup>85</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*), *vacated in part*, *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. Aug. 22, 1997), *cert. granted*, *AT&T Corp. v. Iowa Util. Bd.*, 118 S.Ct 879 (Jan. 26, 1998).

<sup>86</sup> See 47 C.F.R. § 52.15(d). We also note that currently, the NANC is developing a recommendation regarding the authority the code administrator exerts over auditing carriers' predictions for CO code utilization. See 7/22-23/98 NANC Meeting Minutes. We will address our role as well as that of the states and the NANPA in a future action regarding procedures to be taken in the event a carrier's NXX code utilization predictions prove to be inaccurate.

<sup>87</sup> See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997 at § 8.3 n.12.

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.

26. Carriers alleging that a particular NXX code conservation or rationing measure that a state commission orders unduly favors or disfavors a particular industry segment, or otherwise violates our guidelines for numbering administration, may file a petition for declaratory ruling with this Commission to seek relief. State commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief. If state commissions do not make decisions on area code relief when forecasts indicate that NXX depletion is imminent, carriers may petition this Commission for relief. The Commission, under its exclusive jurisdiction over numbering, can order the code administrator (which ultimately will be the NANPA) to implement area code relief.

27. We are aware that some states, such as Illinois, are conducting number pooling trials.<sup>88</sup> We encourage those efforts, and believe that state commissions conducting experimental number pooling trials may provide useful information that will aid in the development of uniform national standards for number pooling implementation, architecture, and administration. At this time, however, we decline to delegate to state commissions the authority to order number pooling, in view of the activity occurring at the federal level to develop such national standards. As we discuss below, we expect a recommendation from the NANC on national standards for number pooling by September 23, 1998, and we anticipate conducting a rulemaking to develop regulations on number pooling.<sup>89</sup> Until that time, we encourage number pooling experiments in the various states, provided that such experiments do not violate previous Commission decisions in the area of numbering administration and area code relief and that carrier participation is voluntary.<sup>90</sup> To that end, state commissions may order that a certain number of NXX codes in a new area code be withheld from

---

<sup>88</sup> See Illinois Commission reply comments at 1.

<sup>89</sup> See Letter from A. Richard Metzger, Jr., FCC, to Alan C. Hasselwander, NANC, dated March 23, 1998 (requesting a report from the NANC on number pooling within six months of the date of the letter).

<sup>90</sup> On April 17, 1998, the Pennsylvania Commission issued a Secretarial Letter to its Joint Task Force on Number Pooling. The letter stated that the Architecture and Administrative Guidelines subcommittees had recommended that Pennsylvania delay moving forward with 1,000 block number pooling until national standards and guidelines are established. The letter further stated that the Pennsylvania Commission will not delay the implementation of 1,000 block number pooling. The Pennsylvania Commission directed members of the task force to develop a Pennsylvania-specific implementation plan for 1,000 block number pooling, including a Request for Proposal (RFP) for a pooling administrator. Again, we support a number pooling trial in Pennsylvania, provided that carrier participation is voluntary and that Pennsylvania complies with the other conditions outlined in this Order.

assignment and saved for number pooling. No carrier, however, may be denied a NXX code so that it can be saved for pooling purposes. If a NXX code exhaust situation in an area code becomes so dire that there are not NXXs available to assign to carriers, the NXXs that have been withheld from assignment must be made available for carriers. States are thus free to implement number pooling trials that comply with the guidelines set forth in this Order.

28. Once the uniform national standards for number pooling are in place, it may be appropriate to delegate to state commissions additional authority to implement and enforce those standards. We emphasize, however, that the Pennsylvania Commission and other state commissions proceed with number pooling with the understanding that they ultimately may have to change their number pooling methods to conform to the national standards.<sup>91</sup> So that number pooling trials will not compromise uniform NXX code administration, we recommend that state commissions conducting pooling trials work cooperatively with the NXX code administrator on those aspects of the number pooling trial that affect NXX code administration. Further, while we do not require state commissions to conduct number pooling trials in a manner that is consistent with industry guidelines on NXX code administration, where applicable, we recommend that state commissions do so.<sup>92</sup> The guidelines are the product of industry consensus and adherence to those guidelines will promote nationwide uniformity.

29. Number pooling is not a substitute for area code relief because, at this time, it does not provide sufficient assurance that all telecommunications carriers will have access to numbering resources. In fact, number pooling would probably be a more effective conservation tool if applied to new area codes with many whole NXX codes, rather than to codes that already have a high usage rate, because there will be more whole NXXs, including blocks of 1,000 or fewer numbers and individual telephone numbers, to pool. Moreover, if a state commission implements number pooling on an experimental basis, numbering resources

---

<sup>91</sup> In its comments in this proceeding, the Colorado Public Utility Commission (Colorado Commission) states that it has established an industry task force to address efficient use of numbers in Colorado, and the task force is determining the feasibility of efficient number utilization techniques, such as number pooling. Colorado Commission comments at 2. The Colorado Commission states that it expects that any recommendation of the Colorado task force that the Colorado Commission ultimately implements will be subject to possible modification when a national standard is developed. It views its efforts as "an attempt to help forge a national standard" and recommends that those efforts be allowed to continue. *Id.* Similarly, the Illinois Commerce Commission (Illinois Commission) argues that state commissions are better positioned to address number pooling issues related to area code exhaust and efficient number assignment because they have a better understanding of their state-specific conditions and needs. The Illinois Commission notes that it currently has two open proceedings addressing number pooling, and asks that it be allowed to continue working on the issues to conclusion. Illinois Commission reply comments at 1. *See also* CUB reply comments at 2. We support the work of the Illinois and Colorado Commissions, and we anticipate that their trials will advance the understanding of different number conservation techniques.

