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

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In the Matter of	)	
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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	)	File No. NSD-L-99-19
and	)	
New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures	)	File No. NSD-L-99-21

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COMMENTS OF AT&T CORP. ON PETITIONS FOR WAIVER

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and	)	
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to Implement Number Conservation Measures	)	

COMMENTS OF AT&T CORP.
ON PETITIONS FOR WAIVER

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, AT&T Corp. ("AT&T") hereby submits its comments on the petitions of the Massachusetts Department of Telecommunications & Energy ("MDTE") and the New York State Department of Public Service ("NYDPS"), both of which request additional grants of authority from the Commission to implement various area code conservation measures.[1/] The Commission has consistently refused to grant such authority to the states, thus ensuring the continued maintenance of consistent national numbering policies essential to the development of competition and the

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[1/] 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 ("MDTE Petition"); New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, filed February 19, 1999 ("NYDPS Petition").

provision of the telecommunications services consumers demand. Neither the MDTE nor the NYDPS have provided any basis for a reversal of this longstanding policy.

INTRODUCTION AND SUMMARY

When it comes to numbering matters, all parties to FCC and state commission proceedings have the same ultimate goal: the long-term availability of resources sufficient to meet consumer demand for competitive and innovative telecommunications services. The only difference of opinion arises in connection with how best to achieve this objective. AT&T agrees with the MDTE and the NYDPS that prompt action on conservation and optimization is required to reduce the need for frequent and costly area code relief implementation. However, AT&T is very concerned about the potential impact of dozens of differing and inconsistent state plans on the viability of the North American Numbering Plan ("NANP"), carriers' ability to provide service to their current and prospective customers, and the development of national numbering standards.

Congress wisely granted the Commission sole jurisdiction over number administration as the only viable means to maintain the integrity of the NANP and promote competition and consumer interests. The Commission has consistently recognized the critical importance of establishing uniform national numbering policies, even as it has delegated significant authority to state commissions to implement area code relief and certain conservation measures consistent with those policies. The petitioners point to no new or changed circumstances that would warrant the wholesale revision of this policy in the form of open-ended delegations of power to the states to depart from national norms.

Indeed, the MDTE and NYDPS petitions are uniformly lacking in any sustainable rationale for the relief they request, nor do they provide any detailed plans for utilizing the

authority they seek. Both cite the critical shortage of numbers and the societal and economic costs associated with the introduction of new area codes, but they fail to explain why delegation of federal functions to state commissions would resolve these concerns or how number conservation trials in their states would further the FCC's consideration of these issues and development of national standards.

The development of national standards for pooling is currently underway and the Commission fully comprehends the need to conclude the process expeditiously. Permitting state commissions to implement mandatory number pooling – or other conservation methods such as individual telephone number pooling or unassigned number porting – would fruitlessly divert much-needed resources away from the federal process. Similarly, the petitioners' requests for authority to implement auditing and enforcement procedures are premature given that these issues are currently under consideration at the Commission. Nor is there any basis to turn to the states for other number administration functions, such as the establishment of utilization rates, code reclamation, and number rationing. Congress placed this authority with the Commission precisely because the existence of fifty-one independent regimes for overall code administration would severely impede management of the nationwide numbering plan.

The petitioners' requests cover well-plowed ground. Each of their proposals has either been expressly removed from the purview of state commissions or is currently under consideration at the Commission. The petitioners do not advance any specific reasons why their situations merit revisiting these issues and do not present any particular proposals for the Commission's evaluation, instead seeking wholly open-ended grants of authority over significant aspects of number administration. Given that these petitions bring no new facts or circumstances

to light, and given the clarity of the Commission's prior rulings on the same subjects, the waiver petitions should be rejected.

I. THE PETITIONERS FAIL TO DEMONSTRATE WHY THE COMMISSION'S WELL-ESTABLISHED AUTHORITY OVER NUMBERING ADMINISTRATION SHOULD BE ALTERED

A. Authority Over Number Administration Rests Properly With the Commission

Congress has granted the Commission sole jurisdiction to administer a uniform national numbering system.[2/] The Commission has consistently retained this plenary authority while making specific, limited delegations of authority to state commissions.[3/]

By retaining federal authority over numbering administration, Congress has recognized an inexorable truth – an efficient and effective nationwide numbering plan must be centrally

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[2/] 47 U.S.C. § 251(e)(1).

[3/] 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, 13 FCC Rcd 19009, 19025 ¶ 23 (1998) ("Pennsylvania Order") (reiterating the Commission's sole responsibility to implement national numbering policy while delegating limited authority for states to implement code rationing in certain circumstances); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19512 ¶ 271 (1996) ("Second Report and Order") (retaining the "authority to set policy with respect to all facets of numbering administration" while authorizing states to resolve matters involving implementation of new area codes).

