

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

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

**OPPOSITION OF BELL ATLANTIC MOBILE, INC.
TO PETITIONS FOR RECONSIDERATION**

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SUMMARY

Bell Atlantic Mobile, Inc. (BAM), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby opposes eleven of the twelve petitions for reconsideration¹ of the Commission's September 28, 1998, *Memorandum Opinion*

¹ The petition filed by SBC Communications Inc. principally seeks clarification of the duties of state commissions to implement area code relief. BAM supports SBC's petition because it is consistent with the Commission's numbering policies and because it emphasizes the importance of uniform rules and the timely assignment of number resources.

and Order and Order on Reconsideration (Order) in this proceeding.² BAM is one of five wireless carriers which filed the Petition for Declaratory Ruling that led to the Commission's issuance of the *Order*.

These eleven petitions challenge the Commission's authority to implement consistent national numbering policy. They should be denied, and the *Order* should be affirmed, because petitioners fail to demonstrate that the *Order* was legally invalid in any respect. To the contrary, the relief petitioners request would inhibit competition in the telecommunications industry and undermine other policies and goals of the Commission and the Communications Act. The petitions essentially request that state utility commissions be given *carte blanche* to order number conservation methods independent of or in lieu of area code relief, and even where area code relief is indisputably needed. With fifty state commissions setting off on their own, transferring such authority to them would undercut the uniform administration of numbers that is so critical not only to competition but to the proper functioning of the nationwide communications network. *See Order* at ¶ 21. The danger is particularly clear for wireless carriers, which operate across state boundaries and would thus be impeded by piecemeal and inconsistent number conservation efforts.

² *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717*, NSD File No. L-97-42, released September 28, 1998. *See* 64 Fed. Reg. 3104 (January 20, 1999) (giving public notice of the reconsideration petitions and the opportunity to file oppositions by February 4, 1999).

Even more unsettling, actual experience, much of it from the same state commissions seeking reconsideration, demonstrates that states' efforts to pursue code conservation have resulted in extended jeopardy periods, prolonged number rationing, total exhausts, and discrimination against certain industry segments that has impaired their ability to meet the needs of the public. Those outcomes violate federal numbering policy goals and impede competition.

BAM recognizes and supports the public policy goal of maximizing the efficient use of telecommunications number resources. However, optimization measures must not undermine the paramount objectives of number availability, non-discriminatory access to numbers, and the fostering of competition. The Commission, working with the NANC and the industry, is exploring such number optimization methods at a national level.³ BAM is participating in those proceedings, and the petitioners can and should do so as well. In the meantime, state commissions have ample room to experiment with number pooling through their newly delegated authority to conduct voluntary number pooling trials and their ability to petition the Commission for additional authority to implement specific measures. There is no legal or factual basis for granting the unfettered authority requested by the petitioners. Their petitions should be denied.

³ For example, the Commission sought and has received comments on alternative measures for enhancing the efficient use of numbering resources. *In the Matter of North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-134, DA 98-22654, released November 6, 1998 (*Number Optimization Proceeding*).

I. THE RELIEF PETITIONERS REQUEST IS CONTRARY TO COMMISSION RULES AND THE GOALS OF THE ACT.

A. The Order's Rulings Are Grounded in the Act.

Section 251(e)(1) of the Act vests the Commission with “exclusive” jurisdiction over numbering administration. As the *Order* notes (at ¶ 34), “Congress did not assign to state commissions any authority for area code relief or numbering issues in general.” Petitioners do not challenge the Commission’s exclusive authority to demarcate federal and state responsibilities, nor could they.

To implement Section 251(e)(1), Section 52.9(a) of the Commission’s Rules requires that the administration of numbers must:

- (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 telecommunications industry segment or group of telecommunications carriers; and
- (3) Not unduly favor or disfavor one telecommunications technology over another.

In the *Order*, the Commission correctly focused on these three regulatory requirements, as well as on its previously announced objective of maintaining “a nationwide, uniform system of numbering.” The Pennsylvania plan fell short because it “did not facilitate entry into the telecommunications marketplace by making numbers available on an efficient and timely basis” (*Order* at ¶ 37) and “unduly disfavored wireless and non-LRN capable carriers” (*Order* at ¶ 40). The

limits on the authority delegated to state commissions – especially those challenged by the petitioners – are grounded in these same principles. Petitioners fail to sustain any argument as to why these principles are not valid, or why they do not support the actions taken by the *Order*.⁴ Instead, petitioners rehash arguments that many of them already made earlier in this proceeding. Petitions for reconsideration which, like these, consist of reargument are to be dismissed.⁵

B. The Order’s Limits on Rationing Are Necessary to Assure Timely Availability of Numbering Resources.

The *Order* (at ¶ 24) delegates to state commissions the authority to order NXX code rationing, but only in the absence of an industry consensus on the issue, and only after the state commissions have decided on a specific form of area code relief and have set an implementation date. Almost all of the petitioners object to these limitations, asserting that state commissions should have the authority to order rationing in the interest of forestalling or avoiding area code relief.