<sup>92</sup> *See* Industry Numbering Committee Central Office Code (NXX) Assignment Guidelines (INC 95-0407-008) (dated April 1997).

must be available for those carriers that do not have the LNP technology available to participate in number pooling. We encourage the Pennsylvania Commission and other state commissions to consider other measures and activities, such as rate center consolidation, that affect number usage and may decrease the frequency of the need for area code relief.<sup>93</sup>

30. Although the Illinois number pooling trial falls outside of the guidelines that we adopt herein, we acknowledge Illinois has taken steps to ensure that the trial will not impede our NPA relief guidelines and efforts to initiate national number pooling standards. We therefore grant to Illinois limited authority to continue its pooling initiative, in spite of the trial's mandatory nature. Illinois has taken several precautions to conduct its pooling trial in a nondiscriminatory manner.<sup>94</sup> Further, although the Illinois pooling trial is mandatory, because the Illinois Commerce Commission (ICC) has ordered that an all services overlay will supersede the pooling trial in the event that NXXs in the 847 NPA are depleted, we conclude that the Illinois trial does not interfere with the operation of the guidelines that the Commission has established for traditional area code relief. We also observe that only those

---

<sup>93</sup> In the Pennsylvania Commission Order II, the Pennsylvania Commission established a Joint Task Force for the implementation of the Pennsylvania Commission's directives on NPA/NXX code relief and related conservation measures. It also solicited comments by February 20, 1998 on rate center consolidation and ordered the Joint Task Force to analyze the comments and report to the Pennsylvania Commission by April 10, 1998. We note Vanguard's statement in its reply comments that rate center consolidation is a potential method of number conservation that is within the Pennsylvania Commission's jurisdiction but is not subject to the technical barriers of number pooling and the transparent overlay. Vanguard reply comments at 9. See also Comcast reply comments at 1-2, 4.

Recently, the Colorado Commission ordered that the 43 rate centers comprising the 303 area code be reduced to 16. Rate Center Consolidation within the 303 Area Code, Creation of a Single Local Calling Area Defined as All Territory Within the 303 Area Code, and Permissive 11 Digit Local Dialing, *Decision and Order*, Decision No. C98-439, Docket No. 97M-548T, at 21 (dated April 29, 1998). The Colorado Commission noted that by consolidating rate centers, facilities-based local exchange service providers would need fewer NXX codes to provide local service. Such a result, the Colorado Commission concluded, would reduce the demand for NXX codes, improve number utilization, and prolong the life of the area codes serving the Denver metropolitan area. *Id.* at 6.

<sup>94</sup> The Illinois Commission stated that it was concerned with the possible exhaust of the 847 NPA. Petition by Citizens Utility Board to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630, and 708 area codes and Petition by Illinois Bell Telephone Company for Approval of an NPA Relief Plan for the 847 NPA, Docket Nos. 97-0192 and 97-0211 (Consol.), *Order* (May 11, 1998) (Illinois Order) at 20. While ordering pooling, the Illinois Commission recognized that a "back-up plan" was necessary because the pooling solution had not yet been completely developed or tested. *Id.* The Illinois Commission thus ordered the code administrator, Illinois Bell Telephone Company, to implement an all-services overlay plan within the 847 NPA, but to refrain from assigning the new NPA for as long as possible without causing an exhaust situation. *Id.* at 20-21. The Illinois Commission also exempted wireless carriers from participating in number pooling until June 30, 1999, in accordance with the date listed by the Commission by which wireless providers are to be LNP capable. *Id.* at 21. On September 1, 1998, the Wireless Telecommunications Bureau, under delegated authority, released an order delaying this date until March 31, 2000. In the Matter of Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, CC Docket No. 95-116, *Memorandum Opinion and Order*, DA 97-2579 (September 1, 1998)

carriers that have implemented permanent number portability are subject to the trial, and that wireless carriers will not be subject to the trial until they are required to implement LNP.<sup>95</sup> Finally, by requiring that national pooling rules or guidelines mandated by the Commission will supersede whatever guidelines Illinois has in effect for carriers operating within Illinois, we conclude that Illinois has not acted in a manner that undermines efforts by the Commission and the industry to establish a national pooling solution.<sup>96</sup> We acknowledge that Illinois has been at the forefront of developing number pooling as a number conservation measure, and we do not wish to discourage Illinois from continuing the work it has done in this area. We continue to be concerned, however, that there not be multiple, inconsistent pooling trials throughout the country, and therefore limit this grant of authority only to Illinois. We encourage states to participate in the national efforts to develop number conservation measures, including number pooling. Nothing in this paragraph should be read to prohibit state-ordered pooling trials, so long as such trials are voluntary as described herein. Because we do not wish to stifle state creativity, but rather seek to encourage state efforts to implement innovative number pooling plans, as we discuss in more detail in paragraph 31 below, state commissions that are considering number pooling trials that fall outside of the guidelines adopted herein should submit such plans to the Common Carrier Bureau.

