

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

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FEDERAL COMMUNICATIONS COMMISSION
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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)
_____)

SPRINT PCS OPPOSITION

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Summary of Opposition

Sprint Spectrum, L.P., d/b/a Sprint PCS (“Sprint PCS”), submits this opposition to several reconsideration petitions filed in response to the Commission’s September 28, 1998 *Pennsylvania NPA Order*.¹ Eight petitioning state commissions contend that the Commission erred in not delegating them authority to adopt NXX code rationing plans *before* they decide upon an area code relief plan.

The public and industry are facing a serious — and expanding — crisis: carriers do not have access to adequate numbering resources when they need them. The relief sought by the state petitioners would have the effect of exacerbating the growing crisis. Ample numbering resources are available when area code relief is ordered, especially if true conservation methods are implemented with new area codes. Certain state commissions, however, have decided either to ignore the problem or to delay the date that they implement area code relief.

The shortage of numbers being made available impacts all carriers, but it has a disproportionate impact on new entrants — and especially those growing rapidly — who do not enjoy the inventory of numbers and reserves held by incumbents. This shortage also adversely affects the public interest, because consumers and businesses are losing the benefits of robust competitive choice, as new entrants postpone the introduction of new promotions that the public would find attractive — or worse, must stop providing service to new customers altogether.

¹ See *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, CC Docket No. 96-98, *Memorandum Opinion and Order and Order on Reconsideration*, FCC 98-228 (Sept. 28, 1998), published 63 Fed. Reg. 63613 (Nov. 16,

Carriers cannot obtain additional numbers as they need them in many areas of the country — including California, Illinois, Massachusetts, New Jersey, New York, Pennsylvania. The situation in some localities has become so dire that Sprint PCS has been compelled recently to file several emergency petitions requesting the immediate assignment of additional NXX codes outside of rationing plans because it is facing imminent exhaust of its available number supply.

Many of the states claiming the need to order rationing before relief are the same states that have demonstrated an inability to implement relief timely. They are also the same states that have shown little interest in pursuing meaningful conservation measures at their disposal (*e.g.*, rate center consolidation). Four examples discussed within —New Jersey (609 NPA); New York (516 NPA); eastern Massachusetts (508, 617, 781, and 978 NPAs); and virtually the entire state of California — graphically illustrate the problem industry is encountering in some states.

The current crisis will not be solved by conservation measures. Number rationing is *not* number conservation as some states suggest. Rationing is an extraordinary procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow). True number conservation, such as rate center consolidation and number pooling by landline carriers, can delay the date that area code relief becomes necessary. The industry needs relief now. But, conservation steps implemented today will not fix the current crisis. True number conservation steps work best with the introduction of new area codes.

1998)(“*Pennsylvania NPA Order*” or “*Order*”). See also 64 Fed. Reg. 3104 (Jan. 20, 1999)(establishing February 4, 1999 as the date to file oppositions to reconsideration petitions).

The Commission needs to take decisive steps *before* carriers exhaust completely their current supply of number resources as a result of state inaction. Sprint PCS supports the Commission's *Pennsylvania NPA Order* requiring states to adopt an area code relief plan before they become involved in an industry rationing plan. However, because several states have relied on rationing plans to delay area code relief, there is, as explained within, only one meaningful and effective course that the Commission can take to solve this crisis: establish strict timelines governing every phase of the area code relief process.

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OPPOSITION OF SPRINT PCS

Sprint Spectrum, L.P., d/b/a Sprint PCS (“Sprint PCS”), submits this opposition to several of the reconsideration petitions that have been filed in response to the Commission’s September 28, 1998 *Pennsylvania NPA Order*. In this *Order* the Commission “delegat[ed] *additional* authority to state commissions to order NXX code rationing, under certain conditions, so that [they] may have more flexibility to assure that the area codes they have will last until implementation of relief.”²

Eight state commissions have filed reconsideration petitions, contending that the Commission erred in not delegating them yet additional authority— specifically, the authority to adopt NXX code rationing plans *before* they decide upon an area code

² *Id.* at ¶ 2 (emphasis added).

relief plan.³ California goes so far to assert that the Commission's *Order* granting it and other states additional authority has the effect of "tying the hands of state commissions by preventing them from looking at broader intrastate relief options" and "has cast into doubt the ability of California and other states to implement effective area code relief."⁴

The Commission's *Order* granting states additional authority does not "tie the hands" of state commissions in any way. The public and industry are beginning to face a serious — and expanding — crisis in numbering that will soon impact adversely both (a) the ability of consumers and businesses to obtain the telecommunications services they desire and (b) the ability of new entrants to compete on a level playing field with incumbents (in part because they do not have number reserves they can draw upon during a time of shortage). The problem is that in an increasing number of states, carriers (and new entrants in particular) can no longer obtain the numbers they need when they need them. This problem is not caused by a shortage of numbering resources (because additional resources can be made available by area code relief). Rather, the problem is caused by the reluctance of *certain* state commissions to implement timely needed area code relief to increase the available supply of numbers. (It is important to emphasize that the most acute problems are isolated to a few states; and many states discharge properly their responsibility to implement timely relief, as evidenced by the success stories documented in Part VI and Attachment D below.)

Sprint PCS demonstrates below that the relief sought by the state petitioners not only is unnecessary, but would actually have the effect of exacerbating the grow-

³ Petitions have been filed by the state commission in California, Colorado, Connecticut, Maine, Massachusetts, New Hampshire, Pennsylvania, and Texas. NARUC also filed a similar petition.

⁴ California Petition at 6 and 22.

ing crisis over the available supply of numbering resources. This Commission needs to take decisive steps *before* carriers exhaust completely their current supply of number resources as a result of state inaction. Sprint PCS supports the Commission's *Pennsylvania NPA Order* requiring states to adopt an area code relief plan before they become involved in an industry rationing plan. However, because several states have relied on rationing plans to delay area code relief, there is, as explained below, only one meaningful and effective course that the Commission can take to solve this crisis: establish strict timelines governing every phase of the area code relief process.

I. There Is A Serious and Growing Crisis Over the Availability of Adequate Numbering Resources and This Crisis Will Soon Become Service Impacting

The ability of a carrier to provide a telecommunications service depends entirely on its ability to obtain telephone numbers; put another way, customers cannot obtain desired services unless carriers have numbers to assign to them. The shortage in available numbering resources is also affecting the free flow of competitive market forces — because, as is so often the case, in times of shortages incumbent carriers have access to a pool of numbering reserves that new entrants do not have. As the Commission has acknowledged:

For competition to continue to develop, *all carriers* must have access to numbering resources.⁵

There is a burgeoning crisis over the supply of new numbering resources. In many areas of the country — including California, Illinois, Massachusetts, New Jersey, New York, Pennsylvania — carriers cannot obtain additional numbers as they need them. The situation in some localities has become so dire that Sprint PCS has been com-

⁵ *Pennsylvania NPA Order* at ¶ 38.

pelled recently to file several emergency petitions requesting the immediate assignment of additional NXX codes outside of rationing plans because it is facing imminent exhaust of its available number supply.

Approximately 60 of this nation's 213 area codes are now in jeopardy — meaning that the demand for NXX codes in these areas exceeds the available supply before a new supply of codes becomes available (through area code relief). In all these jeopardy NPAs, the industry is forced to ration codes. (Rationing is a means to *artificially* restrict demand for codes when public demand for services (and therefore, numbers) remains strong.) In adopting a rationing plan, industry nevertheless assumes (and expects) that area code relief will be implemented promptly.

For example, in Long Island (516 NPA) the entire industry (landline and wireless) has been forced to ration a total of only three codes per month over the past year. Sprint PCS was recently “lucky” in the 516 NPA lottery — it became eligible to receive one code in June 1999 and perhaps a second in March 2000. The problem, though, is that Sprint PCS's current supply of numbers in the 516 NPA will exhaust before these dates. *And to make matters worse, even if Sprint PSC were to obtain early activation of these two codes to meet its immediate needs, this new supply will almost certainly exhaust before relief is implemented in the 516 NPA — because the New York Commission ignored for a year the pleas of the code administrator to adopt a relief plan by April 1998 and because it is unknown when the Commission will adopt a plan, much less when the plan adopted will be implemented. See Attachment B.* It is unclear how or if Sprint PCS will be able to serve new customers demanding its services in Long Island if Sprint PCS cannot obtain additional 516 NXX codes.

