

DOCKET FILE COPY ORIGINAL

RECEIVED

FEB 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)
)
Petition for Declaratory Ruling and)
Request for Expedited Action on)
July 15, 1997 Order of the Pennsylvania)
Public Utility Commission Regarding)
Area Codes 412, 610, 215 and 717)
)
)
Implementation of the Local Competition)
Provisions of the Telecommunications Act)
of 1996)
)

NSD File No. L-97-42

CC Docket No. 96-98

**REPLY COMMENTS IN SUPPORT OF THE
MAINE PUBLIC UTILITIES
COMMISSION'S MOTION FOR RECONSIDERATION**

The Maine Public Utilities Commission (MPUC) submits these Reply Comments in support of its Motion for Reconsideration of the Commission's September 28, 1998 Memorandum Opinion and Order and Order on Reconsideration (Order) in the above-captioned matter.

In essence, the parties opposing the MPUC's Motion (Opposing Parties)¹ argue that the only way out of the current crisis is to do business as usual by continuing to assign new area codes as often as "needed" by carriers, regardless of the impact on the public, until a solution is reached at the national level. The Commission should reject these arguments for allowing the current wasteful practices to continue. These parties would perpetuate a system where numbering resources are squandered and hoarded by carriers who place their individual business agendas above the need to participate in the development and implementation of technology and

¹ AT&T, Bell Atlantic, Bell Atlantic Mobile, Spring PCS, Nextel, and Vanguard.

No. of Copies rec'd 4
List A B C D E

programs which will allow for the more efficient utilization of numbering resources. The industry should not be allowed to continue to subject the public to unnecessary and costly area code changes in the name of national uniformity when it is unable to agree at the national level upon the implementation of technology and programs which will allow for the more efficient assignment and utilization of numbers. Given the pace of area code creation, by the time the industry reaches an agreement, any benefits from such an agreement will be rendered meaningless. To prevent the citizens of Maine from being subjected to the costs and inconvenience of an unnecessary new area code, the MPUC should be given the authority to ration codes prior to an area code relief and order the return of improperly obtained or utilized codes.

I. MAINE IS NOT RUNNING OUT OF NUMBERS AND SHOULD NOT BE FORCED TO IMPLEMENT AN UNNECESSARY NEW AREA CODE

While the MPUC cannot speak to issues of number unavailability in other states, it can categorically state that in Maine, there is not now a shortage of individual numbers, nor will there be over the next ten years. Currently, there are approximately 516 central office (NXX) codes assigned in Maine (5,160,000 numbers), yet only 2,143,812 of the numbers are being used -- a utilization rate of less than 41%. Indeed, there are over 3 million unused numbers within currently assigned codes and over 2.7 million unused numbers in unassigned NXX codes -- a total of over 5.7 million unused numbers, five times the current population. There is *no* crisis in Maine with regard to availability of numbers. The only "crisis" is the industry's unwillingness to

rapidly implement the technology and programs needed to ensure the more efficient utilization of numbering resources, namely local number portability and thousand block pooling.²

The Opposing Parties insist that competition under the Telecommunications Act of 1996 (Act) requires that public numbering resources be immediately available at all times to any carrier that requests them. The MPUC believes that Congress intended for competition under the Act to provide direct benefit to consumers, not additional needless expense and inconvenience. The MPUC does not question the importance of bringing competition to Maine; to the contrary, we strongly support the development of a competitive telecommunications market in Maine. However, the MPUC does question the necessity of subjecting the public to the costs and inconvenience of an additional area code in the name of competition when it is clear that the technology needed to avoid a new area code is available today but is not being implemented by the industry because of individual business agendas. If the industry were truly interested in providing consumers with the benefits of competition, it would put aside individual business agendas and begin the immediate implementation of numbering efficient technology.

