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

Federal Communications Commission
Office of Secretary

APR 14 1999

Commons and
Network Service Division
Office of the Chief

In the Matter of)
)
NEW YORK DEPARTMENT OF PUBLIC)
SERVICE PETITION FOR ADDITIONAL)
AUTHORITY TO IMPLEMENT)
NUMBER CONSERVATION MEASURES)

File No. NSD-L-98-21

CC DOCKET 96-98

Comments of Omnipoint Communications, Inc.

Omnipoint Communications, Inc. ("Omnipoint"), by its attorneys, hereby opposes the Petition of the New York State Department of Public Services ("New York DPS") for additional authority from the Commission to implement number conservation measures.

I. Background

On February 19, 1999, the New York DPS filed a petition with the Federal Communications Commission seeking additional authority to implement several number conservation measures. Specifically, the New York DPS is seeking additional authority to: (1) implement mandatory thousand block pooling trials; (2) explore options for implementing individual telephone number pooling and establishing ITN pooling trials where technologically feasible; and (3) implement interim unassigned number porting. See Public Notice, NSD File No. L-99-21, DA 99-462 (March 5, 1999). As noted in the New York DPS's Petition, the purpose of implementing or exploring these methodologies is directly linked to the State's increasing rate of central office code assignments and the developing exhaustion of its current Numbering Plan Areas ("NPAs").

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The State of New York is currently conducting a voluntary, interim thousand block number pooling trial in the 212 NPA. This voluntary trial has more recently been extended to the 718 NPA. Neither of these trials include CMRS carriers.

The NPA conservation methods of thousand block pooling, individual telephone number pooling and interim unassigned number porting are similar in that each requires a portability architecture based upon Location Routing Numbers. As the Commission is aware, this past February it revised the implementation schedule under which CMRS carriers are to implement local number portability (“LNP”). See In the Matter of Cellular Telecommunications Industry Association’s Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, Memorandum Opinion and Order, WT Docket No. 98-229, FCC 99-19 (February 9, 1999)(“LNP Forbearance Order”). As a result of this ruling, the deadline by which CMRS carriers were to implement number portability has been extended until November 24, 2002 -- a date concurrent with the conclusion of the five-year PCS build-out period. In granting this extension, the Commission ruled that it will “provide the industry with the flexibility to allocate its immediate resources toward network construction -- a goal proven to promote a competitive marketplace.” See id. at ¶ 49. The Commission also noted that “. . . [t]he public interest in efficient use of numbering resources is not harmed by this limited extension of the LNP deadline . . .” See id. at ¶ 48.

The wireless industry has demonstrated to the Commission that wireless carriers can ensure efficient utilization of numbering resources prior to November 24, 2002, during the period that they are not LNP-capable. Specifically, the Commission has observed in this regard that, “[t]he proposals submitted by wireless carriers are helpful, and they

demonstrate that there are certain number conservation techniques that are not LNP-based that can be implemented during the period in which CMRS carriers have been relieved from their current obligation to implement LNP.” See LNP Forbearance Order at ¶ 47. The Commission has signaled its intention to further investigate non-LNP-based conservation methods, with the goal of creating new, uniform, federal rules that will “establish more control” over number administration. Id.

II. Allowing the New York DPS to Institute Mandatory Thousand Block Number Pooling Would Create Serious Administrative Problems

The Commission clearly outlined the scope of authority delegated to the state commissions on area code matters in its Second Report and Order regarding local competition. See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98, 11 FCC Rcd 19392 (1996)(“Second Local Competition Order”) As the Commission is aware, the Second Local Competition Order granted state commissions the “authority to implement new area codes . . . [and choose] among available area code relief mechanisms,” but declined to delegate authority to state commissions to administer or allocate NXX codes. See, e.g., In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997, Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717, Memorandum Opinion and Order and Order on Reconsideration, NSD File No. L-97-42 and CC Docket No. 96-98, at ¶¶ 32-33 (1998). As stated by the Commission, “[I]f each state commission were to implement its own NXX code administration [e.g. conservation]

measures without any national uniformity or standards, it would hamper the efforts of the North American Numbering Plan Administrator [“NANPA”] to carry out its duties as the centralized NXX code administrator . . . and could interfere with forecasting and projections for exhaust of the North American Numbering Plan and could force implementation of a new plan earlier than would otherwise be necessary to ensure that numbers are always available for telecommunications providers.” See id. at ¶ 32.

The Commission also has yet to adopt the uniform thousand block pooling guidelines developed by the Industry Numbering Council. In the absence of such national standards, granting the New York DPS additional authority to implement *mandatory* thousand block pooling trials would be premature. Furthermore, granting this additional authority to the New York DPS could negatively impact the NANPA’s ability to determine number utilization and forecasting information which, in turn, would significantly hinder carriers’ access to numbering resources.

III. Thousand Block Pooling Would Essentially Impose Local Number Portability on PCS Carriers

Omnipoint supports the New York DPS’s efforts to adopt reasonable code conservation measures within the jurisdiction granted by the Commission. Furthermore, Omnipoint recognizes the Commission’s delegation of limited authority to state commissions to implement voluntary pooling trials. However, the Commission, the New York DPS, and the telecommunications industry have each acknowledged the fact that thousand block pooling is not technically feasible for all segments of the telecommunications industry at the present time. Since allowing the New York DPS to implement thousand block number pooling would force PCS providers such as Omnipoint

to prematurely confront the technical problems acknowledged in the LNP Forbearance Order, the Commission should not grant the New York DPS the authority to implement mandatory trials of this conservation mechanism.

A. The Commission Has Recognized Technological Constraints in the LNP Forbearance Order

As discussed above, the Commission recently extended the deadline by which PCS carriers must deploy local number portability until November 24, 2002. In so doing the Commission stated that in spite of the fact that some CMRS carriers may be able to deploy number portability under accelerated schedules, “[w]e believe that to facilitate the goals of deploying portability in all major markets and to support nationwide roaming, the deadline we establish should be one that is realistic for the wireless industry as a whole.” See LNP Forbearance Order at ¶ 30.