The U.S. Supreme Court's recent decision affirming the Commission's authority to prescribe rule and regulations implementing the local competition provisions of the Telecommunications Act of 1996 further supports the Commission's conclusion that Section 251(e) gives it plenary authority over numbering administration. AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721, 729 (1999) (citing section 201(b) of the Communications Act as giving the Commission the authority necessary to carry out the provisions of the Act, including the local competition provisions of sections 251 and 252).

administered pursuant to national standards.[4/] The Commission has repeatedly affirmed that a system comprised of varying state regimes for number administration would result in significant societal and economic costs.[5/] Moreover, the Commission has recognized that inconsistent regimes pose a serious threat to the integrity of the NANP. For example, lack of uniformity in pooling and similar measures could impair call routing and hamper the industry's ability to forecast and plan for exhaust.[6/] Indeed, numbering administration epitomizes the Supreme Court's observation that "a federal program administered by 50 independent state agencies is surpassing strange."[7/] The Commission has correctly and repeatedly found that permitting state commissions to proceed with certain numbering administration measures "on a piecemeal basis" could "jeopardiz[e] telecommunications services throughout the country."[8/]

The North American Numbering Council ("NANC") has stated that a uniform national architecture is required to implement some conservation methods efficiently, and to

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[4/] 47 U.S.C. § 251(e)(1). Congress established the national numbering system to ensure the efficient delivery of telecommunications services.

[5/] See, e.g., Second Report and Order at 19533 ¶ 320 (1996); Pennsylvania Order at 19022-24 ¶ 21.

[6/] Pennsylvania Order at 19023-24 ¶ 21 (stating that lack of uniformity may prevent routing of calls, and hamper the ability to forecast and properly plan for exhaust thereby accelerating the need for a new nationwide numbering plan); id. at 19031-32 ¶ 33 (stating that premature deployment of a new numbering plan will cause costly and unnecessary network upgrades and consumer confusion.

[7/] AT&T v. Iowa Utilities Board, 119 S.Ct. at 730, n.6.

[8/] Pennsylvania Order at 19022 ¶ 21; 19028 ¶ 28.

avoid imposing needless costs on the industry.[9] The Commission has properly determined that it, with guidance from the NANC, should develop the standards by which number conservation measures must be implemented. The Commission is in the process of reviewing the public comments on the NANC's Number Resource Optimization Report ("NANC NRO"), and has indicated that it plans to initiate a rulemaking on specific number optimization proposals shortly. Because commencement of this proceeding will significantly mitigate many of the petitioners' and other parties' concerns, AT&T urges the Commission to act as expeditiously as possible, and stands ready to continue to assist in developing national standards for number pooling and other conservation measures.

In the meantime, nothing would be gained by granting piecemeal authority over certain numbering administration issues to state commissions. Patchwork state-mandated administration efforts would fruitlessly divert resources from developing and implementing national standards for efficient number administration, and would thereby ultimately hinder, rather than promote, efforts to address telecommunication users' numbering needs. More immediately, state-specific numbering administration may directly impede the ability of service providers to obtain the

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[9] North American Numbering Council, Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, at §§ 6.2.8, 8.21.3, 11.2.5 ("NANC NRO") (recognizing the need for a uniform national architecture for individual telephone number pooling, thousands block number pooling, and unassigned number porting).

numbers necessary to provide service.[10] Hampering carriers in their efforts to serve customers will deny American consumers the benefits that result from robust competition in the telecommunications marketplace.

B. The Petitions Do Not Satisfy The Commission's Requirements For Waiver Requests

A petitioner seeking waiver of the Commission's rules must show "good cause" as to why the rule should be suspended, amended, or revoked.[11] This standard poses a "high hurdle" because it requires a petitioner to "plead with particularity the facts and circumstances which warrant [the waiver]."[12] Far from demonstrating changed or novel circumstances that might merit a waiver, the MDTE bases its request for authority to implement a wide range of number administration measures solely on the ground that regional area codes are in jeopardy and that the Commission's orders limit its options in dealing with these situations.[13] Similarly, the NYDPS argues that the declining life spans of New York area codes are a sufficient basis for its

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[10] This is precisely the situation that led to the Pennsylvania Order. There, the Pennsylvania Public Utilities Commission ("PaPUC") implemented conservation measures in lieu of area code relief until the advent of number exhaust compelled the PaPUC to reconsider and initiate conventional relief for area codes 717 and 215/610. See Pennsylvania Order at 19017-20 ¶¶ 12-17. However, because of the PaPUC's delay in establishing an area code relief plan, several area codes completely exhausted well before relief could be implemented. As a result, some carriers have fully depleted their inventories and cannot serve customers or have had to resort to extraordinary means to provide such service.