31. We are very interested in working with state commissions that have additional ideas for innovative number conservation methods that this Commission has not addressed, or state commissions that wish to initiate number pooling trials the implementation of which would fall outside of the guidelines we adopt in this Order. We therefore encourage such state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these proposed conservation methods, comparable to the authority we are granting to Illinois in this Order. Because of the NANC's broad industry representation and the subject-matter expertise of its members, the Commission will seek a recommendation from the NANC on the proposed conservation method that a state commission presents. We encourage state commissions to present their proposals to the NANC first. If a proposed conservation method will conserve numbers and thus slow the pace of area code relief, without having anticompetitive consequences, we will consider delegating additional authority to state commissions to use the conservation method. We direct the Chief, Common Carrier Bureau, to make this determination, consistent with the authority we have delegated to the Common Carrier Bureau to determine whether area code relief plans are consistent with our regulations by acting on petitions filed by parties wishing to dispute proposed area code plans.

---

<sup>95</sup> While the Illinois Commerce Commission's order mandates that all wireline carriers participate in number pooling, the guidelines under which wireline carriers in the 847 NPA are operating specify that the 1,000 block assignment guidelines apply only to those carriers which have implemented permanent service provider number portability. See 847 NPA Number Pooling Guideline at §2.4

<sup>96</sup> See also 847 NPA Number Pooling Guidelines at § 2.3 (recognizing that guidelines are interim only, and will remain in place until national guidelines are developed and implemented).

We direct the Chief, Common Carrier Bureau, to consult with other Bureaus within the Commission, for example, the Chief, Wireless Telecommunications Bureau, when necessary to determine the potential ramifications on a particular industry segment of a proposed conservation method.

32. *State Commission Authority.* We clarify that the actions mandated by the Pennsylvania Commission in its July 1997 Order exceeded the scope of the authority the Commission has delegated to the state commissions. The Commission has not delegated jurisdiction over numbering issues to the states, as the above discussion of the *Local Competition Second Report and Order* demonstrates.<sup>97</sup> The text of that Order is clear that the Commission delegated to state commissions the authority to implement new area codes. Thus, state commissions can choose among available area code relief mechanisms (a split, an overlay, or a rearrangement of area code boundaries), based on their knowledge of local circumstances, including consumer preferences and demographics. State commissions also can make the decisions pertaining to the details of implementation of one of those area code relief methods, such as a decision on where the boundary between the old and the new area codes will be for a geographic split. In delegating authority to the state commissions to implement new area codes, we intended that state commissions would use that authority to implement relief when jeopardy has been declared.

33. As discussed above, the Commission specifically declined to delegate to state commissions the authority to administer or allocate NXX codes.<sup>98</sup> We disagree with MCI that the measures the Pennsylvania Commission originally took did not constitute NXX code administration.<sup>99</sup> While the Pennsylvania Commission itself was not actually assigning the NXX codes, it ordered carriers and the NXX code administrator to implement several measures, including 1,000 block pooling, 1,000 block reclamation, the return of NXX codes, and NXX code rationing, that are part of NXX code administration. If each state commission were to implement its own NXX code administration measures without any national uniformity or standards, it would hamper the NANPA's efforts to carry out its duties as the centralized NXX code administrator. In that event, the NANPA would have the potentially impossible task of performing its NXX code administration and area code relief planning functions in a manner that is consistent with both Commission rules and industry guidelines,

---

<sup>97</sup> Pennsylvania Commission comments at 18, *citing* 47 U.S.C. § 251(e)(1). *See also* NARUC comments at 2. NARUC argued that, because state area code relief decisions are based upon extensive records that include participation by consumers, the Commission should defer to state decisions as long as they are not discriminatory or technically anticompetitive. In its reply comments, however, Vanguard stated that the Pennsylvania Commission proceedings focused on what area code relief to adopt. The conservation measures, Vanguard argued, arose as a result of informal contacts between some of the parties and were not subject to normal notice and comment procedures. Vanguard reply comments at 6.

<sup>98</sup> *Local Competition Second Report and Order* at 19533.

<sup>99</sup> MCI comments at 4.

as well as fifty-one different regimes for overall NXX code administration. Further, a lack of consistency in NXX code administration could interfere with forecasting and projections for exhaust of the North American Numbering Plan and could force implementation of a new plan earlier than would otherwise be necessary to ensure that numbers are always available for telecommunications service providers.

34. We disagree with the assertion that, if Congress had intended to have the Commission review state commission decisions regarding numbering administration, the statute would expressly provide for such review.<sup>100</sup> Congress did not assign to state commissions any authority for area code relief or numbering issues in general. Congress gave the Commission exclusive jurisdiction over numbering matters in the United States, and the authority to delegate to state commissions all or any portion of that jurisdiction. The Commission delegated a discrete portion of that jurisdiction and placed certain parameters around that delegation, one of which is that the Commission retains authority to ensure that state commissions act consistently with federal regulations.

35. We disagree with arguments asserting that, because Petitioners filed appeals with the Pennsylvania Commonwealth Court, that forum is where this matter must be decided.<sup>101</sup> The Commission specifically retained jurisdiction over state commissions' decisions on area code relief when the Commission provided that parties wishing to dispute a proposed area code plan seek relief from the Commission. We have no intention of reviewing all state commission area code decisions. The Commission, however, reserved authority to act when a party alleges that a state has acted inconsistently with Commission guidelines and seeks relief.