Omnipoint recognizes, however, that the LNP Forbearance Order also addressed the possibility of implementing national standards for various number conservation methodologies prior to the new deployment date for wireless LNP, including the possibility of implementing number pooling or other non-LNP methodologies. Specifically, the Commission stated:

Although the Commission has not yet adopted pooling requirements, several state public utility commissions have already implemented number pooling trials, which have necessarily excluded CMRS ... we also intend to move rapidly forward to develop national standards for a variety of other number conservation methods possibly including one or more pooling methods. Should the Commission adopt number pooling requirements in a rule-making proceeding, our decision to grant forbearance in this instance in no way is intended to limit our ability to require wireless participation in pooling at an earlier date, if doing so were necessary to address specific number exhaust problems. Our decision to grant forbearance similarly does not limit our ability to invoke number exhaust remedies that may provide relief only for carriers that are LNP-capable.

See id. at ¶ 48.

Omnipoint and the wireless industry continue to work with the New York DPS and other state utility commissions in an effort to investigate methodologies which conserve numbering resources while providing all carriers equal access to numbering resources in spite of technical constraints. In fact, Omnipoint has filed comments with the New York DPS supporting the consideration of using rate center consolidation on a statewide basis, where technology permits. Omnipoint believes that such conservation methodologies are viable means of conserving NXX codes while considering current carrier technical constraints.

B. The Commission Has Further Recognized the Capital Requirements On New Entrants Which Are Developing Networks and Establishing Service Quality

In addition to noting the current technical constraints on both wireless carriers and some wireline carriers, the Commission also balanced the significant capital constraints currently restricting their ability to become LNP capable. Primarily, the Commission noted the current financial constraints of PCS carriers, like Omnipoint, who are focusing their limited capital resources on their network build-out in compliance with the Commission five year requirement, as well as other requirements governed by the Commission. The Commission detailed its investigation of these costs in the LNP Forbearance Order, stating:

... [w]e believe that extending the LNP deadline until November 24, 2002 more appropriately balances the competitive costs and benefits of wireless LNP. The record demonstrates that the costs to the industry of implementing wireless number portability, though not prohibitive, are substantial. Commenters in this proceeding have estimated that it would cost individual carriers, depending on their size, millions of dollars in

network upgrade, switch replacement, and changes in back office operations in order to implement wireless number portability. The Yankee Group, an international strategic planning and market research firm, has estimated that the wireless industry as a whole will need to spend up to \$1 billion to implement wireless number portability, including software and network modifications.

Id at ¶ 37.

The Commission further added:

We agree with CTIA that requiring wireless carriers to implement number portability under the current schedule has the potential to divert available financial and technical resources from other initiatives that could have a more immediate impact on competition, such as network buildout. Indeed, our findings in the Third CMRS Competition Report suggest that in the next few years, investment in buildout will be critical to broadband CMRS carriers as they seek to improve coverage and service quality in response to growing consumer demand. In addition, CMRS carriers are currently devoting substantial resources to Y2K issues and to other regulatory requirements, such as E911 and CALEA, which are designed to meet important public interest needs but likely will result in some additional technical burden. Thus, if carriers are required to implement number portability within the same time frame as these other initiatives, this could slow network buildout and system development efforts necessary to meet these other demands.

See id at ¶ 38.

The New York DPS's Petition asks the authority to mandate all carriers operating in the State of New York -- including PCS carriers -- to incur the costs associated with employing pooling and porting methodologies prior to the Commission's LNP deployment date. This request is clearly in contradiction with the LNP Forbearance Order. Further, requiring wireless carriers to incur additional, significant capital costs now would hinder their ability to improve coverage and service quality -- goals which the Commission has clearly recognized as in the public interest. Specifically, in this respect the Commission has found that the "[e]xtension of the deadline will provide the industry with the flexibility

to allocate its immediate resources toward network construction -- a goal proven to promote a competitive marketplace.” See LNP Forbearance Order at ¶ 49.

C. **Wireless Carriers Are Not Guilty of the Waste and Inefficiencies Which Pooling and Porting Methodologies Are Designed To Prevent**

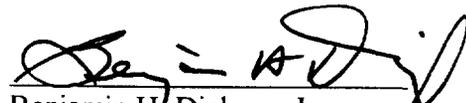
The Commission recognized in the most recent Forbearance Order that wireless carriers are efficient users of numbering resources. Specifically, the Commission stated that the wireless number utilization records provided during the CTIA Forbearance proceeding “are helpful, and they demonstrate that there are certain number conservation techniques that are not LNP-based that can be implemented during the period in which CMRS carriers have been relieved from their current obligation to implement LNP.” Id. at 47. Specifically the Commission noted that the wireless utilization records “underscore[] the need for further development of the record with respect to number utilization by all carriers, including other carriers such as LECs outside the top 100 MSAs who are not yet LNP capable, and the need to develop comprehensive rules that prevent inefficient use of this critical resource.” Id.

Number Pooling does not accomplish increased efficiency or increased supply of available numbers for wireless carriers. Omnipoint already achieves high fill rates in each of its service areas. The rapid rate at which Omnipoint assigns new numbers, specifically in the New York Metropolitan area, requires that it maintain numbers in reserve. In its New York market, for instance, Omnipoint is licensed by the Commission to cover over 21 million POPs. At the current consumer demand, Omnipoint has run through a complete NXX code in a matter of weeks. Indeed, Sprint PCS (another PCS carrier) has

had to file a Petition for Expedited Relief with the New York DPS in order to receive an NXX under current jeopardy procedures.

In short, the New York DPS Petition constitutes a cure worse than the ill. Wireless carriers such as Omnipoint are efficient users of numbering resources and do not "warehouse" numbers in a manner that would be addressed by thousand block pooling or other LNP-based methodologies. Omnipoint and similarly situated carriers are instead providing the rapid and broad deployment of PCS, as envisioned both by this Commission and by Congress, and as evidenced by high fill rates and rapid growth within the industry. In sum, the Petition of the New York DPS should be denied, at least with respect to wireless carriers.

Respectfully Submitted,



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*Attorneys for
Omnipoint Communications, Inc.*

April 5, 1999

New York indicates that the increasing rate of number assignments and NPA assignments is problematic, and that the New York Commission requires additional authority to implement number conservation measures and to explore alternatives to the current inefficient number assignment process. New York avers that its request for additional authority will, among other things, result in improved efficiency of telephone number resources, and will enable the state commission to implement and manage better area code relief. New York also indicates that the requested delegated authority will be performed in compliance with any guidelines or national rules established by the FCC and in collaboration with the telecommunications industry.

