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Common Carrier Bureau
Network Service Divis.
Office of the Chief

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

In the Matter of)
)
Common Carrier Bureau Seeks Comment)
on Massachusetts Department of)
Telecommunications and Energy Petition)
For Waiver To Implement A Technology)
Specific Overlay in the 508, 617,)
781, and 978 Area Codes)

DA 99-460
NSD File No. L-99-17

CC DOCKET: 96-98

To: Chief, Common Carrier Bureau

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Federal Communications Commission
Office of Secretary

I. INTRODUCTION

Pursuant to the Public Notice of the Federal Communications Commission ("Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Petition of the Massachusetts Department of Telecommunications and Energy ("DTE") for authority to implement a technology-specific overlay in various area codes in eastern Massachusetts.^{2/}

In the Petition, the DTE seeks authority to "implement a technology-specific or service-specific overlay in the 508, 617, 781, and 978 area codes in eastern Massachusetts."^{3/} The DTE asserts that it is in the best position to determine "[w]hether a

^{1/} Public Notice, "Common Carrier Bureau Seeks Comment on Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes," DA 99-460, released March 4, 1999.

^{2/} Massachusetts Department of Telecommunications and Energy's Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes, filed February 17, 1999 (hereinafter "DTE Petition").

^{3/} DTE Petition at p.1.

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technology-specific or service-specific overlay would unreasonably discriminate or unduly inhibit competition. . ."4/

Nextel submits these Comments to assert that no circumstances, whether in Massachusetts or any other state, could justify the implementation of a technology-specific or service-specific overlay that required a take-back of existing telephone numbers from those customers to be segregated to the new area code. Regardless of the circumstances in Massachusetts, if the DTE required only one group of carriers to take back telephone numbers from their customers, the result would be unjust discrimination against those carriers and their customers. Any area code relief investigation conducted by the DTE should not include consideration of a technology or service-specific overlay that requires taking back and reprogramming telephone numbers assigned to existing customers.

II. BACKGROUND

In 1995, the Commission first prohibited the use of technology or service-specific overlays in Illinois' 708/630 area code relief proceeding.5/ Again, in 1996, the Commission reiterated that "any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit

4/ *Id.* at pp. 4-5.

5/ See Declaratory Ruling and Order, IAD File No. 94-102, 10 FCC Rcd 4596 (1995).

competition."6/ These overlays are discriminatory, the Commission concluded, because they exclude certain carriers or services from the existing area code and segregate them into a new area code.7/ Additionally, requiring that the customers of only one type of carrier change their phone number is discriminatory as only those customers "suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of the new number."8/

III. DISCUSSION

In its Petition, the DTE suggests that "circumstances in Massachusetts may be different from the circumstances in existence when the Commission originally prohibited technology-specific or service-specific area code overlays. . . "9/ The Petition fails on this initial point. The DTE has provided no evidence of circumstances in Massachusetts that would warrant permitting the imposition of a service-specific area code overlay requiring the take-back and reassignment of numbers to existing customers. Indeed, Nextel asserts that there are no circumstances that could justify a technology or service-specific overlay requiring existing

6/ Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) at para. 285.

7/ *Id.*

8/ See Declaratory Ruling and Order, *supra.* at fn. 5, at para. 27; see also Second Report and Order and Memorandum Opinion and Order at para. 285.

9/ DTE Petition at p. 5.

customers' numbers to be reprogrammed to the new overlay. Under any circumstances, whether a marketplace with "88 registered competitive local exchange carriers,"10/ or one with only a handful of competitors, a service-specific overlay is discriminatory.

A take-back of telephone numbers generates significant costs for both the company and its customers as carriers must educate their users and reprogram their phones. Customers, who have given back their phone numbers, must then change business cards, stationary and other signage to indicate the new phone number. Both the carrier and the customer potentially suffer a loss of goodwill as a result of changing to a new telephone number. This loss of goodwill is particularly likely among Nextel's customers, the majority of which are small businesses.11/ One of the significant advantages of an area code overlay vis-a-vis a geographic split is that no existing customer of any carrier has to get a new phone number, and no wireless customer has to bring his or her phone in for reprogramming to a new number. Thus, the DTE should not impose this burden on any carrier should it elect to impose an area code overlay.

The fact of the matter is that the instant Petition, in combination with the DTE's companion petition for broad area code

10/ DTE Petition at p. 5.

11/ A service or technology-specific overlay without take-backs, i.e., one that is prospective only, allowing all customers to keep their existing codes in the old area code, may be less objectionable depending on the facts of the particular code exhaust proceeding.

administrative authority in Massachusetts,^{12/} represents an attempt by the DTE to overcome the limits of its delegated authority to choose from among alternative code relief methods and substitute itself for the Commission and the North American Numbering Plan Administrator ("NANPA"). The DTE already has a pending petition for reconsideration of the Commission's most recent articulation of shared federal-state authority over numbering matters.^{13/} The DTE is well aware of the recent work of the North American Numbering Council ("NANC") and its Number Resource Optimization working group to develop nationwide number pooling standards and other code conservation mechanisms.^{14/} Nextel believes that the public interest will be best served by the completion of the Commission's consideration of these matters, not by the grant of broad unrestricted authority to state regulators to engage in disparate and uncoordinated code relief and code administration activities. Although the Commission has indicated a willingness to consider granting delegated authority to states proposing new or novel code conservation or number optimization

^{12/} See Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, filed February 17, 1999.

^{13/} Memorandum Opinion and Order and Order on Reconsideration, FCC 98-224, CC Docket No. 96-98, NSD File No. L-97-42 (released September 28, 1998) ("PA PUC Decision").

^{14/} See Public Notice, "Common Carrier Bureau Seeks Comment on North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures," NSD File No. L-98-134, DA 98-2265, released November 6, 1998 (hereinafter "Public Notice").

measures,^{15/} the DTE's bald assertion that it knows best does not even begin to approach that standard.

IV. CONCLUSION

Nextel strongly opposes any consideration of a service or technology-specific overlay that would require a take-back of telephone numbers from the segregated service or technology. Nextel, therefore, opposes the Petition to the extent described herein.

Respectfully submitted,



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Date: April 5, 1999

^{15/} PA PUC Decision at para. 31.

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 5th day of April 1999, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery to the following:

Al McCloud
Network Services Division
2000 M Street, NW
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Rochelle L. Pearson