36. *Compliance With Numbering Administration Regulations.* The Pennsylvania Commission's original plan violated our regulations, which we promulgated to ensure that telecommunications numbers are made available on an equitable basis.<sup>102</sup>

---

<sup>100</sup> Pennsylvania Commission comments at 18.

<sup>101</sup> *Id.* at 19. Similarly, the Pennsylvania Commission argued that forbearance by the Commission is called for where the state appellate process has been initiated by petitioners, and that a federal regulatory agency should apply comity in considering matters addressed by state regulatory agencies. *Id.* at 24-25. The Pennsylvania Commission stated that, because Petitioners are seeking review of issues pending in the Pennsylvania Commonwealth Court, the Commission should decline to review the issues even if it is empowered to do so, because duplicate litigation of identical issues is contrary to the principles of abstention, whereby federal courts defer to state courts. *Id.* at 25. See also NARUC comments at 4-5. Subsequent to the Pennsylvania Commission filing its comments, the Commonwealth Court remanded the case to the Pennsylvania Commission. See Order of the Commonwealth Court of Pennsylvania, Nos. 2241, 2255, and 2297, Commonwealth Docket 1997, February 26, 1998.

<sup>102</sup> 47 C.F.R. § 52.9.

37. *Availability of Numbering Resources.* The original Pennsylvania plan did not facilitate entry into the telecommunications marketplace by making numbering resources available on an efficient and timely basis to carriers.<sup>103</sup> Although the Pennsylvania Commission intended for transparent overlays and number pooling to extend the exhaust date for the area codes, the measures were unproven and could have deprived carriers of the numbers they needed to offer their services. If the conservation measures, even if technically feasible, did not yield the desired return of whole NXXs, so that carriers that could not participate in the conservation measures could obtain them to provide service, those carriers would not have access to numbering resources during the time in which the Pennsylvania Commission decided on splits or overlays and carriers implemented the new area codes.<sup>104</sup>

38. We do not question the good faith efforts of the Pennsylvania Commission to conserve numbering resources and avoid unnecessary disruption to consumers. Conservation measures should delay the declaration of jeopardy by the code administrator and provide additional time for the implementation of area code relief once jeopardy has been declared. Such measures, however, particularly unproven ones such as number pooling, are not a substitute for area code relief after jeopardy has been declared.<sup>105</sup> When an area code is in jeopardy, a decision on area code relief (*i.e.*, a geographic split, an overlay, or a rearrangement of area code boundaries) should occur promptly, and through an orderly process. State commissions, by declining to implement area code relief, should not put carriers in the position of having no numbers and therefore being unable to serve customers. We commend the Pennsylvania Commission's recent actions to implement traditional area code relief. For competition to continue to develop, all carriers must have access to numbering resources. Relying on experimental conservation methods, rather than planning for traditional area code relief, during the jeopardy period would place some carriers at risk and could delay area code relief implementation well beyond the projected exhaust dates.

---

<sup>103</sup> 47 C.F.R. § 52.9 (a)(1).

<sup>104</sup> We agree with several wireless carriers' comments noting that the Pennsylvania Commission Order did not suggest how wireless carriers were to obtain numbers after their existing assigned NXXs were depleted. *See* AT&T Wireless comments at 2-5; *see also* AirTouch comments at 6-7 (stating that the Pennsylvania Commission did not adopt any safeguards to ensure wireless access to numbering resources, and that the Pennsylvania Commission's decision to ration only three NXX codes per month exacerbated the anticompetitive impact of its number pooling plan by limiting further the resources available to wireless carriers); AMTA comments at 4; PageNet reply comments at 3-4.

<sup>105</sup> We agree with commenters arguing that it was not possible for the Pennsylvania Commission to base a relief plan on either a transparent overlay or on number pooling, because transparent overlays raised many issues that most likely could not be resolved satisfactorily in time to extend significantly the life of the Pennsylvania area codes, and because the industry has not yet developed a number pooling mechanism. *See, e.g.*, USTA comments at 2; *see also* GTE reply comments at 10-11 (contending that pooling is not a workable alternative before number pooling administration guidelines have been determined by the NANC).

39. Measures such as those ordered by the Pennsylvania Commission could affect negatively the routing of calls in the United States. For example, although the Pennsylvania Commission and the PaOCA asserted that the "transparent overlays" did not conflict with the requirements for 911 or E911 service,<sup>106</sup> and that no solution in the Order adversely affected roaming,<sup>107</sup> the record supports a finding that there is at least a potential for disruption in 911 service if wireless carriers must participate in the "transparent overlays" in order to obtain numbers. For example, Petitioners allege that when calling 911, a wireless customer's "transparent number" would be transmitted to the Public Safety Answering Point (PSAP), not the customer's "ported number."<sup>108</sup> According to Petitioners, transmitting this "transparent number"—which is non-callable—to the PSAP would disrupt the ability of the 911 system to call back the location from which the 911 call was received.<sup>109</sup> The record also indicates a potential for service disruption if Pennsylvania wireless customers who have numbers assigned from the "transparent overlays" or whose carriers are attempting to participate in 1,000 block number pooling roam outside of Pennsylvania. Transparent overlays require the use of RCF.<sup>110</sup> The Commission previously recognized several limitations surrounding the use of RCF, including degradation of transmission quality.<sup>111</sup> The Commission also found that use of RCF places a significant strain on number administration and contributes to area code exhaust.<sup>112</sup> Furthermore, according to Comcast, the effect of wireless pooling in only a single state or single area code would be to deprive customers of the ability to use the service outside of the state or area code in which a pooled number was assigned.<sup>113</sup>

---

<sup>106</sup> Pennsylvania Commission comments at 12; PaOCA comments at 6-9.