The Ohio Commission agrees with New York that the five proposals listed previously will result in more efficient use of a scarce public resource, and will assist states to deal better with area code relief. The Ohio Commission in Case No. 97-884-TP-COI (In the Matter of the Commission's Investigation into Telephone Numbering and Number Assignment Procedures) (attached) investigated area code relief procedures and numbering issues in Ohio. Through this investigation, the Ohio Commission explored intrastate policies that would ensure both the efficient use of numbers, and a fair, reasonable, systematic, and nondiscriminatory process for the implementation of new area codes.

Specifically, the Ohio Commission explored two specific issues in our proceeding: (1) the efficient use of available numbers, and (2) the appropriate development and implementation of new area code plans prior to number exhaust. Similar to New York's petition, the Ohio Commission notes in the 97-884-TP-COI proceeding that one of the primary reasons for rapid exhaust of NPA is the traditional practice of assigning NXX codes of 10,000 number blocks to carriers on an exclusive basis, regardless of a carrier's actual demand for numbers. If New York's request for

additional authority is allowed, individual states could consider the implementation of more efficient demand-based NXX code requirements. Given the vast, changing nature of number administration, the Ohio Commission believes this task resides best with the individual states and not with the North American Numbering Plan Administrator (NANPA) or the FCC.

The Ohio Commission also agrees with New York that such state procedures on numbering issues must be developed in concert with FCC. The Ohio Commission initiated the 97-884-TP-COI proceeding because it is well positioned to comprehend the unique nature and concerns of area code implementation in Ohio. Cooperative efforts between the individual states and federal government, however, must continue to address thoroughly the long-term impacts of number exhaust, and to arrive at comprehensive policies and programs to address number exhaust problems.

CONCLUSION

In conclusion, for the reasons identified above, the Ohio Commission endorses New York's Petition to the FCC for delegated authority to develop additional intrastate number conservation measures. Finally, the Ohio Commission wishes to thank the FCC for the opportunity to file comments in this proceeding supporting the New York petition for delegated authority.

Respectfully submitted,

The Public Utilities Commission of Ohio

By its Attorneys:

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Duane Luckey



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Dated: April 4, 1999

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the matter of the Commission's)
Investigation into Telephone Numbering) Case No. 97-884-TP-COI
And Number Assignment Procedures.)

ENTRY

The Commission finds:

- (1) On August 14, 1997, the Commission issued an entry opening the above captioned case to investigate telephone numbering and number assignments in Ohio. This investigation includes, but is not limited to, an examination of: (a) telephone number usage in Ohio, (b) current number assignment procedures, and (c) future area code relief plan development procedures.
- (2) On September 11, 1997, ICG Telecom Group, Incorporated (ICG), filed a motion to intervene. ICG's memorandum in support of its motion claims that the company has had difficulty obtaining new NXX code assignments and that ICG customers may be adversely affected by the Commission's determinations in this proceeding. On September 30, 1997, the Ohio Telecommunications Industry Association (OTIA) filed a motion to intervene. OTIA's memorandum in support of its motion claimed that numbering and number assignment and related issues affects the vital interests of the OTIA's member companies.

This Commission ordered investigation is a generic proceeding examining numbering issues on a state-wide basis. All interested parties have the opportunity, and are encouraged, to participate in this proceeding through the requested comments and workshops. Therefore, we need not rule upon the requests of ICG and OTIA for intervention.

- (3) On September 17, 1997, Staff issued a data request to all NXX code holding companies in Ohio. This data request sought detailed accounting of each company's usage of NXX codes and individual blocks of station numbers within each NXX code. The response deadline for that data request was November 3, 1997. To date only 42 of 75 companies have

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responded. A list of the companies that have not responded is attached to this entry. The efficient usage of numbers and the fair, reasonable, and systematic process for the implementation of new area codes should be of interest to not only all telecommunications end users but to all telecommunications service providers as well. It is necessary and required that all Ohio NXX code holding companies respond to the Staff's data requests in a timely and appropriate manner. The Commission, therefore, directs that all companies on the attached list respond to Staff's data request, no later than November 14, 1997. Failure to do so may result in assessment of penalties consistent with Sections 4905.54, 4905.56, and 4905.99 of the Revised Code.

- (4) The Staff has participated as an observer in the industry processes implementing new area codes in the old 216, 513, and 614 Numbering Plan Areas (NPAs). Through two complaint proceedings involving the 216/440 NPA split (Case No. 97-650-TP-CSS) and the 614/740 NPA split (Case Nos. 97-822-TP-CSS, 97-709-TP-CSS, and 97-547-TP-CSS) the Commission has considered the industry implementation process. Through the Staff's observations in all the recent NPA splits and the Commission's direct involvement in both the above mentioned proceedings, the Commission became aware that the processes of developing those plans were less than ideal.
- (5) The Federal Communications Commission (FCC) has authorized states to resolve matters involving the implementation of new area codes (CC Docket 96-98; Second Report and Order, FCC 96-333, August 8, 1996). The FCC required that any state wishing to perform any or all functions of initiating and developing area code relief plans must notify the new North American Numbering Plan Administrator (NANPA) within 120 days of the selection of the NANPA by the FCC. On October 9, 1997, the FCC selected Lockheed-Martin as the new NANPA (FCC 97-372). We find that the Commission is in the best position to understand the unique nature and concerns of area code implementation in Ohio; therefore, this process should not be relegated to a national administrator. By this entry we authorize the Assistant Attorney General, Utilities Section, to notify the FCC and Lockheed-Martin, the new NANPA, of our intent to perform

all functions relating to the initiation, development, and implementation of new area codes in Ohio.