The numbering crisis is worsening, moreover. Since the Commission released its September 28, 1998 *Order* now under reconsideration, twelve NPAs have been placed in a jeopardy condition.⁶ Yet, based on publicly available information from NANPA, it does not appear that a single NPA relief plan has been adopted during the last four months.

The shortage in the supply of numbers being made available impacts all carriers, but it has a disproportionate impact on new entrants — and especially new entrants that are growing rapidly — who do not enjoy the inventory of numbers and reserves held by incumbents.⁷ This shortage is also adversely affecting the public interest because consumers and businesses are losing the benefits of robust competitive choice, as new entrants postpone the introduction of new promotions that the public would find attractive — or worse, must stop providing service to new customers altogether.

Three years ago Congress removed the ambiguity in the existing law and expressly gave the Commission “exclusive jurisdiction” over all numbering issues.⁸ It is time that the Commission exercise this jurisdiction — at least with respect to those state commissions that have demonstrated an inability (or unwillingness) to implement relief in a timely fashion. Indeed, with respect to federal licensees (particularly carriers like Sprint PCS that paid \$3 billion for these licenses), the Commission has an obligation to

⁶ NPAs placed in jeopardy since the *Pennsylvania NPA Order* include: 318, 407, 503, 530, 602, 603, 612, 626, 703, 707, 716, and 760. See www.nanpa.com/news/jeopardy_declaration_table.html.

⁷ Sprint PCS explained this phenomenon last week. See Letter from Jonathan Chambers, Sprint PCS, to Yog Yarma, Deputy Chief, Common Carrier Bureau, NSD File No. L-98-134 (Jan. 29, 1998). In the Philadelphia area, for instance, the Local Exchange Routing Guide (“LERG”) shows that each incumbent cellular carrier has about *nine times* the number of NXX codes compared to Sprint PCS.

ensure that they have timely access to numbering resources to provide their federally authorized services, services the public finds so attractive and important to their daily lives. The very survival of competitive markets in some areas depends upon swift and decisive action by the Commission.

II. The Current Crisis Will Not Be Solved by Conservation Measures

The petitioning state commissions would give the Commission the impression that the current crisis can be solved only if they have the flexibility to order rationing and other conservation measures before they decide upon a relief plan. Nothing could be further from the truth. Indeed, as the Commission has stated (correctly):

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. . . . 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.⁹

At the outset, Sprint PCS takes issue with the position of some state commissions that rationing/lotteries during a time of jeopardy constitute number conservation. Number rationing is *not* number conservation.¹⁰ Number conservation involves steps to improve “the efficient and effective use of a finite numbering resource” and thereby delay the date that the total supply of available NANP numbers exhausts.¹¹ In contrast, NXX code rationing does not improve in any way “the efficient and effective

⁸ 47 U.S.C. § 251(e)(1)(“The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States . . .”).

⁹ *Pennsylvania NPA Order* at ¶¶ 26 and 38.

¹⁰ Notably, rationing was not even mentioned as an alternative in the recent *Number Optimization Report*. See Number Resource Optimization Working Group, *Modified Report to NANC on Number Optimization Methods* (Oct. 20, 1998); Letter from Alan Hasselwander, NANC Chair, to Kathryn Brown, Common Carrier Bureau Chief (Oct. 21, 1998)(“*Number Optimization Report*”).

use” of numbers; instead, rationing is an extraordinary procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow).

Industry imposes rationing when a NPA is declared to be in jeopardy — that is, where the demand for numbers exceeds their available supply and where inevitably, certain carriers will not receive the numbers they need to provide their services. The goal of rationing is to help ensure that, in a time of an *artificial* shortage, carriers most in need of numbers can obtain them. Simply stated, rationing indicates that the relief process has not worked properly because a new area code has not been implemented soon enough.¹² Importantly, industry adopts a rationing plan with the expectation that state commissions will *timely* implement area code relief .

True number conservation can delay the date that area code relief becomes necessary. But, and it is important to emphasize, *conservation steps implemented even today will not fix the current crisis*. True number conservation methods work best with the introduction of new area codes. That conservation measures will not fix the current crisis is demonstrated by reviewing two conservation methods — rate center consolidation and number pooling — measures the California Commission has stated “are particularly valuable potential tools of high priority through which number conservation can be enhanced.”¹³

¹¹ Industry Numbering Committee, *Central Office Code (NXX) Assignment Guidelines*, INC 95-0407-008, § 13 Glossary: Conservation (Sept. 18, 1998)(“*NXX Code Assignment Guidelines*”).

¹² See SBC Petition at 2 (“Properly planned and executed relief avoids the need for code rationing.”).

¹³ *Order Instituting Rulemaking into Competition for Local Exchange Service*, 188 P.U.R.4th 540, 1998 Cal. PUC LEXIS 577, *10 (CA, Aug. 6, 1998).

A. Rate Center Consolidation. Consolidating an incumbent LEC's rate centers can be a very effective method of number conservation, and several states have begun to implement this approach.¹⁴ The "primary benefit of rate center consolidation," the Minnesota Commission has noted, "is that new local service providers serving multiple rate centers with a single switch can be assigned fewer central office codes."¹⁵ For example, the Texas Commission recently made sweeping consolidations of LEC rate centers, including the consolidation of 29 rate centers in San Antonio into one rate center.¹⁶ However, this consolidation, important as it is, is projected to extend the life of the existing, already partially utilized 210 NPA by only two years.¹⁷

The real benefits of these rate center consolidations will be realized in the future as new area codes are implemented. As the Missouri Commission observed recently:

[R]ate center consolidation ha[s] significant potential for promoting the efficient utilization of numbering resources in the future and could dramatically prolong the lives of the NPAs if implemented as soon as possible.
* * * [R]ate center consolidation ha[s] the potential to dramatically

¹⁴ The Missouri Commission has noted that "[t]he original purposes for establishing numerous rate centers, such as older switch technology and cost variations based on small differences in call distances, no longer exist." *Exhaustion of Central Office Codes*, 187 P.U.R.4th 100, 1990 Mo. PSC LEXIS 43, *51 (MO, Aug. 4, 1998).

¹⁵ *Relief Plan for the Exhaust of the 612 Area Code*, 1998 Minn. PUC LEXIS 93 n.2 (MN, June 4, 1998). See also *Rate Center Consolidation*, Docket No. 97M-548T, Decision No. C98-439, § D.1 (CO, May 5, 1998) ("If the rate centers in the 303 NPA are consolidated into fewer rate centers, then facilities-based providers of local exchange service will need fewer NXX codes in order to provide local exchange service throughout the territory at issue. Such a result will reduce the demand for NXX codes, improve number utilization, and prolong the life of the area code(s) serving the greater Denver metropolitan area.").

¹⁶ See Texas Petition at 8-9.

¹⁷ *Id.* at 9.

lengthen the lives of the revised 314 NPA and the new NPA that will be come into existence.¹⁸

For example, the consolidation in San Antonio will extend considerably the life of any new area code because a new entrant entering the San Antonio market will initially need only one NXX to serve the entire market (vs. the up to 29 codes it may have required in the past). Put another way, a new entrant would require only 10,000 numbers as opposed to the up to 290,000 numbers it may have required in the past — a reduction of over 96%. The 28 codes (280,000) numbers that remain available can now be assigned to 28 other carriers. As noted by the Colorado Commission in reducing the Denver rate centers from 43 to 16, “[s]uch a consolidation will improve the level of efficiency by which the public resource of NXX codes is used by [LECs] without impacting more than necessary the local calling area or the rate for basic local exchange service.”¹⁹

States where there is now a crisis have not pursued this conservation tool, however. For example, California states that it has “considered, in a very general way, the idea of consolidating rate centers,” but further admits that it “has not pursued this option actively as of yet.”²⁰ The California Commission has not pursued this matter even though it has acknowledged that “[t]he large number of rate centers in California . . . ex-

¹⁸ *Exhaustion of Central Office Codes in the 314 NPA*, 1998 Mo. PSC LEXIS 30 *55 and 59 (Mo., July 22, 1998). See also *Rate Center Consolidation Within the 303 Area Code*, Docket No. 97M-548T, Decision No. C98-619 (CO, June 23, 1998) (“[R]ate center consolidation will improve the efficiency by which telephone numbers are assigned and its benefits will therefore accrue in the long term.”).