II. PROVIDING THE MPUC WITH AUTHORITY TO ORDER NUMBER RATIONING AND RECLAIM CODES WILL NOT ADVERSELY AFFECT THE NATIONAL NUMBERING POLICY

The Opposing Parties argue that all numbering issues, except the decision as to what type of area code relief to implement, should take place at the national level because "inconsistent state regimes for number conservation would result in significant societal and economic costs."

² While the industry will claim that the deployment of LNP is a "separate" issue and that pooling needs to be dealt with at the national level, the FCC must make a realistic assessment of the interrelationship of these issues at both the state and federal level and either quickly take steps to get the industry moving forward on these issues or give the states the necessary authority.

AT&T at p. 5. These parties are wrong and granting the relief we seek will have the very opposite affect of avoiding unnecessary costs. Leaving all decisions to the national level in current practice means leaving it to the industry to police itself because the FCC has delegated most of its numbering authority to the North American Numbering Council (NANC) which is controlled by the industry. This is like asking the fox to guard the chicken coop and has proven to have the same consequences regarding the consumption of NXXs. The carriers have no incentive to conserve numbering resources. They have created a system premised upon an unlimited supply of numbering resources with a first come, first served philosophy which only encourages the squandering and hoarding of numbering resources. So long as state commissions continue to implement area code relief, carriers will continue to use the resources available without regard to the societal and economic costs borne by the public in making those resources available to them.

Bell Atlantic argues that state commissions should not "squander" their resources on investigating number administration and optimization because it is better handled at the national level. Given the lack of real progress at the national level and the direct impact numbering issues have on consumers, state commissions are not "squandering" their resources by trying to move the industry forward on these important issues. Indeed, the support for our position expressed by both of Maine's United States Senators and our Governor's reference to this problem in his recent inaugural address leave no doubt that MPUC action in this area would hardly be viewed as squandering states resources by the people of Maine.

The Opposing Parties also argue that states should not be given authority to impose number conservation measures, including rationing, until after an area code relief decision has been made because such varying regimes "pose a serious threat to the integrity of the North

American Numbering Plan (NANP).” AT&T at p. 5. The Opposing Parties fail to explain, just as the Commission failed to explain in its Order, why there is less of a problem with a lack of uniformity after an area code relief decision is made than there would be before such a decision. A voluntary pool will be as consistent (or inconsistent) with the NANP before a state area code relief decision as it will be after such a decision. Further, to suggest that states would order the implementation of measures which would threaten the viability of the NANP is insulting; states want to protect consumers, not subject them to substandard service.

III. STATE AUTHORITY TO RECLAIM CODES WILL NOT ADVERSELY IMPACT CARRIERS WHO COMPLY WITH THE GUIDELINES

Most of the Opposing Parties³ argue that states should not be given authority to reclaim codes which have been improperly obtained or utilized⁴ and that such matters should be resolved at the national level. Nextel goes so far as to claim that state reclamation of codes is “antithetical” to the goals of the national numbering policy. It is very difficult to understand how requiring carriers to comply with the Central Office Code Administration Guidelines that they themselves drafted (in the name of national uniformity) is “antithetical” to the national numbering policy.⁵ Carriers who abide by the Guidelines will only be positively affected; state reclamation of improperly obtained or utilized codes will result in additional codes being

³ Bell Atlantic supports the MPUC’s request for authority to reclaim codes which are being used to serve areas in which the carrier is not authorized to serve.

⁴ Improperly obtained codes would include those obtained prior to state certification to provide service in the requested rate center or those obtained through falsified certifications to NANPA. Improperly utilized codes would include codes used to provide services which have not been authorized by the state commission.

⁵ Bell Atlantic Mobile argues that the Guidelines are outside the scope of these proceedings, an argument that begs the question given that the Guidelines govern the current numbering administration process and provide the carriers with access to codes.

available to other carriers. Only those carriers who abuse the Guidelines by prematurely requesting codes or by using central office codes to provide unauthorized services will be negatively impacted, a result other carriers should support.