<sup>107</sup> PaOCA comments at 9-10. Roaming is defined as a telecommunications service occurring when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider. Most often, roaming occurs when the subscriber is physically located outside the service area of his or her service provider. See Wireless Telecommunications Bureau Seeks Comment On CTIA Petition for Waiver to Extend Implementation Deadlines of Wireless Number Portability, *Public Notice*, CC Docket No. 95-116, DA 97-2579, (rel. December 9, 1997).

<sup>108</sup> Petition at 9; see also Vanguard reply comments at 8; Sprint PCS reply comments at 10; AirTouch comments at 4-6; AMTA comments at 5-6; Comcast comments at 2-3; PCIA comments at 2.

<sup>109</sup> *Id.*

<sup>110</sup> Petition at 15. See also *supra* n.37

<sup>111</sup> Telephone Number Portability, *Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 95-284, 10 FCC Rcd 12350, 12369 (1995).

<sup>112</sup> *Id.*

<sup>113</sup> Comcast comments at 2-3. See also Sprint PCS reply comments at 10; CTIA reply comments at 9-10; AirTouch comments at 4-6; AMTA comments at 5-6; PCIA comments at 2. *But cf.* PaOCA Comments at 9; see also MCI comments at 10-11.

40. *Discrimination Against an Industry Segment.* We agree with Petitioners that the Pennsylvania Commission's original reliance on the use of number pooling and transparent overlays unduly disfavored wireless and non-LRN capable carriers because it did not provide adequate assurances that those carriers would have access to numbering resources. We find, therefore, that the measures mandated in the July 15, 1997 Order violated our rule requiring that numbering administration not unduly favor or disfavor any particular telecommunications industry segment.<sup>114</sup> As Petitioners note, because of the later introduction of LNP for wireless technologies and other technological aspects of wireless service, the measures the Pennsylvania Commission originally ordered provided no assurances of useful numbering resources to wireless carriers and appeared to leave those carriers without a source of numbers in these area codes that are approaching exhaust.<sup>115</sup> As explained above, if carriers could not take advantage of the transparent overlays and number pooling, and there was no area code relief, those carriers would be unable to obtain numbers and, consequently, would be unable to provide service to customers.

41. The PaOCA stated that Commission rules do not prohibit wireless carriers from implementing LNP before June 30, 1999, and that the first Pennsylvania Commission Order offered equal opportunity for all carriers to use LNP-based number pooling.<sup>116</sup> In the *Number Portability Order*, the Commission stated that additional time was needed to develop standards and protocols to overcome the technical burdens unique to the provision of seamless roaming on cellular, broadband PCS, and covered SMR networks.<sup>117</sup> Wireless carriers may not be able to overcome those technical burdens to implement LNP before the June 30, 1999, deadline. Further, even if wireless carriers could overcome the technical burdens and implement LNP in Pennsylvania, the repercussions could be widespread. Because of the manner in which wireless carriers offer their services, they cannot develop a localized number portability

---

<sup>114</sup> 47 C.F.R. § 52.9 (a)(2).

<sup>115</sup> Petition at 14. We recognize that the measures that the Pennsylvania Commission proposed to attempt to alleviate the NXX code depletion problem unduly disfavor wireless carriers because they cannot participate in LNP. On the other hand, we would be remiss if we did not note that the Wireless Telecommunications Bureau, under delegated authority, recently granted the petition of CTIA to extend the schedule for wireless carriers' implementation of LNP to March 31, 2000. In the Matter of Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, CC Docket No. 95-116, *Memorandum Opinion and Order*, DA 97-2579 (September 1, 1998). We also observe that CTIA has filed a separate but related petition requesting the Commission to forbear from enforcing number portability requirements for CMRS licensees until the five-year build-out period for PCS carriers has expired. See CC Docket No. 95-116, Petition for Forbearance of the Cellular Telecommunications Industry Association (filed Dec. 16, 1997) (*CTIA Forbearance Petition*). The *CTIA Forbearance Petition* is currently pending before the Commission. Thus, even in the future, wireless carriers may not be able to participate in a number pooling scheme.

<sup>116</sup> PaOCA comments at 3.

<sup>117</sup> *Number Portability Order*, 11 FCC Rcd at 8440.

method without affecting the other states in their service areas and the carriers with whom they have roaming agreements across the country.<sup>118</sup> Forcing wireless LNP implementation before the Commission's deadline would have an impact on more than just the Pennsylvania area codes at issue, even if wireless carriers only had to implement LNP in Pennsylvania.