¹⁹ *Rate Center Consolidation*, Docket No. 97M-548T, Decision No. C98-439, at 6 (CO, May 5, 1998).

²⁰ California Petition at 21. Remarkably, California blames the FCC for its inaction: the *Pennsylvania NPA Order* appears to foreclose state commissions from exploring rate consolidation.” *Id.* This FCC *Order* did nothing of the kind. Besides, even if it had, the *Order* has been in effect for only three months, and therefore it cannot be used as an excuse for California’s inaction for the past three or four years, when the problem first began to surface.

acerbates service providers' needs for NXX codes" and that rate center consolidation would "represent a useful tool to help conserve NXX codes."²¹

This Commission is also familiar with the crisis the industry faces in Pennsylvania. Although the Pennsylvania Commission has recognized that "Pennsylvania has potentially hundreds of rate centers that today could be combined to more efficiently use numbering resources," it continues only to "explore" the subject of rate center consolidation.²² Similarly, 10 months ago the New York Commission identified rate center consolidation as a potential conservation tool, but to date the only *action* it has taken is to ask "industry to examine whether rate center consolidation could be a means of conserving numbering resources."²³

Three conclusions can be drawn from the forgoing. First, rate center consolidation can be a very effective conservation measure. Two, rate center consolidations made today will not solve the current crisis over obtaining additional numbers. Three, had states like California, Pennsylvania, and New York adopted meaningful rate center

²¹ *Order Instituting Rulemaking into Competition for Local Exchange Service*, 188 P.U.R.4th 540, 1998 Cal. PUC LEXIS 577, *12 and 35 (CA, Aug. 6, 1998). Given California's failure to initiate any meaningful conservation methods, it is remarkable that California now asserts that it is "deeply concerned about the absence, in the FCC's Order, of any genuine concern about the impact on the public of the ever-increasing rate of implementing NPA relief." California Petition at 7. Completely within California authority is the power to order rate consolidations that prevent the very problem about which it complains.

²² *215/610 Area Code Relief Plan*, 1998 Pa. PUC LEXIS 127, at *24 and 32 (PA, May 21, 1998).

²³ *Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources*, 1998 N.Y. PUC LEXIS 403, at *2 (NY, July 13, 1998). This proceeding is not the appropriate place to address how rate center consolidation should be implemented. However, as discussed in Part IV below, Colorado is a good example of how rate consolidation can be implemented in a way that meets the diverging interests of incumbent LECs (large and small) and competitive carriers (landline or wireless). Among other things, Colorado re-balanced rates while consolidating rate centers.

consolidations two or three years ago, the crisis that exists in these states today would likely have never occurred.

B. Number Pooling. Number pooling is an arrangement where numbers would be assigned in increments smaller than the current 10,000 blocks. However, number pooling can be employed only by those carriers equipped to provide long-term number portability.²⁴

There is growing recognition that adoption of number pooling “should result in significant efficiencies in NXX administration and use”²⁵ — although in many areas pooling will not have as dramatic an impact as rate center consolidation.²⁶ Nevertheless, and of critical importance, this promising conservation method will not provide any assistance in resolving the current crisis.

The industry has advised the Commission that the most readily available pooling method, thousands-block pooling, “could be implemented initially sometime within a 10 to 19 month interval after a regulatory order.”²⁷ It is thus apparent that pool-

²⁴ See *Pennsylvania NPA Order* at ¶ 40; *Telephone Number Portability*, 13 FCC Rcd 11701, 11759 ¶ 114 (1998).

²⁵ *Pennsylvania NPA Order* at ¶ 22. Indeed, implementation of number pooling by landline LECs should eliminate most (if not all) of the alleged abuses referred to by the states in their reconsideration petitions. However, as Sprint has previously explained, because CMRS providers use numbers more efficiently than landline carriers and because they are growing so rapidly, the CMRS industry should not be required to participate in pooling arrangements at this time. See Sprint Corporation Comments, NSD File No. 98-134 (Dec. 21, 1998).

²⁶ To return to the San Antonio example, prior to the recent consolidation, a CLEC wanting to serve the entire market and match the calling areas of Southwestern Bell would require the immediate assignment of 290,000 numbers (29 rate centers x 10,000 numbers per center). With pooling in place, the same CLEC would instead require 29,000 numbers (29 rate centers x 1,000 numbers). However, with the rate center consolidation, the same CLEC today requires only 10,000 numbers to serve all of San Antonio (one rate center x 10,000 numbers).

²⁷ Number Resource Optimization Working Group, *Modified Report to NANC on Number Optimization Methods*, at § 5.6.4 (Oct. 21, 1998).

ing and other new number conservation methods will take time to implement and that their beneficial impact will not be realized for some time. As the Commission has observed, even when pooling is implemented, it will “probably be a more effective conservation tool if applied to new area codes . . . rather than to codes that already have a high usage rate.”²⁸

However, industry needs relief today — not a year or two from now. The current situation where industry is being increasingly forced to ration the dwindling supply of available NXX codes because some states are unwilling to implement relief promptly can be tolerated no longer. If this situation continues, consumers and businesses in large areas of the country will soon be precluded from obtaining desired telecommunications services — because carriers will have no numbers to assign to them.

Some of the petitioning states expressly take the position that they want to impose “conservation” plans (*i.e.*, rationing) to “delay the need for a new area code until after the advent of number portability . . . [or] at least defer the need for many years.”²⁹ The only “conservation” measures these petitioners identify that are available before number portability are rationing (which is not conservation), “code sharing,” and rate center consolidation.³⁰ Rationing does nothing to make more numbers available, nor does it improve the efficiency with which numbers are used. Rate center consolidation does little to make more numbers available in existing NPAs. And, CMRS providers such as Sprint PCS cannot code share, because they would lose switch-based features

²⁸ *Pennsylvania NPA Order* at ¶ 29.

²⁹ *Pennsylvania Petition* at 6.

³⁰ *See id.*

(e.g., call forward, call-back, caller ID) and because code sharing would pose substantial problems with roaming.

Four months ago, the Commission stated that “[c]onservation methods are not . . . area code relief, and it is important that state commissions recognized that distinction and implement area code relief when it is necessary”:

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.³¹

These statements were accurate then, and they remain equally accurate today.

III. There Is Only One Fix to the Current Crisis: Prompt Implementation of Area Code Relief

The current crisis is that carriers do not have access to additional numbering resources when they need them. The issue is not that there is an inadequate supply of numbering resources; ample resources are available when area code relief is ordered (especially if conservation methods are implemented with new area codes).³² The issue rather is that certain state commissions have decided either to ignore the problem or to delay the date that they implement area code relief. Four examples —New Jersey (609 NPA); New York (516 NPA); eastern Massachusetts (508, 617, 781, and 978 NPAs); and virtually the entire state of California — graphically illustrate the problem industry is encountering in some states.

1. Southern New Jersey. As documented in Attachment A, the New Jersey Board of Public Utilities was told 27 months ago, in October 1996, that the 516 NPA

³¹ *Pennsylvania NPA Order* at ¶¶ 22 and 29.

³² Because the number of unassigned, available NPA codes is finite, it is essential that effective conversation methods be adopted now so as to prolong the life of the current NANPA.

encompassing southern New Jersey was projected to exhaust in June 1998. Nothing of significance occurred for a year, when in October 1997 the Board conducted several days of hearings. At the close of the hearing, the Board was advised that the projected exhaust date had been (artificially) deferred to the first quarter of 1999 because of a rationing plan industry adopted to address the jeopardy situation declared in May 1997 (maximum of seven codes monthly). Despite the passage of 14 months since the hearings closed, the Board has yet to issue a relief plan. Complete exhaust is imminent in the 609 NPA, and the NPA has been in jeopardy for nearly two years — yet a relief plan is not even in place. There is an absolute certainty that available numbering resources will exhaust before a relief plan can be implemented.