⁴ For example, petitioners never confront the problems that state-by-state actions will cause for wireless carriers, which hold licenses to operate systems transcending state boundaries and provide nationwide “roaming” service. The *Order* (at ¶¶ 40-42) correctly acknowledges the harms that flow from piecemeal numbering solutions. Nationwide solutions are essential for this reason alone, yet petitioners ignore the needs of wireless carriers.

⁵ “Petitions for reconsideration are not granted for the purpose of debating matters which have already been fully considered and subsequently settled. . . . Bare disagreement, absent new facts and argument properly placed before the Commission, is insufficient grounds for reconsideration.” *Direct Broadcast Satellite Service*, 53 RR 2d 1637, 1641-42 (1983).

What the petitioners fail to acknowledge is that rationing is anticompetitive, because it denies numbers to carriers who need them. Without numbers, affected carriers cannot provide service and compete. Rationing may have a limited role as a stopgap measure in transitioning from an old exhausted NPA to a new one, as the Commission recognized in giving state commissions the limited authority they now have. Rationing may not be used, however, as a “substitute[] for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.” *Order* at ¶26. Petitioners fail to show why the *Order’s* findings in this regard are contrary to the Act or the Rules; in fact they are clearly consistent with both.

Experience shows that many state commissions have used rationing to extend artificially the time to exhaust and delay area code relief, with the result that carriers are not able to obtain the numbering resources they need to compete. Pennsylvania is a prime example. The tortuous history of Pennsylvania Public Utility Commission (PUC) efforts to avoid area code relief are set forth fully in the *Order* and the original Petition for Declaratory Ruling filed by BAM and other wireless carriers. In brief, petitions for area code relief in the 215, 610, and 717 NPA were filed in May and June of 1996. Rather than adopt area code relief, the PUC instead ordered rationing of NXXs at the highly restrictive rate of three per month. All these actions were taken at a time when area code relief was desperately needed. By the time BAM and the other wireless carriers sought judicial and FCC relief, one carrier, Nextel, had already run out of numbers in the 215 and 610 NPAs. (*Order* at n.23). By June of 1998, all available NXXs in 215 had

been assigned. Another carrier, Sprint PCS, exhausted its supply of numbers in the 215 NPA. By the time area code relief finally takes effect in July of 1999, the 215 NPA will have been totally exhausted for more than a year.

In the 212 NPA in New York, rationing went into effect in November of 1997. The available numbers in that NPA exhausted in 1998, and area code relief, though finally ordered, will not go into effect until July of 1999. Thus, by the time carriers see area code relief in New York, they will have deprived of timely access to new numbers for over a year and a half.

In the 609 NPA in New Jersey, the code administrator filed a petition for area code relief with the New Jersey Board of Public Utilities (BPU) in October of 1996. Despite completing evidentiary hearings in the fall of 1997, the BPU did not order relief until yesterday – *twenty-eight months* since the original petition for relief was filed. Rationing has been in effect in the 609 NPA since June of 1997, limiting the availability of numbers to meet subscribers' needs. Under the BPU's recent decision, however, rationing will continue.

In Connecticut, the Department of Public Utility Control (DPUC) initiated a proceeding in November 1996 to explore number conservation methods after it was advised that the 860 NPA faced potential exhaust. More than *two years* later, the DPUC has still failed to adopt any area code relief. Today, not only the 860 NPA but also the 203 NPA is in jeopardy.

In sum, petitioners have not presented any legal or factual basis for concluding that the Commission's decision to require area code relief before

rationing was incorrect. To the contrary, the actions of state commissions to date demonstrate that the *Order's* limitation is essential to assuring that numbering resources needed by carriers are made available on a timely basis.