[11] 47 C.F.R. § 1.3. The rule makes clear that any waiver of general agency rule is subject to the provisions of the Administrative Procedure Act. Id.

[12] Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F.2d 664, 666 (D.C. Cir. 1968). See also Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972).

[13] MDTE Petition at 2-5.

request for authority to implement various conservation and other measures.[14] These are precisely the types of arguments the Commission considered – and rejected – in the Pennsylvania Order.[15]

The petitioners fail to distinguish their states' experiences from those of Pennsylvania, and thus provide no reason to revisit issues settled in that proceeding. Indeed, these pleadings are nothing more than untimely filed petitions for reconsideration of the Commission's Pennsylvania Order. The petitions fail to show any special or changed circumstances that justify deviation from the rule established in the Pennsylvania Order, and accordingly, there is no evidence in the record that could support a waiver.[16]

Nor do the petitioners satisfy the standards set forth in the Pennsylvania Order for state-run trials. In that decision, the Commission expressed its interest in having states experiment with "innovative number conservation methods," for example, by initiating voluntary number pooling trials.[17] The Commission encouraged states to experiment with pooling and other conservation methods so that – through their efforts – the Commission, the states, and the

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[14] NYDPS Petition at 3-5 & n.9. Although the petitioners advert to state commissions' knowledge of local circumstances, there are no grounds to conclude that individual states would be better able than the Commission and the NANC to work through the many technical and administrative issues that must be resolved in order to implement viable number conservation solutions.

[15] While the Pennsylvania Order recognized the exigencies associated with NPA exhaust, the Commission refused to allow states to implement rationing and other conservation measures without first deciding on area code relief plans, and limited the states' ability to order certain conservation measures at any time. See Pennsylvania Order at 19025 ¶ 23.

[16] See, e.g., Industrial Broadcasting Co. v. FCC, 437 F.2d 680, 683 (D.C. Cir. 1970) (refusing to grant a waiver request because petitioner "presented no new expedients to the Commission not envisaged by the rules").

[17] Pennsylvania Order at 19030 ¶ 31.

industry would obtain useful information to aid in the development of uniform national standards for effective conservation measures.[18] To facilitate such experimentation, the Commission stated its willingness to grant additional authority for conservation and pooling plans upon recommendation from the NANC, and directed the Chief, Common Carrier Bureau (the "Bureau") to determine whether the proposed plans were consistent with Commission policies and regulations.[19] In this regard, the Pennsylvania Order expressly charged the Bureau with "determin[ing] the potential ramifications on a particular industry segment of a proposed conservation method."[20]

The petitions submitted in this proceeding are not sufficiently specific to permit the Bureau to evaluate whether they would serve the public interest or are otherwise consistent with its policies and rules.[21] The petitioners request blanket authority to order almost every type of code conservation measure or rationing plan that is currently under consideration by the industry, without regard to technical or practical feasibility, without any explanation of how their implementation would be accomplished, and without Commission assessment of their competitive impacts. For instance, the MDTE proposes to reclaim unused exchange codes but does not describe the logistics of reclamation or the standards that would govern such a

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[18] Id. at 19027 ¶ 27.

[19] Id. at 19030 ¶ 31.

[20] Id.

[21] Nor have the petitioners submitted their proposals to the NANC for prior review as recommended by the Pennsylvania Order. Because the NANC has substantial subject matter expertise, and represents a broad range of industry views, the Commission will ultimately seek NANC's recommendation on any number conservation proposal submitted. Thus, the Commission suggests that state commissions present their proposals to NANC, first. Pennsylvania Order at 19030 ¶ 31.

program.[22/] It also asks for authority to institute a panoply of number conservation measures, including thousands block number pooling, without providing a glimpse of how it would carry out such authority if granted.[23/] Similarly, the NYDPS sets forth a brief description of the voluntary number pooling trial currently underway in the 212 NPA, but fails to explain how the mandatory pooling it seeks to impose would be structured.[24/] Instead, the NYDPS merely asserts without proof or explanation that its mandatory pooling scheme would be consistent with industry standards.[25/] Similarly, the NYDPS assures the Commission that individual telephone number pooling – a methodology the petition admits has yet to be developed – would be implemented in a "nondiscriminatory, technologically neutral manner" that it does not specify.[26/]

Despite the Commission's explicit intent that experiments be conducted in order to obtain information to develop national standards, the petitioners fail to demonstrate that their proposed "experiments" would add anything of value to existing numbering trials, or accomplish anything other than to potentially delay area code relief.[27/] This is precisely the authority that the Commission recently refused to delegate to Pennsylvania.[28/] Indeed, if avoiding area code relief

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[22/] MDTE at 5-7.