2. Long Island, New York. As documented in Attachment B, the 516 NPA serving Long Island was declared to be in jeopardy 14 months ago, and since that time all of industry has been able to obtain a total of only three NXX codes each month. Although the code administrator specifically asked the New York Commission to adopt a relief plan over a year ago (recommending that a plan be adopted by April 1998), rather than address the pressing need for relief, the New York Commission instead decided last July to focus its efforts on conservation issues, commencing an “omnibus proceeding . . . to investigate the efficiency of usage of telephone numbering resources.”³³ The New York Commission ignored the request for 516 area code relief until last week. On January 27, 1999 the Commission finally asked for public comment on the type of relief plan it should adopt for the 516 NPA.

³³ See Attachment A at 1.

3. Eastern Massachusetts. As documented in Attachment C, the Massachusetts Department of Telecommunications and Energy (formerly, the Department of Public Utilities) was told 10 months ago that the Boston (617) and southeastern Massachusetts (508) area codes were in “extraordinary jeopardy.” Eight months ago the Department was further told that the Boston suburbs (781) and northeastern Massachusetts (978) area codes were in jeopardy as well. During the first meeting conducted by the industry on April 3, 1998, the Department stated that it was not convinced that relief was even necessary:

The [Department] wants the industry to understand that the Department is by no means convinced at this point that Massachusetts needs new area codes or that any serious effort has been directed toward code conservation. *Everyone should understand that the Department will not begin to entertain the question of area code relief until it is convinced that the industry has done everything possible to conserve existing codes.*³⁴

Despite the seriousness and extent of the crisis, the Department did not commence an area code relief proceeding until January 11, 1999. Industry will not learn of the Department’s schedule for adopting a relief plan until sometime after February 12, 1999, when the Department is scheduled to conduct its preliminary conference on the subject. In the meantime and since last spring, the entire industry has been forced to ration the dwindling supply of codes in all four NPAs.

4. California. Carriers have been forced to ration codes continually in large areas of California since 1996 or early 1997: Los Angeles (213, 310, and 818); Orange County (714); San Diego (619); San Francisco (415 and 510); and San Jose/Silicon

³⁴ Final Minutes of the 508 and 617 NPA Extraordinary Jeopardy Meeting, April 3, 1998 – Boston, MA (emphasis added).

Valley (408).³⁵ In October, for instance, California carriers were only able to obtain in the lottery 10% of the NXX codes they had requested (95 of 973).³⁶ Yet, the California Commission claims that it is implementing relief “with all deliberate speed.”³⁷ As noted, the California Commission has not actively pursued rate center consolidation even though it has recognized that “[t]he large number of rate centers in California . . . exacerbates service providers’ needs for NXX codes.”³⁸ And, the California Commission recently permitted Pacific Bell to withdraw its reverse billing arrangements — further exacerbating the demand for additional NXX codes to offset the loss of this service.³⁹ Because of this inaction, carriers must wait in line for months at the California Commission’s monthly lottery before they are assigned an NXX code — and the gap between supply and demand continually worsens.

Some of the petitioning state commissions attempt to justify their delays in entering a relief plan by reciting the public outcry over what appears to be continual area

³⁵ It is Sprint PCS’s understanding that NXX codes in 16 of the state’s 22 NPAs are being rationed in the monthly lottery.

³⁶ See California Petition at 5.

³⁷ *Id.* at 7.

³⁸ See note ... *supra*.

³⁹ See *Wireless Week*, “Local Tolls Apply for Wireless,” at 1 (Jan. 11, 1999). At the same time that Pacific Bell and other LECs are withdrawing their reverse billing services, the FCC is examining whether the availability of such arrangements should be expanded. See *Public Notice*, Common Carrier Bureau Seeks Comment on NANC Report Concerning Telephone Number Pooling and Other Optimization Measures, NSD File No. L-98-134, DA 98-2265 (Nov. 6, 1998). Sprint PCS does not believe reverse billing arrangements are solutions to area code relief or an acceptable form of number optimization. Many LECs still offering the arrangement price their reverse billing services at very high rates (approaching levels that Sprint PCS charges its own customers). However, carriers like Sprint PCS may now be forced to take numbers from one rate center in an attempt to address shortages in another. This “robbing Peter to pay Paul” approach has the effective of exhausting numbering supplies sooner in the “borrowed” rate center where there is high demand too, and forces the carrier to pay exorbitant toll charges. Competitors with adequate supplies of numbers (*e.g.*, incumbent cellular carriers) are not compelled to use costly reverse billing arrangement.

code relief, California noting the “collective unhappiness of thirty million . . . customers.”⁴⁰ Sprint PCS does not dispute either the existence or legitimacy of these public concerns; anyone “asked” to accept a second number change in two years understandably would be outraged. However, Sprint submits that the public will become even more outraged once they learn that they cannot obtain the services they desire because their preferred carrier does not have available numbers to assign. Sprint PCS, too, is harmed by other carriers’ inefficient use of NXX codes, and supports numbering resource optimization efforts. However, until optimization methods like landline number pooling are available, carriers like Sprint PCS must be assured access to an adequate supply of numbers.

The fact is that state commissions must bear part of the responsibility for the current public outcry. Many state commissions decided to reject the overlay alternative in favor of a geographic split. (Indeed, California went so far as to ban the use of overlays altogether, although it has recently begun to abrogate this ban.⁴¹) With a split approach, roughly half the residents of an area code (millions of people and thousands of businesses) must accept a number change, with the attendant confusion and costs. The industry guidelines are clear in specifying that persons should not be required to accept a number change for eight to 10 years.⁴² Despite this admonition and despite the continued strong growth for telecommunications services and the present numbering crisis, some states have decided they should continue to utilize a split approach to area code relief —

⁴⁰ California Petition at 7.

⁴¹ See *Competition in the Local Exchange*, 1998 Cal. PUC LEXIS 703 (1998)(overlay adopted for 408 NPA); *Competition in the Local Exchange*, 1998 Cal. PUC LEXIS 531 (1998)(overlay adopted for 310 NPA).

⁴² See *NPA Relief Guidelines* at §§ 2.5, 5(f).

even though customers changing numbers would be required to change their numbers again — sometimes only 18 to 24 months after their number had been changed the first time.

IV. The Commission Must Adopt Strict Timelines to Ensure Relief Is Implemented Promptly

As noted above, the current crisis will be solved only by implementation of area code relief. The crisis is not being solved because some state refuses to enter a relief plan promptly (*e.g.*, no decision in New Jersey after 27 months). Consequently, the current crisis can be solved in only one of two ways: (a) this Commission assumes responsibility for implementing area code relief — at least with respect to states that have demonstrated an inability (or unwillingness) to do the job themselves; *or* (b) this Commission establishes strict timelines under which all states must operate. Because Sprint PCS questions whether the Commission has the resources to do the former, it instead submits a proposal for the latter.

There are several phases of the area code relief process and, if there is to be assurance that relief is implemented timely, the Commission must establish timelines for all but the first phase.

1. Notice of the Need for Relief. Industry guidelines specify that “NPA relief coordinators shall take the lead to prepare relief options for each NPA projected to exhaust within the next 5 to 10 years.”⁴³ The relief coordinator is directed to notify the industry and share an initial planning document as soon as “the earliest exhaust date is

⁴³ Industry Numbering Committee, *NPA Code Relief Planning & Notification Guidelines*, INC 97-0404-016, at § 5 (July 13, 1998)(“*NPA Relief Guidelines*”).

determined.”⁴⁴ Too often in the past, the first time industry learns of the need for relief is from a notice of jeopardy, indicating that the available supply of codes will not meet the demand before relief can be implemented (with the coordinator waiting too long in notifying industry of the problem).⁴⁵

The public and the industry need more advance notice that relief will be needed. Rather than place the onus of the notification trigger entirely on the shoulders of the code administrator/relief coordinator, the public and industry should have the means to review for themselves the status in each NPA. Sprint PCS therefore recommends that the Commission direct the North American Number Plan Administrator (“NANPA”) to maintain a web page for each NPA that is updated monthly and that contains a running tally of the total number of NXX codes assigned each month and the most current projected exhaust date.