- (6) The Commission has two primary concerns regarding the usage and administration of telephone numbers. First, we are concerned about the efficient usage of available numbers in existing NPAs. Second, we are concerned about the appropriate development and implementation of new area code plans when future NPA exhausts occur. Before a new area code is implemented it must first be determined that a new area code is required. In the past, the NXX code administrators have simply handed out NXX codes to any carrier whose request for new codes appeared on the surface to meet the industry guidelines for code assignments. This might have been the appropriate and perhaps the only way to assign numbers to avoid claims of discrimination. Furthermore, in the past, the rapid exhaust of numbers was not foreseen. However, the rapid increase in local carrier certifications, the explosive growth of services, and the customer demand for additional lines forces a need to implement a more efficient system of nondiscriminatory number usage and assignment. In order for the Commission to be assured that the limited resource of numbers are being used efficiently and in nondiscriminatory manners, we must have a timely and accurate account of current and forecasted number usage and demand. The Staff's data requests in this case will establish the baseline of number usage in Ohio and provide the Commission with a measure of relativity on a going-forward basis.
- (7) One of the primary reasons for rapid exhaust of NPAs is the traditional practice of assigning NXX codes of 10,000 station numbers to carriers on an exclusive basis, regardless of a particular carrier's actual demand for numbers. We recognize that this practice is driven by the technical limitations of the legacy numbering system and telephone network design. We find that it is imperative to change this system, such that numbers may be assigned to carriers in a more efficient manner based on actual number demand and usage. The Commission is aware that these issues are being considered by other forums, the FCC, and the North American Numbering Council. However, if or when these technologies and system changes might take place and actually forestall the future exhaust of NPAs is unknown. Therefore, we find it is

appropriate to take action now, even under the current system of assigning NXXs on a carrier and rate center exclusive basis. Better utilization of numbers under the current system will likely enable future number pooling and assignment procedures to have more of an effect on exhaust dates. Furthermore, we believe that many of the procedures we establish in this proceeding will likely carry-over to a future system or process of number assignment and area code implementation.

- (8) The Commission finds that it is now appropriate to consider the development of processes that will insure efficient and nondiscriminatory number usage, reasonable and efficient implementation of new area codes, and other issues regarding numbering. Therefore, the Commission requests that all interested persons submit comments in response to the proposals outlined in the attached appendix. In addition to commenting on the specific staff proposals set forth in Appendix B, the Commission would ask commentors to address the questions we pose throughout Appendix B. Comments are due no later than January 12, 1998. The Commission will issue an entry on January 20, 1998, to provide a listing of all persons who filed comments. Any person who filed comments will be required to serve a copy of their comments upon all commentors no later than January 27, 1998. Reply comments should be filed no later than February 17, 1998, and should also be served upon all other persons who filed initial comments.

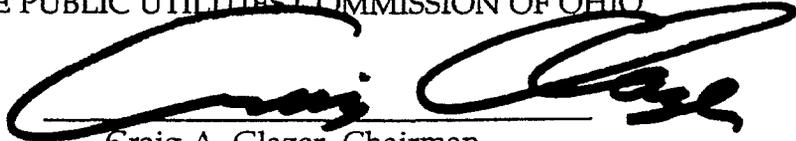
It is, therefore,

ORDERED, That, in accordance with Finding (3) all companies listed on attached Appendix A are directed to respond to the Staff's data request No. 1.0 in this proceeding, no later than November 14, 1997. It is, further,

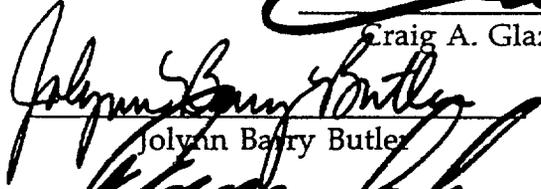
ORDERED, That, in accordance with Finding (8), any person wishing to file comments to the attached appendix, should do so no later than January 12, 1998. Reply comments should be filed no later than February 17, 1998. It is, further,

ORDERED, That a copy of this entry be served upon all telecommunications companies serving in Ohio, all parties of record in Case Nos. 97-547-TP-CSS, 97-650-TP-CSS, 97-709-TP-CSS, and 97-822-TP-CSS, the County Commissioner's Association of Ohio, and the Mayor's Association of Ohio.

THE PUBLIC UTILITIES COMMISSION OF OHIO



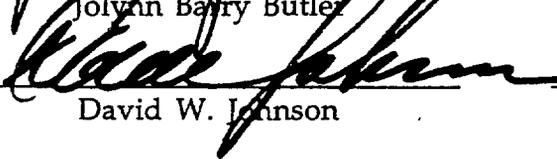
Craig A. Glazer, Chairman



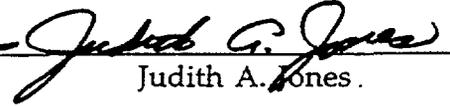
Jolyan Barry Butler



Ronda Hartman Fergus



David W. Johnson



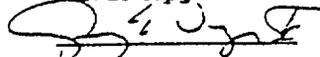
Judith A. Jones

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Gary E. Vigorito
Secretary

APPENDIX A

NON-RESPONDING COMPANIES

1. Aerial
2. American Portable Telecom
3. Arcadia Telephone (TDS)
4. Benton Ridge Telephone
5. Buckland Telephone
6. CBG
7. Cellular-10
8. Chillicothe Telephone
9. Continental Telephone (TDS)
10. Germantown Independent Telephone
11. Little Miami Communications (TDS)
12. McClure Telephone
13. Middle Point Home Telephone
14. Mobilecomm
15. New Knoxville Telephone
16. Nova Telephone
17. Oakwood Telephone (TDS)
18. Orwell Telephone
19. Pagemart
20. Pagenet, Paging Network of America
21. Parkersburg Cellular
22. Pattersonville Telephone
23. Preferred Networks
24. PRI Cellular
25. Professional Communications
26. Ridgeville Telephone
27. Sprint Cellular, Sprint Spectrum & United Cellular
28. Steel Valley Cellular, dba McLang Cellular
29. TeleSpectrum
30. Toledo Paging/Cellular
31. USA Mobile Communications
32. Vanlue Telephone (TDS)
33. Vaughnsville Telephone

NUMBERING AND AREA CODE IMPLEMENTATION**STAFF PROPOSALS****Number Usage**

As long as NXX codes of 10,000 station numbers continue to be assigned to carriers on an exclusive basis, the Staff proposes to require the NXX code administrator to maintain and send to us a quarterly forecast of NXX assignments for the proceeding 12 months, an update of the codes remaining in each NPA, and an updated projected exhaust for each NPA. The Staff also proposes that all carriers who currently hold, or who make a request for NXX codes, would be required to submit an annual forecast of NXX code requests (by month) to the Commission no later than January 31, of each year. All carriers making a request for an NXX code assignment would submit a copy of the request to the Commission, no later than its submission of the request to the code administrator. This copy of the request would also include an identification of the rate centers in which the requested codes will be utilized, a list of all the NXX codes the carrier currently has in those rate centers and a detail of the numbers used in those NXX codes. (The Commission would also ask commentors to discuss the manner and process by which the Commission should treat the information provided to it in the requested forecasts.)