42. The original plan also unduly disfavored wireless carriers because its implementation would have caused service problems for wireless carriers and their customers, but similar burdens would not have been placed on other types of carriers. As noted above, the transparent overlays could cause problems for wireless 911 service and wireless roaming, and the burden of rectifying those problems in order to use numbers from the transparent overlays would be imposed solely on the wireless industry.<sup>119</sup>

43. Because of the NXX code rationing plan that the Pennsylvania Commission ordered, the original plan also would have unduly disfavored carriers that could not participate in the transparent overlays and number pooling. The Pennsylvania Commission asserts that the NXX code rationing is not discriminatory against wireless carriers because there is always NXX code rationing, initiated by the NXX code administrator, when an NPA approaches the end of its life, and all carriers are treated equally in the rationing process.<sup>120</sup> While it is true that NXX code rationing is common when an area code is in jeopardy, rationing typically extends the life of an area code until implementation of a relief code,<sup>121</sup> and rationing typically affects all carriers equally. In this case, however, the rationing would have a disparate effect on the carriers that could not participate in the transparent overlays and number pooling ordered by the Pennsylvania Commission, because carriers that could not participate in those conservation measures would only have been able to obtain numbers through the rationing process, and may thus have been thwarted in providing service, while carriers that could participate in the conservation measures would have had multiple potential sources for obtaining numbers.<sup>122</sup> The record before us demonstrates that at least one carrier,

---

<sup>118</sup> Wireless carriers' service areas are not restricted to particular state, area code, or Local Access and Transport Area (LATA) boundaries. Any LNP method developed in one state automatically would impact customers in other states that are in a wireless carrier's service area. Further, carriers with whom wireless carriers have roaming agreements may be unable to honor those agreements if they cannot recognize numbers that have been ported to and from wireless carriers who are applying a localized number portability method in a particular state.

<sup>119</sup> See *supra* at para. 38.

<sup>120</sup> Pennsylvania Commission comments at 5.

<sup>121</sup> See Industry Numbering Committee, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, reissued April 1997 at § 8.3. The code administrator is to convene a meeting to explain the conservation procedures that will be in effect until code relief is implemented.

<sup>122</sup> Comcast noted that, by not adopting an area code relief plan, the Pennsylvania Commission extended the period of rationing indefinitely in all affected area codes. Comcast reply comments at 4 n.7.

Nextel, ran out of numbers in area codes 610 and 215, would not have been able to participate in the transparent overlays and number pooling without significant problems, and had difficulty obtaining NXX codes under the rationing plan.<sup>123</sup>

44. The Pennsylvania Commission has changed its directions to the NXX code administrator regarding rationing and directed that NXX codes be rationed at a rate of ten per month. The Pennsylvania Commission also asked the NXX code administrator to schedule an industry meeting for discussion of the allocation of remaining NXX codes pending the availability of additional codes.<sup>124</sup> If some carriers were to participate in number pooling between now and implementation of new area codes for 717, 215, and 610, it appears that the rationing could still have a disparate effect on those carriers that cannot participate in such conservation measures. We are, as explained further below, providing a forum for relief for carriers that may need to obtain an NXX code outside of the parameters of the rationing plan.

45. *Technological Neutrality.* We do not determine whether Pennsylvania's original proposed methods would have been "technology-neutral," and therefore consistent with our rule requiring that numbering administration not unduly favor or disfavor any telecommunications technology, if carriers that could not have participated in the transparent

---

<sup>123</sup> Letter from Robert S. Foosaner, Nextel, to A. Richard Metzger, Jr., FCC, dated November 18, 1997 (Nextel November 18 ex parte) at 1. See also Letter from Robert S. Foosaner, Nextel, to Chairman William E. Kennard, Commissioner Susan Ness, Commissioner Harold Furchtgott-Roth, Commissioner Michael Powell, and Commissioner Gloria Tristani, FCC, dated December 19, 1997 (Nextel December 19 ex parte) at 1 and Letter from Robert S. Foosaner, Nextel, to Ari Q. Fitzgerald, FCC, dated January 9, 1998 (Nextel January 9 ex parte) at 1. Nextel stated that it had to assign Philadelphia customers numbers from NXXs in the 609 area code in New Jersey, which meant that calls to Nextel subscribers from Philadelphia homes and businesses became toll calls. Nextel also stated that it was forced to reimburse these toll charges for its customers in order to compete. Further, Nextel stated that it "purchased" 215 and 610 telephone numbers from a competitive local exchange carrier, which meant that it paid the CLEC to switch 1,000 number ranges from its 215 and 610 NXXs to Nextel. Nextel stated that it incurred costs for T1 facilities and trunks to the CLEC, per call switching costs and the costs of sending its traffic through the CLEC's network. Nextel added that customers assigned these numbers experienced degraded service. Nextel January 9 ex parte at 1. The Pennsylvania Commission responded that Nextel's actions demonstrated that "code sharing" is a reality and that Nextel can secure numbers in blocks of 1,000. See Letter from James J. McNulty, Pennsylvania Commission, to Magalie R. Salas, FCC, dated January 28, 1998 at 3. The fact remains, however, that, in order to provide service through these measures, Nextel has experienced burdens and expenses that other carriers have not experienced.

<sup>124</sup> Pennsylvania Commission Order IV at 15; Pennsylvania Commission Order V at 17.

overlays and number pooling had other access to numbering resources.<sup>125</sup> It is not necessary to resolve that question here.<sup>126</sup>

46. *Section 253.* Although Petitioners and commenters raised arguments under section 253 of the Communications Act,<sup>127</sup> we will not address those arguments in this Order. Because of the Pennsylvania Commission's most recent Orders, Petitioners have obtained the relief they seek, and addressing the arguments put forth under section 253 is not necessary to provide the clarification and guidance that state commissions need in this area.