2. Industry Relief Meetings (two months with an automatic extension for a third month if necessary). Once the relief coordinator notifies industry of the need for relief, the industry meets to discuss the relief option that should be adopted.⁴⁶ Sometimes the industry is successful in reaching consensus over a particular plan; oftentimes, it cannot reach consensus. But even where consensus is not reached, industry is generally successful narrowing the viable options. *See* Attachment D (industry reduces options from 10 to two).

⁴⁴ *Id.* at §§ 5.1, 5.4.

⁴⁵ There were many reasons for this: the quality of local code administrators/relief coordinators varied dramatically; poor forecasting methods were utilized; and unprecedented growth.

⁴⁶ *See NPA Relief Guidelines* at § 5.5.

Industry now has considerable experience with these meetings; indeed, the same carrier representatives often attend these meetings regardless of the state or NPA involved. Sprint PCS therefore recommends that industry be given two months to conduct this work, but that they be given the option of extending their deliberations for a third month by providing notice to the Common Carrier Bureau. Minutes of these industry meetings should be shared with the Common Carrier Bureau and the affected state commission.

3. State Commission Adoption of a Relief Plan (four months). This has been the weak link in the process and is the area most in need of reform. As noted above, New Jersey has been considering a relief plan for the 609 NPA for 27 months; New York waited an entire year before even requesting public comment, with Massachusetts waiting 10 months to begin the process.

Sprint PCS recommends that state commissions be allotted four months from the date a relief petition is filed to adopt a final relief plan. Sprint PCS would be agreeable to giving state commissions the option to extend their deliberations for an additional (fifth) month by providing notice to the Common Carrier Bureau. As demonstrated in Attachment D, in five months the Maryland Commission was able to adopt two relief plans despite conducting at least eight separate public hearings.

Finally, Sprint PCS recommends that, within 30 days of a relief petition having been filed, state commissions announce a schedule designed to complete their deliberations within the allowed time. Without this schedule, industry has no assurance that a state commission will render timely a decision. Submitting an appeal to this Commission after four or five months of inaction by a state commission is not viable if area code

relief is to be implemented timely. Between Administrative Procedures Act requirements and the need to get “up to speed,” this Commission alone will likely require at least three months to review and resolve an appeal — with the result that seven months (or more) have elapsed without a relief plan being announced. Sprint PCS submits that FCC review will be meaningful only if state commissions are required within 30 days of receiving a petition for relief to establish a schedule with milestones for their relief plan decision-making process.

4. Implementation of Relief Plan (nine months, unless NPA is in jeopardy, then six months). Once the state commission adopts a relief plan (split vs. overlay), the plan must be implemented. There are three parts to implementing a relief plan: (a) date that permissive dialing begins;⁴⁷ (b) date that permissive dialing ends; and (3) the so-called “intercept period.”⁴⁸

Nine months is more than sufficient time to adopt a relief plan.⁴⁹ However, where an NPA is in jeopardy, a relief plan should be implemented in six months,

⁴⁷ The permissive dialing period involves the time “during which calls placed to the area to be served by the new NPA can be completed whether the new or the existing NPA code is dialed by the caller.” *NPA Relief Guidelines* at § 7.3. Strictly speaking, a permissive dialing period is not required for overlays. However, it is recommended that a permissive dialing period be use the first time an overlay is done so customers can become accustomed to 10-digit local dialing. A permissive dialing period is not needed, however, when a second overlay is being added.

⁴⁸ Once permissive dialing ends and mandatory dialing begins, industry waits a period of time before an NXX code that has moved to the new NPA will be re-assigned in the old NPA. This “intercept period,” ordinarily 90 days in length, helps prevent misdirected messages and ensure accurate billing. *See NPA Relief Guidelines* at § 7.3.

⁴⁹ On March 13, 1996, the Public Utility Commission of Texas ordered Southwestern Bell Telephone Company to implement a geographic split of the Dallas 214 NPA in six months by September 14, 1996, but allowed a generous six month permissive dialing period beginning on that September date to last through March 15, 1997. *Petition of MCI Telecommunications Corporation for an Investigation of the Practices of Southwestern Bell Telephone Company Regarding the Exhaustion of Telephone Numbers in the 214 Numbering Plan Area and Request for a Cease and Desist Order against Southwestern Bell Telephone Company* *Petition of the Office of Public Utility Counsel for an Investigation of the Practices of Southwestern Bell Telephone Company* Re-

given the urgency of the situation in which carriers cannot get sufficient numbering resources they need.

5. Emergency Petitions. The Commission also needs to establish a time period in which state commissions decide emergency petitions, whereby a carrier requires an additional allocation of numbering resources immediately. Sprint PCS has experience where a state commissions has not acted on its emergency petition for months.⁵⁰ An

*garding the Exhaustion of Telephone Numbers in the 713 Numbering Plan Area and Request for a Cease and Desist Order against Southwestern Bell Telephone Company, Docket Nos. 473-95-1003 and 14447 Texas Public Utility Commission (TX, March 13, 1996). On November 21, 1997, the Pennsylvania Public Utility Commission (revising the area code split line ordered in its July 15, 1997 order that eventually authorized the geographic split of the 412 NPA) ordered Bell Atlantic to implement a split of Pittsburgh (412 NPA), with permissive dialing ending February 1, 1998, and the intercept period ending April 30, 1998. See *Re 412 Area Code Relief Plan*, Docket No. P-00961027 (PA, April 9, 1998). On November 13, 1997, the Minnesota Public Utilities Commission ordered a split of the 612 NPA, requiring the industry to initiate a permissive dialing period to end on "a date in the week of July 1, 1999," and requiring mandatory dialing for the new area code on that same date. The Minnesota Commission directed the industry to submit a proposed implementation date, including the start and end date of a permissive dialing period. *In the matter of a Relief Plan for the Exhaust of he 612 Area Code*, Docket No. P-999/M-97-506, *Order Establishing Area Code Relief Plan, Setting Policies for Number Conservation, and Establishing Task Force*, (MN, November 13, 1997). The industry, in February 25, 1998 and March 16, 1998 meetings, agreed that the split should be implemented on July 12, 1998, with permissive dialing starting on that date and ending on June 10, 1999. See February 25, 1998 Memorandum from the Numbering Plan Administration Center to Telecommunications Industry Members in the 612 Area Code and Other Interested Parties, enclosing Second Draft of 612/652 Industry Implementation Plan.*

⁵⁰ On August 6, 1998 Sprint PCS filed an emergency petition with the California Commission requesting the immediate assignment of two additional NXX codes. During the October 1998 lottery, Sprint PCS got "lucky" and was able to obtain the second of the two codes it had immediate need for, and it subsequently withdrew its petition. On September 29, 1998, Sprint PCS filed a petition with the Pennsylvania Public Utility Commission for emergency relief in which it requested that the Pennsylvania Commission direct the Numbering Plan code administrator to release two NXXs in the 215 area code. Sprint PCS demonstrated that it is facing imminent exhaust of its numbers in the 215 area code and will be required to suspend service to new customers well before numbers will be available in the new overlay area code in June 1999 or it will have to undertake extraordinary and costly measures to continue to provide service, assuming they are available. The Pennsylvania Commission denied Sprint PCS's petition without prejudice and released an Opinion and Tentative Order Regarding Petition for Emergency Numbering Relief Filed by Sprint Spectrum L.P. ("Tentative Order"), proposing to use a part of the 30 or so remaining NXXs for number pooling. On October 26, 1998, Sprint PCS filed a petition seeking reconsideration of the Commission's decision to dismiss Sprint PCS's petition seeking emergency numbering relief. On November 4, 1998, the Commission granted Sprint PCS's request

emergency petition obviously is not an effective form of relief if a state commission ignores the petition. Accordingly, Sprint PCS recommends either that the FCC require states to act on such petitions within 30 days or that it permit carriers to file such petitions directly with the FCC.

V. The Public Interest Would Be Disserved by Permitting State Commissions to Adopt Rationing Plans Before They Adopt Relief Plans

In the *Order* under reconsideration, the Commission delegated to state commissions “additional authority . . . to order NXX code rationing.”⁵¹ However, the Commission held the states may order rationing “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.”⁵² Several states now contend that the Commission did not go far enough, by giving them the right to order rationing *before* they order area code relief.