The Staff proposes that no new NXX code should be assigned when a carrier currently has a code in the relevant rate center that has a station number utilization of less than 80%. Furthermore, the Staff proposes that utilization of a number means that station number must either be assigned to an end-user, reserved for an end-user under tariff or contract, or assigned as a test number to the carrier.

New Area Code Implementation

If the current growth in demand continues, even with more efficient usage of numbers, it seems inevitable that the exhaust of existing and future NPAs will occur. Therefore, the Staff proposes that when it is determined that the available NXXs in an NPA are inevitably going to exhaust, the Commission will open a Commission Ordered Investigation (COI) 30 months in advance of the project exhaust. Once the COI is opened, no NXX codes may be assigned to any carrier that has not submitted an annual forecast (as indicated above) for that year. Furthermore, no carrier will be assigned more codes in any quarter than the carrier has projected for that quarter in its

annual forecast. (The Commission specifically ask that commentors address whether an implementation process schedule beginning 30 months in advance is workable.)

The Staff proposes to convene a team of industry and Staff once a COI of the implementation of a new area code is opened. This team would be responsible for developing proposed plans for the implementation of the new area code. The team would be required to receive and consider the input of all affected communities. In addition to assisting with the development of proposed plans, the Staff would attend all team meetings and assure that the team considered all known options, received and considered appropriate input from the affected communities. Staff would also be available to assist the team with the compilation of needed data and materials.

The Staff further proposes that, no later than 24 months in advance of the projected exhaust date, the team would submit all proposed plans to the Commission for its consideration. The Commission would then receive and consider public input. The Commission would issue an order adopting a plan to implement the new area code, no later than 18 months in advance of the projected exhaust date. The new area code would be implemented no sooner than 12 months and no later than nine months before the projected exhaust date with permissive dialing for a period of no less than nine months.

In order to develop a process by which the teams, convened under the proposed future area code COIs, should receive and consider community input, the Commission Staff would convene a workshop under this case, to discuss the manner in which affected communities would be identified and notified and how the input of interested communities would be heard and considered by the team. Staff should convene this workshop no later than February 19, 1998. The workshop would then present a recommendation to the Commission on these issues no later than May 14, 1998.

(The Commission would also encourage commentors to suggest alternative processes. We ask the commentors to address the issue of implementing an area code overlay as opposed to a geographical area code split. The Commission believes that one immediate way to forestall current and future NPA exhaust is with a service or technology specific overlay. While we recognize that the FCC rules currently prohibit a service specific or technology specific overlay we ask commentors to address the merits and concerns of a service or technology specific overlay.)

Dialing

The implementation of new area codes also raises the question of dialing patterns. As more and more numbers and area codes are introduced into an area, the need to dial additional digits to complete a call occurs. In the not too distant past, many local calls could be completed with only five dialed digits. More recently, local calls became generally associated with seven digit dialing. Now with the implementation of multiple area codes in a local calling area, the need to dial 10 or 11 digits occurs. (The Commission seeks comment on whether local calling across NPA boundaries should be standardized to 10 versus 11 digit dialing. We ask commentors to address the concern that 1+ 10 digits has been associated by many users as a toll call.)

PUBLIC UTILITIES COMMISSION

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April 2, 1999

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**Federal Communications Commission
Office of Secretary**

Al McCloud
Network Services Division
2000 M Street, N.W.
Room 235
Washington, D.C. 20554

Re: *Comment of the California Public Utilities Commission and the People of the State of California, Docket No. 96-98*
NSD File No. L-99-21, NSD File No. L-99-19, NSD File L-99-17

Dear Mr. McCloud:

Enclosed please find the original plus two copies of the **COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA** in the above-referenced docket. We are sending the original plus two copies so that you will have one copy for each of the NSD Files.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-1319

Sincerely,

Helen M. Mickiewicz
Attorney for the California Public
Utilities Commission and the
People of the State of California

HMM:mas

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BEFORE THE
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Common Carrier Bureau
Network Service Division
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In the matter of:

Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717.

NSD File No. L-99-21
NSD File No. L-99-19
NSD File No. L-99-17

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996.

CC Docket No.: 96-98

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit to the Common Carrier Bureau of the Federal Communications Commission (FCC or Commission) these comments on three petitions for additional authority. Specifically, California here responds to 1) the Petition of the New York Department of Public Service (NYPS) for Additional Authority to Implement Number Conservation Measures (NYPS Pet.); 2) the Petition of the Massachusetts Department of Telecommunications and Energy (MDTE) for Additional Authority to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes (MDTE Pet. I), and 3) the companion Petition of the MDTE for

Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes (MDTE Pet. II). Where the issues raised in the NYPSC and MDTE Petitions pertaining to number conservation measures are common, we will address the two together.

I. INTRODUCTION

As a preliminary matter, California wishes to express general support for states seeking additional authority to respond to the crushing demands of area code relief planning and implementation. As noted in other filings in this docket, no state has more area code activity than California. Still, the CPUC is acutely aware that many other states face the very same problems in trying to respond to the escalating numbering crisis. The industry insists on its need for ever more numbers, and the Commission has restricted the states' abilities to reduce the speed at which a valuable public resource is being depleted. We urge the Commission to grant, at least in part, as discussed below, the requests of New York and Massachusetts for the authority to implement measures that will slow the demand for numbers by allocating them more efficiently.

II. MDTE PETITION TO IMPLEMENT A SERVICE-SPECIFIC OVERLAY IN VARIOUS AREA CODES

The MDTE requests that the Commission grant "a waiver of the Commission's rule prohibiting technology-specific or service specific area code overlays". (MDTE Pet. I, p. 4.) The CPUC, to date, has not taken a position on the use of service-specific or technology-specific overlays. At the moment, a bill pending before the California State Legislature would, if enacted, require the CPUC to seek a similar waiver from the FCC.