C. The Order's Limits on Pooling Authority Were Correct.

Many of the reconsideration petitions also request authority to implement "conservation measures" generally, and number pooling in particular, beyond the voluntary pooling trials in new NPAs that are now permitted. The *Order* clearly explains the several reasons why these requests are untenable, and the petitions present no new facts or legal arguments that undermine the *Order's* conclusions. First, the "varying and inconsistent regimes for number conservation" that would inevitably result would quickly undermine the "nationwide, uniform system of numbering" that "is essential to the efficient delivery of telecommunications services in the United States." ¶21. Second, "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." ¶ 29. Third, number pooling is "unproven," and thus could "deprive[] carriers of the numbers they need[] to offer their services." ¶37.

Nothing in the petitions for reconsideration establishes a legal or factual basis for changing these findings. Petitioners offer no response to the Commission's concern that attempts to conserve and promote the efficient use of numbers "cannot be made on a piecemeal basis without jeopardizing telecommunications services

throughout the country.” ¶ 21. Nor do they present any evidence disputing the Commission’s finding that measures such as number pooling and transparent overlays are unproven and discriminatory.

The *Order* also correctly observes that state commissions’ resort to mandatory number pooling would not be technically neutral, as federal law requires, because wireless providers do not have the technical capacity to implement the technology required for pooling. It found that the Pennsylvania plan “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.” ¶ 42. Petitioners do not refute these findings, which have been validated by the record that the Commission has before it in the current *Number Optimization* proceeding. Numerous parties filed detailed comments in that proceeding that explained why number pooling was both technically infeasible and legally invalid as a measure for promoting efficient use of numbers by wireless carriers.⁶ The record in that proceeding confirms that

⁶ BAM, for example, showed that pooling would not materially improve wireless number utilization rates because of its high fill rates and the fact that it does not take numbers in each individual rate centers as do landline carriers. *North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-134, Comments of Bell Atlantic Mobile, filed December 21, 1998.

granting petitioners the relief they seek through reconsideration here would undercut, not promote, national number utilization goals.⁷

In addition, as with rationing (and in combination with it), state commissions have utilized number conservation proceedings and investigations to delay needed area code relief. Pennsylvania again is illustrative. In lieu of area code relief, and in the face of imminent exhaust in three NPAs, the Pennsylvania Public Utility Commission ordered 1000-block pooling, reclamation, restrictions on the use of previously assigned NXXs, and a transparent overlay. As already noted, NPAs in Pennsylvania have experienced total exhaust and carriers in some cases have run out of numbers entirely. In September 1998, Sprint PCS, a new wireless entrant, had virtually exhausted its supply of numbers and was forced to file a "Petition for Emergency Numbering Relief" with the PUC, and in December 1998, AT&T Wireless, another PCS entrant, informed the Pennsylvania commission that it had exhausted all of its numbers in the 215 NPA. Yet the Pennsylvania commission now asserts that it should be given *more* authority -- when it has failed to meet its primary duty of making numbers available to carriers who need them.

⁷ Petitioners' request for broad authority to impose number pooling also ignores findings by the Commission's own advisory committee that there remain many intractable technical problems that preclude deployment of the wireless number portability technology needed for pooling. *North American Numbering Council, Number Resource Optimization Working Group, Modified Report*, October 20, 1998.

Massachusetts pursued a similar course. Following jeopardy declarations, rationing began in May of 1998 in four NPAs -- 617, 508, 781 and 978. Instead of taking steps to implement area code relief, the Department of Telecommunications and Energy opened a broad investigation into conservation measures in the four area codes. For five months voluminous written discovery and sworn testimony were taken. Yet, not until last month, under the impetus of the *Order*, did the Department finally open an investigation to determine a relief plan.

State commissions' pursuit of number pooling and other "conservation measures" can, has been and will be utilized to put off area code relief, depriving carriers of needed numbering resources. The *Order* correctly declined to delegate to state commissions broader authority in those areas.⁸

II. STATE COMMISSIONS CAN SEEK AUTHORITY TO IMPLEMENT SPECIFIC NUMBER CONSERVATION MEASURES.

The *Order* does not prohibit state commissions from pursuing code conservation measures that appropriately address number exhaust; they simply must obtain prior approval from the FCC before adopting such measures. ¶31. In

⁸ That the *Order* correctly articulated the respective federal and state roles is confirmed by recent state legislative efforts to direct state utility commissions to act in ways that would not meet federal policy objectives. For example, HB 388, currently pending in the New Hampshire legislature, would direct the New Hampshire commission to adopt number conservation measures "*even if they decrease telephone service competition, as long as the measures do not eliminate the ability of any competitor to provide service to any specific customer.*" (emphasis added).

seeking such approval, a state commission would present record evidence that the measures are both effective in conserving numbers and consistent with Commission Rules and the Act.