The states recite two discrete arguments in support of their position. California asserts if it does not possess the power to order rationing before relief, “NXX codes in those NPAs already in jeopardy will virtually vanish overnight.”⁵³ This assertion, entirely unsupported, is rebutted by all available evidence. In every situation that Sprint

for reconsideration of its Tentative Order, “pending further review and consideration of the substance of the request.” Sprint PCS was then required to file a Supplemental Petition for Emergency Numbering Relief on November 18, 1998 asking the Pennsylvania Commission to hear the substance of its request. Sprint PCS asked the Pennsylvania Commission to decide its Supplemental Petition on reconsideration by December 3, 1998. The Pennsylvania Commission on December 17, 1998 ordered that Sprint PCS’s request for emergency relief be set for hearing before an administrative law judge and stated it would issue a decision by January 28, 1999.

⁵¹ *Id.* at ¶ 2 (emphasis added).

⁵² 47 C.F.R. § 52.19(a).

PCS is aware of, the industry was able to agree upon a rationing plan — without the assistance of a state regulator. Thus, Sprint PCS has little or no fear that NXX codes will “vanish overnight.” To the contrary, the problem has been that some states like California do not promptly implement relief, forcing the industry to continually use rationing for over two years and to receive through rationing only 10% of the codes they need.⁵⁴

Other state commissions assert that they need to adopt rationing before relief because in their view, rationing is a legitimate conservation tool that can delay area code relief.⁵⁵ This view is misplaced, as the Commission has declared:

Conservation methods are not . . . area code relief and it is important that state commission recognize that distinction and implement area code relief when it is necessary. * * * 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.⁵⁶

Indeed, as Sprint PCS explains above, code rationing does *not* constitute number conservation. Code rationing is a temporary procedure that *artificially* tempers demand for codes *without* reducing customer demand for services (and numbers) and *without* improving the efficiency in which numbers are utilized. Rationing actually worsens the situation because it creates a “pent up” demand for codes that is unleashed when relief is finally implemented — sometimes placing the “relief” area code in jeopardy as well.

⁵³ California Petition at 11. *See also id.* at 13 (“If the FCC does not reconsider its change to Rule 52.19, the CPUC could easily face a situation in which all NXX codes in an NPA are claimed within a few days.”).

⁵⁴ *See* note . . . *supra* and accompanying text.

⁵⁵ *See, e.g.,* Connecticut Petition at 4 (Rationing “could postpone indefinitely the disruptive effects of area code deployment.”); New Hampshire Petition at 3 (With rationing, “New Hampshire might never have needed to plan for a new area code.”); Maine Petition at 4 (Rationing “would delay the need for new area codes . . . [and] could defer the need for many years.”); Pennsylvania Petition at 1 (Rationing would preclude “costly and unnecessary area code splits.”).

⁵⁶ *Pennsylvania NPA Order* at ¶¶ 22 and 26.

Many of the states claiming the need to order rationing before relief are the same states that have demonstrated an inability to implement relief timely. They are also the same states that have shown little interest in pursuing meaningful conservation measures at their disposal (*e.g.*, rate center consolidation). Given that PUC participation in rationing process is not needed for the adoption of a rationing plan, grant of the requested relief would have the effect of only diverting further their focus and resources.

Some state commissions further request the authority to order carriers to return assigned codes when they determine that “carriers have wrongfully obtained telephone numbers or [a]re using the numbers to the detriment of other providers or end users.”⁵⁷ State commissions have no business reviewing the business plans of competitive carriers, much less determining which competitor should return numbering resources so they instead can be allocated to another competitor. And, state commissions certainly have no business reviewing what federally-authorized services federal CMRS licensees may and not provide.

If a state commission believes that any federal licensees is improperly using number resources, it may lodge a complaint with this Commission.

VI. Success Stories

Certain state commissions have demonstrated an inability (or unwillingness) to adopt relief plans in a timely fashion. These state commissions are inhibiting Sprint PCS’s ability to provide services that the public wants and expects to receive.

⁵⁷ Connecticut Petition at 5. *See also* Maine Petition at 6 (PUCs should be able to determine “whether a code holder has the necessary state authority to operate in the exchange and whether the code holder is using codes for a purpose contrary to state regulations regarding the provision of service within the state.”); Texas Petition at 13 (“States like Texas . . . are in a much better position to judge the nature of a service provider’s need for numbering resources.”).

However, some state commissions are not only responsibly discharging their obligations, but are also adopting meaningful conservation measures. Their examples should be followed.

For example, as documented in Attachment D, the Maryland Commission was advised in June 1995 that its two area codes would likely exhaust in two years (4Q97). The Maryland Commission adopted a relief plan five months later, despite the fact that it conducted at least eight hearings and accepted dozens of written comments and reply comments. By acting decisively, no Maryland consumer or business was required to change their telephone number, there was no risk of exhaust, and there was no need for the industry to ration a dwindling supply of numbering resources.

Several state commissions also deserve commendation for the significant rate center consolidations they have made. For example, the Texas Commission recently made sweeping consolidations in its five largest metropolitan areas.⁵⁸

Number of Rate Centers

	<u>Before</u>	<u>After</u>
Austin	15	2
Dallas	18	4
Fort Worth	20	9
Houston	25	15
San Antonio	29	1
Total	107	31

A competitive LEC entering all five markets today requires only 310,000 numbers as opposed to the over one million it may have required in the past.

⁵⁸ See Texas Petition at 8-9.

Similarly, the Colorado Commission recently consolidated 43 rate centers in metropolitan Denver into only 16 rate centers.⁵⁹ As a result, a new entrant “will be able to use one prefix for much of the metro area rather than twenty.”⁶⁰ The Colorado order is especially noteworthy because Colorado adopted a consolidation plan that met the divergent interests of the dominant incumbent LEC, small incumbent LECs, and competitive carriers.

As the Colorado and Texas Commissions have acknowledged in taking these actions, their consolidations were adopted too late to have much of a favorable impact on the recent new area codes they were required to approve. But their actions should have an enormous impact in delaying the date for additional area code relief in these states. Other states would do well to look to Colorado and Texas as models.

The Wisconsin Commission approved an area code relief (split) plan for the Milwaukee metropolitan area (414 NPA) in 1996, a plan that was implemented in 1997. Last year, the reduced 414 NPA was declared to be in jeopardy again. On November 20, 1998, the Wisconsin Commission initiated a new area code relief proceeding. Although the Commission was “very concerned about the need to avoid frequent area code changes and is interested in examining number conservation efforts that may be used in the future to avoid early and frequent exhaust of area codes,” it further recognized that “the FCC has ruled that number conservation is not a replacement for area code relief”:

⁵⁹ See *Rate Center Consolidation*, Docket No. 97M-548T, Decision No. C98-439 (CO, May 5, 1998).

⁶⁰ *Numbering Plan Administration for Relief of the 303 Area Code*, Docket No. 97A-103T, Decision No. C98-605, § N.3 (CO, June 24, 1998).

The Commission is not intending to take any actions that would substitute number conservation for relief efforts aimed at introducing a new area code in the 414 area. The need for a relief plan in 414 is evident, and the Commission intends to order number relief (by an overlay or a geographic split) in this proceeding.⁶¹

The Wisconsin Commission adopted a schedule so that, over an eight-day period (December 2-10, 1998), it would conduct six different hearings in affected communities.⁶²

The actions of these state commissions demonstrate that number relief and number conservation can be done correctly and promptly — to the benefit of the public interest.

VII. Conclusion

Lost in the current debate is the fact that American consumers and businesses have more choices in services and services than ever before. The increasing demand for added choice is understandably increasing the demand for numbering resources. Adequate resources exist if area code relief is timely implemented. However, some state commissions have decided to defer increasing the supply of available numbers. This inaction is undermining the very foundation of our competitive markets and it places new entrants at particular competitive risk.

⁶¹ *Investigation of Area Code Relief Issues and Options for the 414 Area Code*, 05-T1-181, at 5-6 (WI, Nov. 20, 1998).