The Commission may find it interesting that during the course of drafting these comments, the MPUC has learned that two CLECs in Maine which do not have valid interconnection agreements or approved tariffs obtained a total of 14 central office codes over the last six months, while another CLEC has applied for codes, despite the fact that it intends to operate as a reseller for the foreseeable future. This is why area codes are prematurely exhausting. This is why additional oversight is needed. This is why states must be given authority. Neither the FCC nor NANPA is in a position to uncover the information the MPUC has just uncovered. The MPUC must be allowed to act on this information immediately, it should not be forced to wait until completion of the lengthy, convoluted, and ineffective Guidelines process, by which time it may be too late to avoid implementation of a new area code.⁶

IV. MAINE SHOULD BE GIVEN THE AUTHORITY TO RATION CODES PRIOR TO MAKING A DECISION TO IMPLEMENT A NEW AREA CODE.

As stated earlier, there is not, and will not be in the near future, an actual shortage of numbers in Maine — the problem truly lies in the inefficient administration of numbering

⁶ Contrary to Nextel's assertions, giving the MPUC authority in this situation would not be tantamount to allowing the MPUC to use central office codes as state regulatory enforcement tools. The MPUC's real interest in these cases is to conserve central office codes for the benefit of both the market and ratepayers, not to punish carriers for violations of state law. It is entirely appropriate for the MPUC to ensure that carriers operating in Maine comply with the Guidelines and with MPUC regulations and do not subject Maine consumers to an unnecessary additional area code.

resources. Bell Atlantic-Maine has stated that local number portability (LNP) will be available in Maine no later than August of this year. Once LNP is in place, it will be technically feasible to do thousand block pooling. Putting aside arguments regarding whether thousand block pooling should or should not be implemented, the technology necessary to avoid the implementation of a new area code will be in place by the end of this year.

It makes absolutely no sense to require the MPUC to decide to implement an unnecessary area code if it could avoid such action by immediately beginning a rationing program which would extend the life of the 207 area code until pooling is operational. Using very conservative dates, if a rationing program began tomorrow and ended in June of 2000, 14-16 central office codes could be allocated per month. Current industry forecasts indicate that only an average of 10 such codes per month will be needed during that time frame. Given the relatively slow rate of entry by CLECS (Maine has only one operating facilities-based CLEC), there are ample codes available for new entrants. Thus, there is no good reason for denying the MPUC the authority to begin a rationing program which will avoid the needless implementation of a new area code.

V. THE OPPOSING PARTIES' REFERENCES TO RATE CENTER CONSOLIDATION AND VOLUNTARY POOLING ARE RED HERRINGS

Many of the Opposing Parties, including wireless carriers, argue that the FCC has given states sufficient authority over number conservation issues by allowing them to engage in rate center consolidation and voluntary number pooling. These arguments are red herrings. First, as each of the carriers is well aware, rate center consolidation is a very complex, highly political process with far-reaching effects on both carriers and consumers. While the MPUC has

investigated, and will continue to investigate this option,⁷ the economic ramifications of changing local calling areas as well as the potential for customer confusion make rate center consolidation a long-term goal and not a short-term fix.

Second, it is ironic that the same wireless carriers who successfully lobbied the FCC to extend the deadline for LNP capability to 2002, now suggest to state commissions that voluntary pooling is a viable conservation measure. First, wireless carriers know that they will not have to participate in the pool. Second, these carriers understand that the industry no longer volunteers to participate in pools now that the FCC has denied state commissions the authority to order participation.

The FCC must see through these hollow arguments and recognize that states must be given the authority to order number conservation measures which will actually conserve meaningful numbers of NXX codes. Relying upon voluntary methods and efforts will not provide the necessary relief. Carriers will pledge to do the right thing until it conflicts with their own self interest and then they will use arguments of free competition and national uniformity to avoid their responsibilities. The FCC should not let this continue. The FCC should provide the MPUC and other states with the authority to take the measures necessary to protect consumers from the unnecessary implementation of new area codes.