A prime candidate for this process is number reclamation. If, as some petitioners claim, certain carriers have obtained or used numbers contrary to applicable assignment guidelines, the *Order* provides an appropriate solution: A state commission can file a petition with the FCC supplying specific evidence of the misuse and requesting authority to reclaim unused numbers. By contrast, the unfettered authority that some petitioners seek in their reconsideration petitions would allow state commissions to reclaim numbers without substantiation of misuse and otherwise create the danger that number reclamation by state commissions would be anticompetitive, discriminatory or otherwise contrary to the Commission's Rules and the Act, as the Pennsylvania commission's action was.

Some petitions also ask the Commission to "clarify" – and thereby give state commissions the authority to order – other conservation measures.⁹ Here again, the proper approach is not a sweeping grant of authority, but, as the *Order* contemplates, evaluation of area code-specific measures presented to the Commission by petition. This procedure assures that conservation measures are supported by adequate proof of their effectiveness and are consistent with the goals of the Act.

⁹ See Petitions of the Colorado Public Utility Commission, New Hampshire Public Utilities Commission, and Texas Public Utility Commission.

A number of state commissions claim that they have unique needs to implement code conservation measures.¹⁰ The sheer number of commissions making this claim should make the Commission skeptical about how “unique” these situations really are. In any event, the proper course is for these state commissions to seek relief through a specific request.

III. THIS IS NOT THE APPROPRIATE PROCEEDING TO REVIEW THE CENTRAL OFFICE CODE ASSIGNMENT GUIDELINES.

Several petitioners point to what they believe are deficiencies in the current Central Office Code Assignment Guidelines to support their request for additional authority. The *Order*, however, did not address the Guidelines, and they are clearly beyond the scope of that decision. It would thus be improper to deal with this matter in this reconsideration process. The adequacy of the Guidelines is, in any event already being considered in the generic *Number Optimization* proceeding, which is looking at a wide variety of measures designed to enhance efficient use of numbering resources. If there are problems with the Guidelines, handing state commissions authority to order anticompetitive code conservation measures that deny carriers needed numbers is not the solution. Instead, as BAM is doing, these petitioners should participate in the *Number Optimization* proceeding. Through

¹⁰ See Petitions of the California Public Utilities Commission, Colorado Public Utilities Commission, Maine Public Utilities Commission, Massachusetts Department of Telecommunications and Energy, and New Hampshire Public Utilities Commission.

that proceeding the petitioners can help formulate improved Guidelines that will provide for more efficient utilization of numbers.

IV. THE COMMISSION PROCEEDED PROPERLY IN ISSUING THE ORDER.

The California Cable Television Association and the Massachusetts commission complain that they had no prior notice of the original proceeding and the potential broad applicability of the *Order*. These complaints are ill-founded.

First, the original petition filed by BAM and others raised broad issues relating to states' authority over numbering administration in general and over rationing and number pooling specifically. The Commission published a public notice seeking comments on those issues, and twenty-two entities (including NARUC as well as the Illinois and Colorado public service commissions) responded with submissions, recognizing the scope of the issues presented. *Order* at n.2. Petitioners have no excuse for not filing comments as well. The fact that the *Order* extends beyond the Pennsylvania commission's action should hardly have been a surprise, nor is it somehow improper. The Commission has often acted on petitions concerning one particular state commission order to set standards having national applicability, consistent with its mandate to establish national policy for the use of numbering resources.¹¹

¹¹ See, e.g., Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, *Declaratory Ruling and Order*, 10 FCC Rcd. 4596 (1995).

Second, petitioners have no basis to object about any lack of notice of the Commission's retention of authority over numbering administration, since no such authority had ever been delegated to state commissions in the first place. The *Order* in fact gives state commissions authority that they did not have before.

Third, through this reconsideration proceeding petitioners have a full opportunity to put forth whatever arguments and evidence they ostensibly felt deprived of presenting originally. All these petitions have done, however, is reinforce the wisdom of the Commission's decision not to delegate to state commissions additional authority over numbering administration.

CONCLUSION

The Commission should reaffirm its September 28, 1998 *Order*, deny the reconsideration petitions that would undercut the *Order's* correct division of federal and state responsibilities, and continue to ensure that states implement area code relief to provide carriers with the numbers they need to serve the public.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 4th day of February, 1999, caused copies of the foregoing "Opposition of Bell Atlantic Mobile, Inc. to Petitions for Reconsideration" to be sent by first-class mail, postage prepaid, to the following persons:

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