Thus, we may be seeking the same or comparable authority from the Commission in the not-too-distant future.

The CPUC urges the FCC to reconsider its decision to disallow any service-specific or technology-specific area code. Given the exponential growth in number demand, the FCC may find that circumstances now warrant a modification of that policy. Because of the FCC's prohibition, California, like all states, is precluded from considering a service-specific or technology-specific overlay. Yet, at public meetings held in California in connection with area code relief planning, one or more public speakers usually ask why we do not create an area code for specific uses, such as faxes or wireless providers. While California has not taken a position on this question yet, the CPUC would like the discretion to consider such an option. Thus, the CPUC urges the FCC to reconsider its ban, and further, to consider delegating to the states the authority to establish service-specific or technology-specific area codes if the state commission deems doing so to be in the public interest.

Finally, we note that the FCC recently granted wireless carriers a two-year extension of the deadline for their implementation of local number portability (LNP). Carriers which are not LNP-capable are not truly able to participate in number pooling. Both the FCC and the states are considering number pooling, whether on a trial basis at the state level per the Pennsylvania Order¹, or via mandatory FCC rules, hopefully to be established sometime in the very near future. These facts suggest two alternatives: 1) the

¹ Memorandum Opinion and Order and Order on Reconsideration, FCC 96-98, Released September 28, 1998.

FCC delays number pooling until the wireless carriers are LNP-capable, or 2) the FCC authorizes number pooling without the participation of wireless carriers, some of which are now well-entrenched carriers with large stockpiles of numbers at their disposal. If the FCC decides on either of these courses, then it is only reasonable for the FCC to reconsider the potential advantages of setting aside specific NPAs for wireless carriers.

III. PETITIONS BY MDTE AND NYSPSC TO IMPLEMENT CODE CONSERVATION MEASURES

A. Reclamation of Unused and Reserved Exchange Codes

Both the MDTE and the NYSPSC request additional authority pertaining to reclamation of unused or reserved NXX codes. (MDTE Pet. II, pp. 5-7; NYSPSC Pet., p. 13.) In particular, the MDTE asks for “authority to require reclamation to the area code administrator of unused exchange codes or thousands number blocks from carriers with excess number resources”. (MDTE Pet. II, p. 5.) The NYSPSC makes a narrower request, seeking to “tighten and enforce” the time frames which currently exist in industry guidelines for reserving inactive NXX codes.

California urges the FCC to explicitly delegate to states the authority to order carriers to return to the North American Numbering Plan Administrator (NANPA) unused NXX codes or portions thereof. California has not yet attempted to gather utilization data on a broad basis pertaining to contamination rates of currently-assigned NXX codes. Given that the CPUC has expressed interest in 1,000-block number pooling, we would anticipate gathering or accessing utilization data prior to the start-up of pooling. Such data would also serve the purpose of disclosing whether codes are being used, and if not,

offer the CPUC the option to consider reclaiming unused codes. An explicit affirmation of state authority to engage in the gathering of data and the reclamation of unused codes would assist the petitioners, California, and other states in ensuring that numbers are used more efficiently.

California notes also that some reserved NXX codes are used to provide tariffed services over which state commissions have jurisdiction. To the extent that is the case, the CPUC assumes states already have authority to determine whether NXX codes should be reserved, and if so, how many NXX codes or numbers within those codes should be reserved to provide those tariffed services.

In addition, some special use codes are used by incumbent local exchange carriers (ILECs) to provide services for the public which are not tariffed. For example, in California, ILECs provide a weather service number, which is not tariffed. Because the public interest is implicated in how those services are provided, the FCC should affirm that states have authority over how those special use codes are used.

B. Maintain Current NXX Code Rationing for Six Months After Relief Is Implemented

The MDTE seeks authority to maintain its “current central office code rationing measures until six months after implementation of area code relief” in the 508, 617, 781, and 978 area codes. (MDTE Pet. II, pp. 7-8.) In specific area code relief decisions, the CPUC has adopted the approach of continuing to ration codes after implementation of relief, based on industry recommendations. In addition, at a statewide planning meeting in December, 1998, the California industry area code planning group adopted by

consensus the same approach. Lockheed Martin IMS, in its capacity as the NANPA, has elected to take to the North American Numbering Council (NANC) the issue of whether states should or could adopt different policies regarding maintenance of NXX code rationing after relief has been implemented in a given NPA. Though Lockheed did not oppose the California industry planning group's adoption of this approach, the NANPA suggested that it was concerned about differing state approaches, and wanted guidance from the NANC or the FCC on how to respond to the different policies.

This particular issue has caused some dissention in the California industry planning group. Based on the discussion of this issue at the December, 1998 and March, 1999 statewide planning meetings, it is the view of the California industry and of the CPUC that whether NXX code rationing continues after relief is implemented in a given NPA, and if so, how it is effected, is strictly a matter for the industry within each state to address. Where industry consensus is unattainable or where the public interest demands, the state commission should resolve the matter. California urges the FCC to affirm that, at a minimum, the state industry planning group can decide the policy for continuing to ration NXX codes after relief is implemented. Alternatively, the FCC should conclude that state commissions may so order where the state commission deems continued rationing after relief is implemented to be in the public interest or where the industry cannot reach consensus.

Thus, California supports this specific request of the MDTE.

C. Revision of Rationing Procedures

The MDTE asks the Commission for “authority to revise the rationing procedures now in effect, if necessary, to prolong the life of existing area codes”. (MDTE Pet. II, p. 8.) In California, the industry has developed, and the CPUC has adopted, an NXX rationing plan.² Nonetheless, California supports the MDTE’s request that the FCC affirm explicitly that states have authority to revise NXX code rationing procedures, even where the industry might agree on a different outcome. While the CPUC has chosen not to make changes to the NXX code rationing process in California other than at the request of the industry, any state commission may find that the public interest, which is not parallel to the interests of the industry, requires a deviation from or revision to existing NXX code rationing procedures.