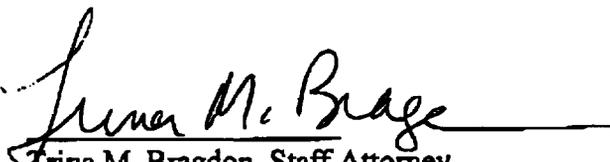
⁷ In October of 1998, the MPUC asked the Industry Task Force to explore whether rate center consolidation was a viable conservation measure. Recently, the Task Force reported that only nine codes could be immediately made available by consolidating rate centers without impact on local calling areas. In order to save additional codes, a much more comprehensive investigation will be needed. Accordingly, the MPUC plans to open an inquiry into rate center consolidation and inconsistent rate center issues in the near future.

V. CONCLUSION

For the reasons described above, the MPUC respectfully requests that the Commission strike that portion of its Order which restricts states from imposing number conservation methods until after a final decision is made regarding the implementation of a new area code and that the Commission specifically delegate the authority for states to reclaim improperly obtained or used codes.

Respectfully,

MAINE PUBLIC UTILITIES COMMISSION

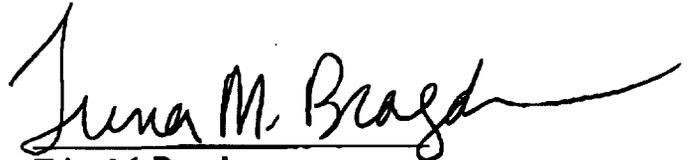
A handwritten signature in cursive script, reading "Trina M. Bragdon", is written over a horizontal line.

Trina M. Bragdon, Staff Attorney
Maine Public Utilities Commission

Dated: February 16, 1999

CERTIFICATE OF SERVICE

I, Trina M. Bragdon, certify that these Reply Comments in Support of the Maine Public Utilities Commission's Motion for Reconsideration were filed electronically with the Federal Communications Commission and served via first-class mail to the persons on the attached service list on this date.


Trina M. Bragdon

Dated: February 16, 1999

MAGALIE ROMAN SALAS, SECRETARY
 FEDERAL COMMUNICATIONS
 COMMISSION PORTALS
 445 TWELFTH STREET, SW
 WASHINGTON, DC 20554

GLORIA TRISTANI, COMMISSIONER
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 ROOM 8-C 302
 WASHINGTON, DC 20554

LAWRENCE E. STRICKLING, CHIEF
 COMMON CARRIER BUREAU
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 WASHINGTON, DC 20554

JEANNIE GRIMES
 COMMON CARRIER BUREAU
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 WASHINGTON, DC 20554

WILLIAM E. KENNARD, CHAIRMAN
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 ROOM 8-B 201
 WASHINGTON, DC 20554

SUSAN NESS, COMMISSIONER
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 ROOM 8-B 115
 WASHINGTON, DC 20554

HAROLD FURCHTGOTT-ROTH
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 ROOM 8-A 302
 WASHINGTON, DC 20554

MICHAEL POWELL, COMMISSIONER
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 ROOM 8-A 204
 WASHINGTON, DC 20554

YOG R. VARMA
 COMMON CARRIER BUREAU
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 WASHINGTON, DC 20554

GERALDINE MATISE
 COMMON CARRIER BUREAU
 FEDERAL COMMUNICATIONS
 COMMISSION
 445 TWELFTH STREET, SW
 WASHINGTON, DC 20554

INTERNATIONAL TRANSCRIPTION
 SERVICE
 1231 20TH STREET, NW
 WASHINGTON, DC 20036

PHILLIP F. MCCLELLAND
 OFFICE OF THE CONSUMER ADVOCATE
 1425 STRAWBERRY SQUARE
 HARRISBURG, PA 17120

BERNARD J. RYAN
 OFFICE OF SMALL BUSINESS ADVOCATE
 SUITE 1102 COMMERCE BLDG
 300 NORTH SECOND STREET
 HARRISBURG, PA 17120