47. *Area Code Relief in Pennsylvania.* We are not ordering area code relief for area codes 215, 610, and 717, as requested by Petitioners, because the Pennsylvania Commission has acted to provide for such relief. Because wireline carriers have implemented LNP or will be implementing LNP soon in the area codes at issue,<sup>128</sup> it does not appear that the Pennsylvania Commission still intends to implement transparent overlays, but the Pennsylvania Commission Orders VI and VII did not specifically rescind the earlier Orders' provisions regarding transparent overlays. We clarify that implementation of transparent overlays is beyond the state commissions' jurisdiction, and, as discussed above, we have misgivings about transparent overlays as an effective relief method because of their impacts on some carriers.

48. The Pennsylvania Commission's original imposition of NXX rationing measures was inconsistent with this Order's delegation of authority to state commissions, because the state commission imposed the rationing plan when the area codes were in jeopardy, without having chosen an area code relief method and established a relief date. As discussed above, rationing of NXX codes should only occur when the area code is in jeopardy

---

<sup>125</sup> 47 C.F.R. § 52.9 (a)(3).

<sup>126</sup> By letter dated August 22, 1997, the NANC requested guidance from the Commission on the meaning of technological neutrality in the context of addressing area code depletion generally, and more specifically in the introduction of number pooling under an NXX-X/LRN scheme prior to the adoption of LNP by all carriers and in unassigned number porting. The NANC stated that Commission orders have required technological neutrality, and that NANC members have explored inconclusively the meaning of this term. The Commission sought comment on the issues raised in the NANC's letter. See Common Carrier Bureau Seeks Comment on North American Numbering Council Letter Seeking Clarification of the Term "Technology Neutral," *Public Notice*, DA 97-2234 (rel. Oct. 20, 1997). The Commission received comments on October 29, 1997, and received reply comments on November 6, 1997.

<sup>127</sup> 47 U.S.C. § 253.

<sup>128</sup> Under our implementation schedule, wireline carriers were to have completed LNP implementation in Philadelphia by March 31, 1998. Implementation must be completed in Harrisburg by December 31, 1998. Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, 12 FCC Rcd 7236, 7346 (1997) (*First Order on Reconsideration*).

and should only be for the purpose of extending the life of the area code until the date of area code relief implementation. Because the Pennsylvania Commission has ordered area code relief and because the NXX code situation in Pennsylvania is exigent, however, the current NXX code rationing plan may continue.

49. Until area code relief is implemented in the 215, 610, and 717 area codes in Pennsylvania, we grant additional authority to the Pennsylvania Commission, if requested, to hear and address claims of carriers claiming that they do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service. Evidence presented may include the carrier's business plan, requests for new service that the carrier has denied because of its lack of numbering resources, and the number of requests for new service that the carrier has been receiving. We request that the Pennsylvania Commission not share the information with any party or entity other than this Commission, if necessary. If, in fact, those carriers cannot serve customers because they do not have numbers, or if they are having to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service before implementation of the new area codes, the Pennsylvania Commission should work with the code administrator to ensure that those carriers have access to NXXs outside of the parameters of the rationing plan. If the Pennsylvania Commission orders a carrier to use an extraordinary measure to obtain numbering resources, such as NXX code sharing, it should not unduly disfavor the carrier, impede the carrier's ability to enter the market, or put the carrier in the position of being in violation of this Commission's rules.

50. We decline to order an "expanded overlay," as Omnipoint advocates.<sup>129</sup> Because the Pennsylvania Commission has acted to provide area code relief, Omnipoint's arguments are moot.

51. *Referral to the NANC.* We ask the NANC for a recommendation as to whether, in the future, the state commissions or the NANPA, Lockheed Martin IMS, should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive an NXX or multiple NXXs outside of the parameters of the rationing plan if it demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service. We recognize the need for such a forum for extraordinary relief, whether the rationing plan is the product of industry consensus or is one a state commission has ordered. We request that the NANC provide a recommendation on this question within 60 days of the effective date of this order.

---

<sup>129</sup> Omnipoint comments at 3-5.

## V. FINAL REGULATORY FLEXIBILITY CERTIFICATION

52. As permitted by section 605(b) of the Regulatory Flexibility Act (RFA),<sup>130</sup> we certify that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this Order will not impose a significant economic impact on a substantial number of small entities as defined by statute, or by the Small Business Administration (SBA). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>131</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>132</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>133</sup> The rule expands state commissions' authority to implement area code relief by granting additional authority to the state commissions to, under certain conditions, ration NXX codes in conjunction with area code relief decisions. Because state commissions will be the entities complying with the rule, and because the expansion of the rule simply supplements authority that the state commissions already have, we can certify that a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).<sup>134</sup>

53. The Commission's Office of Public Affairs, Public Reference Branch, will send a copy of this certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. section 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. section 605(b). A copy of this certification will also be published in the *Federal Register*.

---

<sup>130</sup> 5 U.S.C. § 605(b).

<sup>131</sup> *Id.* § 601(6).

<sup>132</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>133</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>134</sup> SBREFA is Title II of the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847, 857 (1996), codified at 5 U.S.C. § 601 et seq.

## VI. CONCLUSION

54. We delegate additional authority to state commissions to order NXX code rationing in conjunction with area code relief decisions, in the absence of industry consensus on a rationing plan. We also delegate authority to the Chief, Common Carrier Bureau, to delegate additional authority for state commissions to implement innovative or experimental number conservation efforts. We conclude that: (1) the Pennsylvania Commission acted outside of the scope of its delegated authority in the July 15, 1997 area code order; and (2) the July 15, 1997 area code order unduly disfavored Petitioners and carriers that could not participate in certain number conservation measures ordered by the Pennsylvania Commission. We ask the NANC for a recommendation as to whether, in the future, the state commissions or the new NANPA, Lockheed Martin IMS, should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive an NXX or multiple NXXs outside of the parameters of the rationing plan if it demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service.