D. Hear and Address Claim of Carriers Seeking Additional Codes

The MDTE asks the Commission for “authority to hear and address claims of carriers seeking additional exchange codes and to work with the area code administrator to ensure that those carriers unable to serve their customer(s) acquire additional exchange codes outside of the rationing plan” until relief is implemented. The CPUC has already been presented with claims from two carriers seeking to obtain NXX codes outside of the California lottery. The CPUC denied the first petition, filed by Media One, and referred the matter to a subsequent series of lottery workshops. The industry has met three times in workshops to discuss possible changes to the California lottery process, has discussed

² The CPUC has described the California NXX code rationing process in other recent pleadings before the FCC. In addition, we note that the CPUC has resolved, at the request of the industry, contentious issues pertaining to the NXX code lottery which the industry itself could not resolve.

the Media One request three times, and has reached no consensus to change the existing lottery process to give NXX codes to carriers demonstrating an immediate need for codes to provide service.³

The second petition, by Sprint PCS, was withdrawn after Sprint PCS received NXX codes in a lottery held in a month subsequent to the filing of its petition.

In the Pennsylvania Order, issued September 28, 1998, the FCC directed the NANC to provide to the FCC a recommendation on the question of carrier access to NXX codes outside the rationing process.

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

The CPUC is not aware that NANC has provided, as yet, the requested recommendation to the FCC. In the meantime, the states, like California and Massachusetts, find themselves confronted with requests from carriers to be treated as exceptions to the rules which govern the NXX code rationing processes.⁴ In New York, for example, Sprint PCS sought from the FCC an order directing the NANPA to release to Sprint PCS two

³ CPUC staff members led the workshops, and are preparing a workshop report for the CPUC to review.

⁴ Indeed, in our Petition for Reconsideration (PFR) of the Pennsylvania Order, we noted our interest in the anticipated NANC recommendation. (See Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, filed November 6, 1998, pp. 22-23.)

NXX codes which had been reserved for it pursuant to the rationing procedures in place in the 516 NPA.⁵

California emphasizes that it is unfamiliar with the circumstances both underlying Sprint PCS' request in New York, and fueling the request by the MDTE. We note that in California, NXX codes are not reserved for later release to the carrier which is assigned the codes. Rather, the NXX codes reserved for a particular carrier via the lottery process here are released to the carrier in the relatively short time frame completely consistent with industry guidelines. Therefore, we do not comment on the specifics of those situations. The issue remains, however, of critical importance to the states.

Notwithstanding the absence of a recommendation from the NANC, the CPUC urges the FCC to affirm that states do possess authority to order the NANPA to allocate NXX codes outside of the code rationing process, if the state determines that to do so would be in the public interest.⁶ Thus, California supports this specific request by the MDTE.

E. Set Allocation Standards/ Fill Rates

The MDTE requests that the FCC grant it "authority to set the standards for allocation of exchange codes to manage numbering resources more efficiently". (MDTE Pet. II, p. 9.) The NYPSC makes a similar request, asking for authority "to establish

⁵ See Letter to Mr. Ronald R. Conners from Yog R. Varma, FCC Common Carrier Bureau Deputy Chief, dated March 12, 1999.

⁶ For example, Media One has asserted to the CPUC that it seeks codes outside of the California lottery specifically to offer residential local exchange service. In California, today, very few carriers are offering residential local exchange service in competition with ILECs.

minimum fill rates to enhance our efforts to respond appropriately to area code relief by requiring more efficient and effective use of numbering resources”. (NYPSC Pet., p. 12.)

In a decision approving an area code overlay for the 310 NPA in Los Angeles, the CPUC established a requirement concerning assignment of numbers in blocks with relative degrees of contamination. That decision went unchallenged, but when we issued a decision, containing an identical provision, ordering an overlay for the 408 NPA last year, after the FCC had issued the Pennsylvania Order, Pacific Bell challenged our order. Pacific claimed that imposing requirements for efficient number management within NXX codes constituted number assignment, a task the FCC has delegated exclusively to the NANPA. The rehearing of that decision is pending before the CPUC. In the meantime, we expect to be seeking comments on what, if any, measures we should impose in all area code relief plans pertaining to efficient management of numbers within NXX codes. We urge the FCC to affirm that states have such authority, and thus support the specific request of the MDTE and the NYPSC.⁷

F. Institute 1,000-Block Number Pooling

Both the MDTE and the NYPSC request authority from the FCC to implement mandatory 1,000-block pooling. (MDTE Pet. II, pp. 9-10; NYPSC Pet., pp. 6-9.) California fully supports these requests. The CPUC has expressed publicly its interest in pursuing number pooling, and established an industry task force to explore options for doing so. In its recent Interim Report to the CPUC, the Number Pooling Task Force

⁷ We also touched on this issue in our Comments on the NRO Report, filed January 22, 1999. (See Comments of the California public Utilities Commission and of the People of the State of California, In the Matter of: North American Numbering Council Report Concerning Telephone Number Pooling and

explained that it had reached consensus “against recommending a voluntary number pooling trial in California at this time, given the positions that various parties have taken on the matter”. Specifically, the Task Force reported that the ILECs refuse to participate in a voluntary trial. The Task Force further reported that the CLECs are of two views: a minority wish to pursue voluntary pooling trial in hopes they can get smaller blocks of numbers, while the majority consider voluntary pooling trials to be a waste of time and resources if the ILECs will not participate.

Thus, in California, as in many other states, we are at a stalemate in pursuing number pooling. In our PFR of the Pennsylvania Order, we recommended that the FCC take comments regarding guidelines for states to order mandatory number pooling trials.⁸ The FCC has not taken comments on number pooling guidelines, and the states are facing an escalating numbering crisis. The crisis has arisen not because we lack sufficient numbers, but because those numbers are being allocated inefficiently. We continue to urge the FCC to promptly establish guidelines for the states to follow in conducting number pooling trials. If the FCC does not intend to act promptly to establish number pooling guidelines, then the CPUC urges the FCC to delegate to the states authority to mandate number pooling.

Therefore, we support the specific requests of the MDTE and the NYPSC.

Other Optimization Methods, hereafter the NRO Report, p. 11.)

⁸ See Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, pp. 18-20.