NORMAN J. KENNARD, ESQ.
 MALATESTA, HAWKE & MCKEON
 100 NORTH TENTH STREET
 HARRISBURG, PA 17101

JAMES CALEY, ESQ.
 RHOADS & SINON
 12TH PO BOX 1146
 ONE SOUTH MARKET SQUARE
 HARRISBURG, PA 17108-1146

PATRICIA ARMSTRONG, ESQ.
 THOMAS THOMAS ARMSTRONG &
 NIESEN
 212 LOCUST STREET, SUITE 500
 HARRISBURG, PA 17108

PAIGE MACDONLAD MATTHES, ESQ.
 CUNNINGHAM & CHERNICOFF
 2320 NORTH SECOND STREET
 HARRISBURG, PA 17106-1457

ALAN KOHLER, ESQ.
 WOLF, BLOCK SCHOOR & SOLISCOHEN
 305 NORTH FRONT STREET, SUITE 401
 HARRISBURG, PA 17101

BENARDO L. HICKS
 KTLINK
 125 BERKSHIRE BOULEVARD
 WYOMISSING, PA 19610

JEFFREY J. CARPENTER
 2703 SHERWOOD ROAD
 PO BOX 471
 GLENSHAW, PA 15116

SUSAN M. SHANAMAN
 212 NORTH THIRD STREET, SUITE 203
 HARRISBURG, PA 17101

CLIFFORD B. LEVINE
THORP REED & ARMSTRONG
ONE RIVERFRONT CENTER, FIRM 3282
PITTSBURGH, PA 15222

J. MANNING LEE
TELEPART COMMUNICATIONS
ONE TELEPORT DRIVE, SUITE 300
STATEN ISLAND, NY 10311

PRINCE JENKINS
MCI TELECOMMUNICATIONS
1133 19TH STREET, NW
WASHINGTON, DC 20036

RICHARD RINDLER
SWIDLER BERLIN
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116