## VII. ORDERING CLAUSES

55. Accordingly, pursuant to section 1, 4(i), 201-205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, IT IS ORDERED that the Petition for Declaratory Ruling filed by Nextel Communications, Inc., Sprint PCS, Vanguard Cellular Systems, Inc., 360 Communications Company, and Bell Atlantic Mobile, Inc. is GRANTED to the extent described herein.

56. IT IS FURTHER ORDERED, that, pursuant to section 1, 4(i), 201-205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, we reconsider on our own motion a portion of 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) (*Local Competition Second Report and Order*), and authorize state commissions to order NXX code rationing in conjunction with area code relief decisions, consistent with the terms as defined in this Order. Pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. § 408, this authorization is effective immediately upon publication in the *Federal Register*. The remaining policies and requirements set forth herein are effective upon release of this Order.

57. IT IS FURTHER ORDERED, that the Chief, Common Carrier Bureau, is directed to determine whether state commissions should be delegated additional authority to implement innovative or experimental number conservation efforts.

58. IT IS FURTHER ORDERED, that the NANC, within 60 days of the effective date of this Order, provide a recommendation as to whether, in the future, the state commissions or the NANPA should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive an NXX or multiple NXXs outside of the parameters of the rationing plan if it demonstrates that it has no number and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service.

59. IT IS FURTHER ORDERED, that the Commission's Office of Public Affairs, Public Reference Branch, will send a copy of this certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. § 605(b). A copy of this certification will also be published in the *Federal Register*.

60. IT IS FURTHER ORDERED that PageNet's Motion to accept late-filed reply comments is hereby accepted.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

**APPENDIX A**Parties Filing Comments

American Mobile Telecommunication Association, Inc. (AMTA)  
AirTouch Communications (AirTouch)  
AT&T Wireless Services, Inc. (AT&T Wireless)  
Bell Atlantic  
Cellular Telecommunications Industry Association (CTIA)  
Colorado Public Utility Commission (Colorado Commission)  
Comcast Cellular Communications, Inc. (Comcast)  
MCI Telecommunications Corporation (MCI)  
The National Association of Regulatory Utility Commissioners (NARUC)  
Omnipoint  
Pennsylvania Public Utility Commission (Pennsylvania Commission)  
Pennsylvania Office of Consumer Advocate (PaOCA)  
Personal Communications Industry Association (PCIA)  
United States Telephone Association (USTA)

Parties Filing Reply Comments

AT&T Wireless  
CTIA  
Citizens Utility Board, People of the State of Illinois, City of Chicago, and People of Cook  
County (CUB)  
Comcast  
GTE  
The Illinois Commerce Commission (Illinois Commission)  
MCI  
Nextel Communications (Nextel)  
Paging Network, Inc. (PageNet)  
Pennsylvania Commission  
Sprint PCS  
Vanguard Cellular Systems, Inc. (Vanguard)  
United States Cellular Corporation (USCC)  
360 Communications Company (360)

## Appendix B

### Rule Changes

#### PART 52--NUMBERING

1. The authority citation for part 52 continues to read as follows:

Authority: Sec. 1,2,4,5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3,4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-205, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Revise paragraph (a) of section 52.19 to read as follows:

\*\*\*\*\*

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes. State commissions may also order central office code rationing in conjunction with area code relief decisions, if the carriers operating in the area have been unable to reach consensus on a rationing plan to extend the life of an area code, until implementation of relief. A state commission may impose a central office code rationing plan only if the state commission has decided on a specific form of area code relief (*i.e.*, a split, overlay, or boundary realignment) and has established an implementation date for that relief.

\*\*\*\*\*

**Joint Separate Statement of  
Commissioners Gloria Tristani and Harold Furchtgott-Roth**

*Re: 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.*

We support today's Order concerning the division of responsibility over telephone number allocation. We believe it strikes a reasonable balance between giving state commissions more breathing room to conduct certain types of number conservation trials and ensuring that individual carriers can acquire new blocks of numbers when they need them.

We would express our strong support for the idea of giving state commissions greater control over number allocation. The reason is that state commissions, not this Commission, directly face the millions of consumers who are unhappy at the prospect of having new area codes imposed on them. We sympathize with state commissioners who face this difficult situation, and we fully understand their interest in taking aggressive action to stem the depletion of telephone numbers.

We would underscore the Order's invitation to state commissions to work with the FCC, both formally and informally, to devise ways of alleviating the strain on the numbering system. There is no question that state commissions and the FCC share the goal of minimizing the number of consumers who must endure a change in their area codes.

Finally, we note that the North American Numbering Council will present its recommendations on various long-term number conservation techniques to the Commission soon. Those recommendations will provide the foundation for a Commission proceeding on number conservation techniques that we hope will finally provide real relief to state commissions and consumers on this issue. Given the continued and growing demand for new numbers, along with the substantial difficulty this causes for consumers and state commissions, we would express our strong interest in seeing this Commission complete its upcoming proceeding on numbering conservation issues as rapidly as possible.

###