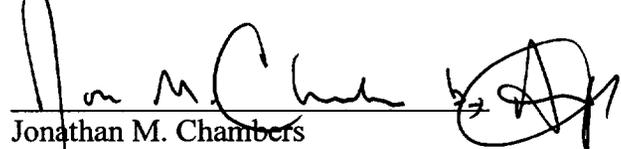
⁶² *Id.* at 6.

For all the foregoing reasons, Sprint PCS respectfully requests that the Commission deny the petitions for reconsideration and adopt the timelines Sprint PCS has proposed for the area code relief process. Adoption of timelines will best ensure that carriers will once again have the opportunity to receive additional numbering resources as they need them.

Respectfully submitted

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The Lingering Crisis in the Southern New Jersey (609) Area Code

The 609 area code encompassing southern New Jersey was introduced 36 years ago, in 1963. In the summer of 1996, Bell Atlantic, acting in its capacity as the code administrator and relief coordinator, advised industry that it should adopt a relief plan for the 609 NPA. Industry met on August 6-7, 1996, but it could not reach consensus whether the relief plan should be an overlay or a geographic split. On October 31, 1996 the relief coordinator petitioned the New Jersey Board of Public Utilities “requesting that the Board select one of the two alternative area code relief plans for the 609 area code.”⁶³ The relief coordinator advised the Board that “available number resources are quickly dwindling and are projected to exhaust by June 1998.”⁶⁴

Six months elapsed when, on May 15, 1997, the relief coordinator declared the 609 NPA to be in jeopardy, notifying the Board that “the 609 NPA was in jeopardy of exhausting available NXX codes prior to the originally projected June 1998 exhaust date.”⁶⁵ Industry met the following month, on June 25, 1997, and agreed to ration codes at a maximum rate of seven codes monthly.⁶⁶ It was projected that this rationing would

⁶³ *Request for New Jersey Board of Public Utilities Guidance on the 609 Area Code Relief Plan*, 1997 WL 475811, at 1 (NJ, July 30, 1997).

⁶⁴ *Ibid.*

⁶⁵ *Id.* at n.3.

⁶⁶ *Ibid.*

extend (artificially) the exhaust date to “the first quarter of 1999,” with the 609 NPA still being in jeopardy.⁶⁷

On July 30, 1997 the New Jersey Board adopted a schedule to address the petition for relief that the coordinator had filed nine months earlier.⁶⁸ Among other things, the Board scheduled to commence hearings on this petition on October 16, 1997 — almost a year after submission of the petition.⁶⁹ Earlier that month, on July 8 and 10, 1997, the Board conducted informal community meetings in Camden and Trenton.⁷⁰

Evidentiary hearings were held, as scheduled, on October 16-21, 1997. Ten days later, on October 27, 1997, the relief coordinator submitted a “final report” to the Board.⁷¹ The report advised the Board that complete exhaust could occur “during 1Q98.”⁷² In response to a Board inquiry, the coordinator further advised the Board that number pooling was not a solution to the crisis:

[B]ased on the data submitted, I conclude that number pooling *will not* extend the life of the 609 NPA. At no time during the jeopardy code rationing period for the 609 area code does number pooling provide enough resources to handle the pent up demand caused by the jeopardy.⁷³

The Board has taken no action since conducting the hearings in October 1997, 16 months ago.

⁶⁷ *Ibid.*

⁶⁸ *See id.*

⁶⁹ *See id.* at *4.

⁷⁰ *Ibid.*

⁷¹ *See* Letter from Bell Atlantic to New Jersey Board of Public Utilities (Oct. 27, 1997).

⁷² *Id.* at 2.

⁷³ *Id.* at 3 (emphasis in original).

Twenty seven months have elapsed since the New Jersey Board was asked to adopt a relief plan for the 609 NPA; 14 months have elapsed since the hearings were concluded. Yet, no relief plan has been adopted. Of course, carriers continue to obtain seven codes monthly per the rationing plan and the date of complete exhaust is imminent.

The Lingering Crisis in the Long Island (516) Area Code

Long Island, New York, consisting of Nassau and Suffolk Counties, has been served by the 516 area code since 1951. On November 18, 1997 the code administrator/relief coordinator declared the 516 NPA to be in jeopardy. In response, industry met on December 11-12, 1997. While industry could not reach consensus over the type of relief plan that should be adopted (split vs. overlay), it did agree to a rationing plan whereby, effective immediately, only three NXX codes would be assigned each month.

The rationing procedure in the 516 NPA is complicated and somewhat unusual.⁷⁴ For example, Sprint PCS has already been “allocated” two additional codes, but it is not scheduled to receive them until June 1999 and March 2000 respectively — well after it exhausts its current supply of numbers. However, there is no guarantee that Sprint PCS will actually receive these two additional codes. From what Sprint PCS can ascertain, all of the codes in this NPA have been allocated, and twenty of the remaining codes apparently are being held in reserve for new entrants under the FCC’s overlay regulations. Sprint PCS was recently allocated a third 516 NPA NXX code for September 2000, but this “allocation” does not appear to be anything more than a “priority” should any of the previously allocated codes not be claimed.

With regard to the subject of relief, in January 1998 the relief coordinator asked the New York Public Service Commission to adopt a relief plan for the 516 NPA by

April 1998. Six months later, on July 13, 1998, the New York Commission commenced an “omnibus proceeding” whose principal “overall goal will be to determine what is required to establish a more efficient system of providing adequate telephone numbering resources while minimizing consumer inconvenience.”⁷⁵ While the Commission further stated that this proceeding would “also consider the specifics of relief plans for any areas found in need of relief,” the order made no reference at all to the crisis the industry was already facing in the 516 NPA or to the petition the relief coordinator had filed six months earlier.⁷⁶ The Commission referred the entire matter to an Administrative Law Judge, who was directed to report “recommended actions or policies to the Commission by April 30, 1999” — that is, nine months in the future.

Nothing happened for three months. On October 15, 1998 the ALJ entered an order inviting the submission of comments.⁷⁷ The ALJ, however, determined that “it makes sense to turn first to the code utilization [*i.e.*, conservation] prong of the proceeding,” rather than to area code relief.⁷⁸ According to the ALJ, the FCC was expected to consider conservation measures shortly (*i.e.*, the NRO Optimization Report), and “the information adduced in this proceeding might form the basis for policies to be advocated before the

⁷⁴ If, for example nine carriers apply for codes in January, three are awarded then, the next three are “allocated” codes for February, and the last three of the nine are “allocated” for March.

⁷⁵ *Proceeding on Motion of the Commission to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area codes available in Areas of New York State, When and Where Needed*, Case 98-C-0689, 1998 N.Y. PUC LEXIS 403 (July 13, 1998).

⁷⁶ *See id.*

⁷⁷ *Proceeding on Motion of the Commission to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area codes available in Areas of New York State, When and Where Needed*, Case 98-C-0689, *Ruling Inviting Comments* (ALJ, Oct. 15, 1998), www.dps.state.ny.us/fileroom/doc4892.t.

⁷⁸ *Ibid.*

FCC rather than for concrete actions by the [N.Y.] Commission.”⁷⁹ The ALJ therefore ruled that public comments should be limited to the question of “the efficiency with which central office codes are used and how that efficiency might be improved.”⁸⁰

Two months later, on December 2, 1998 — that is, over a year after jeopardy had been declared, the ALJ acknowledged that “the need for specific area code relief is becoming more pressing” and that the “516 region requires the speediest action.”⁸¹ The ALJ therefore directed Commission staff to prepare “an options paper” regarding relief for the 516 NPA.⁸² The staff prepared this options paper the next month (recommending implementation of an overlay), and on January 27, 1999 the ALJ requested public comment on the staff paper.⁸³ The pleading cycle is scheduled to end on February 22, 1999.

For over a year now, industry has been rationing codes in the 516 NPA at the rate of three codes per month. After the passage of a year, the New York Commission has made no meaningful progress in developing a relief plan for the 516 NPA. It is now a certainty that the available supply of CO codes in the 516 NPA will exhaust before any relief plan can be implemented. When that happens, it is unclear how or whether Sprint PCS will be able to offer service to new customers in the 516 NPA.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Proceeding on Motion of the Commission to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area codes available in Areas of New York State, When and Where Needed, Case 98-C-0689, Ruling Concerning Future Course of Proceedings* (ALJ, Dec. 2, 1998), www.dps.state.ny.us/fileroom/doc5088.t

⁸² *Ibid.*

⁸³ *Proceeding on Motion of the Commission to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area codes available in Areas of New York State, When and Where Needed, Case 98-C-0689, Ruling Inviting Comment on Staff Paper* (ALJ, Jan. 27, 1999).