JOHN T. SCOTT III
CROWELL & MORING
1001 PENNSYLVANIA AVENUE
WASHINGTON, DC 20004

DANIEL MITCHELL
STATE OF MASSACHUSETTS
200 PORTLAND STREET, 4TH FL
BOSTON, MA 02114

AMY PUTNAM
PA PUC
NORTH OFFICE BUILDING,
ROOM 203, PO BOX 3265
HARRISBURG, PA 17105-3265

TRINA BRAGDON
ME PUC
242 STATE STREET
STATE HOUSE STATION 18
AUGUSTA, ME 043333

BRAD RAMSEY
NARUC
1100 PENNSYLVANIA AVENUE, SUITE
603
WASHINGTON, DC 20004

ERIN DUFFY
NORTH CAROLINA UTILITIES
COMMISSION
NORTH SALISBURY STREET
EIGH, NC 27603

KARLEN J. REED
MASSACHUSETTS - DEPT. OF TELECOM
& ENERGY
1000 CAMBRIDGE STREET, 12TH FL
BOSTON, MA 02202

E. BARCLAY JACKSON
NH PUC
8 OLD SUNCOOK ROAD
CONCORD, NH 033301-7319

MARYANNE REYNOLDS MARTIN
PA PUC
PO BOX 3265
HARRISBURG, PA 17105

LOUISE E. RICKARD
CT DPUC
10 FRANKLIN SQUARE
NEW BRITAIN, CT 06051

ANTHONY MARQUEZ
CO PUC
1580 LOGAN STREET
DENVER, CO 80203

MARK FOGELMAN
STEEFEL LEVITT & WEISS
ONE EMBARCADERO CENTER, 30TH FL
SAN FRANCISCO, CA 94111

DOUGLAS FRASER
STATE OF TEXAS -
OFFICE OF ATTORNEY GENERAL
PO BOX 12548
AUSTIN, TX 78711-2548

CHARLES D. GRAY,
NARUC
PO BOX 684
1100 PENNSYLVANIA AVE., NW,
SUITE 603
WASHINGTON, DC 20044-0684

RICHARD A. KARRE
MEDIAONE GROUP, INC.
9 PENNSYLVANIA AVE.
SUITE 610
WASHINGTON, DC 20006

ROBERT M. LYNCH
ONE BELL PLAZA, ROOM 3023
DALLAS, TX 75202

HELEN M. MICKIEWICZ,
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

CHRISTOPHER D. MOORE
UNITED TELEPHONE & SPRINT
1850 M. STREET NW SUITE 1100
WASHINGTON, DC 20036

WAYNE MILBY
BELL ATLANTIC
1 EAST PRATT STREET, 3E-11
BALTIMORE, MD 21202

DERRICK P. WILLIAMSON, ESQ.
MCNEES WALLACE 7 NURICK
PO BOX 1166
HARRISBURG, PA 17101

JOHN G. SHORT
UNITED TELEPHONE CO.
1201 WALNUT BOTTON ROAD
CARISLE, PA 17013

FRED OCHSENHIRT
DILWORTH PAXSON KALISH &
KAUFFMAN
305 NORTH FRONT STREET, SUITE 403
HARRISBURG, PA 17101-1236

MICHAEL MCRAE
TELEPORT COMMUNICATIONS GROUP
2 LAFAYETTE CENTER, NW,
SUITE 400, 1133 21ST NW
WASHINGTON, DC 20036

DAVID E. FREET
PENNSYLVANIA TELEPHONE
ASSOCIATION
30 N. 3RD STREET, SUITE 300
PO BOX 1169
HARRISBURG, PA 17108-1169

GLENN P CALLAHAN
MCCARTER & ENGLISH
ONE COMMERCE SQUARE
2005 MARKET STREET, SUITE 3250
PHILADELPHIA, PA 19103

DANIEL MONAGLE
BA-PA
1717 ARCH STREET, 32NW
PHILADELPHIA, PA 19103

BRUCE KAZEE
GTE NORTH INCORPORATED
100 EXECUTIVE DRIVE
MARION, OH 43302

LAWRENCE KREVOR
NEXTEL COMMUNICATIONS
1450 G. STREET, NW SUITE 425
WASHINGTON, DC 20005

ROBERT C. BARBER
AT&T COMMUNICATIONS
3033 CHAIN BRIDGE RD., ROOM 3-D
OAKTON, VA 22185

TINA OIDGEON
DRINKER BIDDLE & REATH
901 15TH STREET, NW, SUITE 900
WASHINGTON, DC 20005

RICHARD ARMSTRONG
GTE TELEPHONE
212 LOCUST STREET, SUITE 600
PO BOX 12060
HARRISBURG, PA 17108

RICHARD C. ROWLENSON
VANGUARD CELLULAR
2002 PISGAH CHURCH ROAD
GREENSBORO, NC 27455

GREG STRUNK
D & E TELEPHONE CO.
PO BOX 458
EPHRATA, PA 17522

HARVEY KAISH, ESQ.
MCCARTER & ENGLISH
4 GATEWAY CENTER
100 MULBERRY STREET
NEWARK, NJ 07102-4096

JOSEPH R. ASSENZO
SPRINT SPECTRUM
4900 MAIN STREET, 12TH FL
KANSAS CITY, MO 64112

KEVIN GALLAGHER
360 COMMUNICATIONS
8725 W. HIGGINS ROAD
CHICAGO, IL 60631

JANET S. LIVENGOOD
HYPERION TELECOMM, INC.
DDI PLAZA TWO
500 THOMAS STREET, SUITE 400
BRIDGEVILLE, PA 15017-2838

J.G. HARRINGTON
DOW LOHNES & ALBERTSON
1200 NEW HAMPSHIRE AVE., NW,
SUITE 800
WASHINGTON, DC 20036