G. Extended Local Calling Areas

The MDTE seeks authority to implement extended local calling areas. (MDTE Pet. II, pp. 10-11.) In our Comments on the NRO Report, we stated that “it is not clear to the CPUC exactly what the [NRO] Report contemplates when it discusses ‘wireline-to-wireline ELCA [Extended Local Calling Areas]’”. The details of the MDTE’s request similarly are unclear to us, so the CPUC cannot speak to the specific authority Massachusetts seeks.

H. Inconsistent Rate Centers

The MDTE requests authority from the FCC to “implement Inconsistent Rate Centers”, meaning that CLECs would use different rate center boundaries from those of the ILECs. In adopting rules for local exchange competition in 1996, the CPUC authorized CLECs to create rate centers inconsistent with those of the ILECs. We simply asked that any carrier proposing to create inconsistent rate centers notify the CPUC of its intention to do so. To date, only one carrier has tried to establish inconsistent rate centers.

The CPUC considers establishment of rate centers, as well as any determination as to whether they need be uniform or may vary from carrier to carrier, to be entirely within the domain of the states.⁹ While we consider it unnecessary for Massachusetts to seek approval from the FCC to establish inconsistent rate centers, we urge the Commission to

⁹ We noted in our PFR of the Pennsylvania Order our concern that language in that order appeared to limit the states’ ability to consolidate rate centers. In our PFR, we asked the FCC to clarify its intent on this issue as it was set forth in the Pennsylvania Order.

respond to the MDTE's request by affirming the states' authority allow carriers to use inconsistent rate centers.

I. Unassigned Number Porting

Both the MDTE and the NYPSC ask the FCC for authority to implement Unassigned Number Porting (UNP), though New York limits its request by proposing to use UNP on "a short-term basis and where a carrier can demonstrate a need for the unassigned number(s) to serve specific customers". (See MDTE Pet. II, pp. 11-12; NYPSC Pet., p. 10.) In our Comments on the NRO Report, we noted that the CPUC has not yet considered UNP. We recommended that the FCC and the states need more information on how UNP would work. Specifically, we noted that UNP raises "issues concerning how to implement this measure when some providers are not LNP-capable", and that UNP "may also affect 911 functionality". (CPUC's Comments on NRO Report, p. 8.) We again urge the FCC to address and resolve these issues.

J. Individual Telephone Number Pooling

The NYPSC requests authority to "explore the feasibility of individual telephone number pooling (ITN) and to launch trials where and when technically feasible". (NYPSC Pet., p. 9.) In our Comments on the NRO Report, the CPUC noted that we have not yet formally considered ITN pooling, but "would like the option to pursue any pooling measures which could help slow the rate at which numbers presently are being assigned or increase the efficiency of their usage in California". (CPUC's Comments on NRO Report, p. 8.) In those Comments, however, we also noted the problems that can and will arise in implementing number pooling when a significant group of carriers are

not LNP-capable, and urged the FCC to address and resolve those issues. We continue to urge the FCC to establish, as soon as possible, guidelines for mandatory number pooling, including ITN, or to delegate to the states authority to mandate ITN, if they so choose.

Therefore, California supports the NYPSC request to explore use of ITN.

K. Utilization Surveys

The NYPSC seeks authority to “adopt minimum requirements for [number] utilization surveys”. (NYPSC Pet., pp. 13-14.) In our Comments on the NRO Report, the CPUC stated that “[t]he NANPA should obtain utilization data and the states, if they need the data, should obtain it, in turn, from the NANPA”.¹⁰ (CPUC’s Comments on the NRO Report, p. 12.) Despite expressing a preference for having the NANPA, rather than the states, collect utilization data, we also stated our belief that “the FCC should affirm explicitly the states’ authority to order carriers to provide utilization data to state commissions”. (*Id.*) Thus, we support the request by the NYPSC.

L. NXX Code Rationing

The NYPSC seeks authority from the FCC to “adopt rationing procedures prior to an NPA decision” being adopted. (NYPSC Pet., pp. 14-15.) California has set forth in several recent pleadings before the FCC its views on the need for states to have additional authority to implement NXX code rationing prior to the state commission’s adoption of a relief plan, but after the NPA has gone into jeopardy. We addressed this issue in our PFR

¹⁰ Our preference for the NANPA to perform this function stems from the high number of area codes in California - 25 as of this pleading - and the commensurate resources that the CPUC would need to devote to collecting and processing utilization data. In addition, it is logical for the NANPA to collect this data as the NANPA already performs NPA and NXX forecasting and assignment. If the NANPA were to perform this function, the costs could be added to the existing fixed-contract rate, or included in the next bidding process.

of the Pennsylvania Order, as well as in our Petition for Additional Authority to conduct our own state lottery. We addressed this issue in our replies to responses to those two petitions. We support New York's request for additional authority to impose rationing before a relief plan is adopted, so long as the relief planning is underway, as would be the case in California. We are sensitive to both the FCC's and the industry's concerns that states implement relief in a timely manner. At the same time, California knows from our own extensive experience that even when the industry and a state commission attempt to implement timely relief, the intense demand for numbers cannot be timely met without rationing before relief is implemented.

M. Enforcement

The NYPSC asks the FCC for explicit authority to intervene when "individual carriers do not comply with policies or procedures". (NYPSC Pet., pp. 15-16.) For the reasons set forth in footnote 31 of the NYPSC Petition, the CPUC fully supports New York's request. The FCC appears to assume that carriers can reach consensus on how area code planning should be conducted. As noted in one of our earlier pleadings, the industry planning group in California has engaged in pitched battles over issues such as where to hold meetings. Consensus on much meatier issues is often, if not usually, elusive. Explicit state authority to enforce numbering policies is vital to ensure that carriers comply with those policies, be they FCC, state commission, or industry policies.

N. Auditing

The NYPSC asks the FCC for authority to conduct number utilization audits. (NYPSC Pet., pp. 16-17.) For the reasons set forth in § III.K, supra, we believe the

NANPA should collect utilization data and conduct utilization audits. At the same time, we believe states should be allowed to perform this function if they so choose. Thus, we would support New York's request for such authority.

IV. CONCLUSION

California cannot overemphasize the extent of the numbering crisis the states face, and the dearth of tools the states possess to respond to the current crisis. For the reasons stated, we urge the FCC to grant to Massachusetts and to New York the additional authority they request to adopt number conservation and efficient number management measures.

Respectfully submitted,

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