**The Lingering Crisis in the Boston (617), Southeastern Massachusetts (508),
Boston Suburbs (781), and Northeastern Massachusetts (978) Area Codes**

On March 4, 1998 the code administrator/relief coordinator declared an “extraordinary jeopardy” for the Boston (617) and southeastern Massachusetts (508) area codes. Two months later, on May 12, 1998, the coordinator declared a jeopardy for the Boston suburbs (781) and northeastern Massachusetts (978) area codes.⁸⁴

With respect to the first jeopardy notice, industry met on April 3, 1998 to discuss a rationing plan, and on April 16-17, 1998 to discuss a relief plan. While industry could not agree on a relief plan (split vs. overlay), it did agree to a rationing plan (six codes monthly in each the 508 and 617 NPAs).⁸⁵ With this plan, the two NPAs were projected to exhaust in late 1999 or early 2000.

With regard to the second jeopardy notice, industry met on June 17, 1998 to discuss rationing efforts and on September 23, 1998 to discuss relief plans. Once again, the industry could not reach consensus on a relief plan, but did agree to adopt a rationing plan (eight codes monthly in the 781 NPA and 10 codes monthly in the 978 NPA).⁸⁶ (As of January 20, 1999, each NPA was projected to exhaust within 21 months.)

⁸⁴ See Massachusetts Petition at 4-5.

⁸⁵ See North American Number Plan Planning Letter, PL-NANP-112 (June 9, 1998).

⁸⁶ See *id.* Without any explanation or factual support, MediaOne asserts that this industry rationing plan “will greatly limit the ability of the Massachusetts [Department] to attempt innovative conservation methods that might help to forestall code exhaust situations.” MediaOne Petition at 2. There is no basis to this unsupported assertion.

During the first, April 3, 1998 industry meeting, the Massachusetts Department of Telecommunications and Energy (formerly, the Department of Public Utilities) advised the industry that it was not convinced that area code relief was necessary:

The [Department] wants the industry to understand that the Department is by no means convinced at this point that Massachusetts needs new area codes or that any serious effort has been directed toward code conservation. *Everyone should understand that the Department will not begin to entertain the question of area code relief until it is convinced that the industry has done everything possible to conserve existing codes. We intend to explore all reasonable method to avoid the need to introduce new area codes*⁸⁷

The Massachusetts Department waited nine months, until January 11, 1999, before even commencing a proceeding to examine area code relief.⁸⁸ The Department has already cautioned, however, that “[t]he date of implementation of the appropriate relief plans will depend in part on the Department’s success in code conservation measures such as rate center consolidation.”⁸⁹ The Department stated that it would establish a procedural schedule following an initial conference scheduled a month later, on February 12, 1999.

Although the Massachusetts Department delayed commencing a relief proceeding, on April 24, 1998, only one month after the first jeopardy notice was released, it es-

⁸⁷ Final Minutes of the 508 and 617 NPA Extraordinary Jeopardy Meeting, April 3, 1998 – Boston, MA (emphasis added).

⁸⁸ *Petition of Lockheed Martin, the North American Numbering Plan Administrator, for area code relief for the 508, 617, 781, and 978 area codes*, D.T.E. 99-11 (MA, Jan. 11, 1999).

⁸⁹ *Need for New Area Codes in Eastern Massachusetts and Whether Measures Could Be Implemented to Conserve Exchange Codes within Eastern Massachusetts*, D.T.E. 98-38 (MA, Jan. 26, 1999).

established a new proceeding to examine code conservation methods.⁹⁰ The Department's Chair, Janet Gail Besser, stated in a press released issued the same day:

The DTE will not make any decisions about creating new area codes in the 617 and 508 regions until it has received public input and determined to its satisfaction that new numbers are needed, and that all reasonable steps have been taken to conserve existing numbers.⁹¹

The Department conducted several hearings during the summer to discuss implementation of a "virtual pooling" arrangement.⁹² According to the Department, this pooling investigation "stalled because of the FCC's [September 28, 1998 Pennsylvania] Opinion."⁹³ As noted, the Department did not even begin considering relief options in the four jeopardy NPAs until January 11, 1999.

⁹⁰ See *The Need for New Area Codes in Eastern Massachusetts and Whether Measures Could Be Implemented to Conserve Exchange Codes within Eastern Massachusetts*, D.T.E. 98-38 (MA, April 24, 1998).

⁹¹ Massachusetts Department of Telecommunications and Energy, "State Regulators Investigate Area Code Crunch" (April 24, 1998).

⁹² See Massachusetts Petition at 5.

⁹³ *Id.* at 6.

The Successful Implementation of Area Code Relief in Maryland

For over 40 years Maryland had been a one area code state. The 301 NPA was finally projected to exhaust, and in 1992 Maryland added a second NPA (410) that was assigned to the Baltimore and Salisbury LATAs. At the time the 410 NPA was introduced, it was expected that there would be a sufficient supply of numbers in both NPAs until the year 2012.

However, demand for telecommunications services exploded after the introduction of the 410 NPA. In 1994 alone, the demand for numbers increased by 93% over the prior year in the 410 area and by 135% in the 301 area. In early 1995 the code administrator projected that the new 410 code would exhaust during 4Q97 and the 301 code in 1Q98.

The industry met to consider relief alternatives in June 1995. While the industry could not reach consensus over the appropriate type of relief (split or overlay), it was successful in narrowing the options from ten to two.

On June 30, 1995, nearly 30 months before the projected exhaust, the code administrator/relief coordinate petitioned the Maryland Public Service Commission to commence a proceeding to establish area code relief for the state. The Commission initiated a proceeding the following week, on July 7, 1995.⁹⁴ It scheduled pleadings for August and a formal hearing for September 7, 1995. It also announced its goal of ren-

dering a decision in September 1995, so as to “provide customers with sufficient planning time and a permissive dialing trial period before the actual change in 1997.”⁹⁵

The Maryland Commission conducted hearings in six different communities during the three week period between August 14 and September 6, 1995. On September 29, 1997 the Commission decided to reopen the record to allow interested parties to submit additional evidence. The industry met again on October 11, 1995, and the Commission conducted its final hearing on October 31, 1995. The Maryland Commission rendered its decision three weeks later, on November 22, 1995, and it denied reconsideration petitions less than three months later, on February 13, 1996.⁹⁶ Although the Commission conducted a total of eight hearings, it was nevertheless able to adopt a final relief plan less than five months after the code administrator requested its intervention. Permissive dialing began May 1, 1996 and ended May 1, 1997.

Because of the foresight of the relief coordinator in bringing the need for area code relief to the public’s attention coupled with the dispatch in which the Maryland Commission addressed the issue, area code relief was implemented without requiring any Maryland resident or business having to change their telephone number and without having to resort to any rationing methods.

⁹⁴ See *Alternative Plans for New Telephone Area Codes*, Case No. 8705, Order No. 72074, 86 Md P.S.C. 215 (July 7, 1995).

⁹⁵ *Id.*

⁹⁶ See *New Telephone Area Codes*, Case No. 8705, Order No. 72274, 165 P.U.R.4th 344 (Nov. 22, 1995), *rehearing denied*, 87 Md P.S.C. 18 (Feb. 13, 1996). The MdPSC rejected geographic splits in favor of overlay codes because an overlay remedy “is the most far-sighted, least disruptive and most economical proposal offered in this case.” 165 P.U.R.4th 344.

Certificate of Service

I, Tony Traini, hereby certify that on January 27, 1999, I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of this opposition on the following persons:

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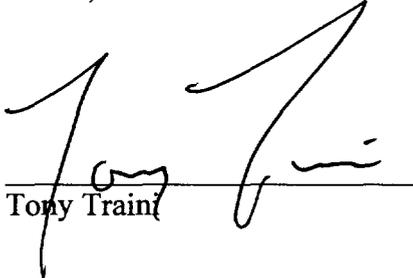
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