[23/] MDTE Petition at 9-12.

[24/] NYDPS Petition at 6-7.

[25/] NYDPS Petition at 7, n.16.

[26/] NYDPS Petition at 9.

[27/] The MDTE admits as much when it seeks permission to implement mandatory thousands number block pooling in advance of federal rules. MDTE Petition at 10.

[28/] See Pennsylvania Order at 19024-25 ¶ 22 ("Conservation methods are not, however, area code relief and it is important that state commissions recognize that distinction and implement area code relief when it is necessary.") Id. at 19027-28 ¶¶ 27-28.

constituted a sufficient justification for waiver of the Commission's Pennsylvania Order, then any state that faced NPA exhaust would qualify for such a waiver, eviscerating the underlying requirement.[29/]

II. GRANTING PETITIONERS' SPECIFIC NUMBERING PROPOSALS WOULD HAVE FAR-REACHING AND NEGATIVE EFFECTS ON COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY

A. State-by-State Implementation of Number Pooling and Other Conservation Measures Would Hinder Efforts to Achieve a Nationwide Solution

Like the MDTE and NYDPS, AT&T strongly supports thousands block pooling for technically capable carriers.[30/] To maximize the benefits of thousands block pooling, however, it should be implemented according to a uniform national set of requirements, and such requirements have yet to be finalized.[31/] Because thousands block number pooling substantially alters number resource administration and significantly affects carrier networks, systems, and operations, implementing it on a state-by-state basis, as Massachusetts and New York request,[32/]

[29/] See Wait Radio, 418 F.2d at 1159 ("This combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility.").

[30/] The Commission has correctly recognized that thousands block pooling requires the use of LNP, and only LNP-capable providers can participate. See Pennsylvania Order at 19028-29 ¶ 29. To maintain its principle of technological neutrality, the Commission should continue to ensure that non-LNP capable providers remain exempt from pooling requirements. See Second Report and Order at 19587 ¶ 283.

[31/] Changes required to implement thousands block pooling include: development of pooling administration guidelines; selection of the appropriate pooling method; development of pooling administration specification requirements; modifications to Local Service Management Systems and Service Order Administration Systems; enhancements to Operational Support Systems; and switch and SCP enhancements, just to name a few. The extent of these changes necessitate the development and implementation of a national architecture. See NANC NRO at §8.19.1.

[32/] MDTE Petition at 10, NYDPS Petition at 6-7.

could place an intolerable strain on carriers' administrative resources. Carries could be forced to create different systems in each state in which they do business – and then could be required to revise those systems yet again once national standards emerge. These increased burdens would come without corresponding benefits. The proposals advanced by New York and Massachusetts are completely undefined, and would add nothing to the knowledge gleaned from current pooling trials in Illinois. The Commission recently refused to grant states authority to implement number pooling "in view of the activity occurring at the federal level to develop such national standards" and petitioners provide no new facts or arguments warranting reversal.[33/]

AT&T also supports further exploration of individual telephone number pooling ("ITN") pooling and unassigned number porting ("UNP"). At this point, however, UNP and ITN remain undeveloped and are not yet ready to be implemented in any meaningful way.[34/] Moreover, once the substantial remaining work required to develop these methodologies is completed, they may not prove to be as cost-effective as thousands block number pooling, which may adequately address the demand for numbering resources that motivates the instant petitions.[35/] AT&T therefore urges the Commission to proceed forthwith with the creation of nationwide standards for thousands block pooling, and to ensure that those standards can be implemented before

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[33/] Pennsylvania Order at 19027 ¶ 27.

[34/] NANC NRO at § 6.11 (stating that there are additional items that must be addressed before ITN pooling can be implemented and that the implementation time frame is 4-6 years); § 11.1.1 (stating that the NANC was only able to examine the use of UNP in jeopardy situations and that no qualitative or quantitative analysis of the costs or benefits of UNP was performed).

[35/] The industry would likely incur substantial costs due to the significant network and system modifications necessary to implement ITN pooling. Service providers will be required to modify their Operational Support Systems to interface with the Pool Administration System and to remove system dependency in associating a central office code to a switch. Id. at § 6.4.1. Required modifications to ordering and provisioning will, in turn, require employee training.

authorizing experiments with other, less developed number conservation methods. Once thousands block pooling is firmly established, it may be appropriate to revisit whether a state trial of UNP is warranted.

B. Establishing Fill Rates is a Complex Process that, if Undertaken at all, Should Be Reserved to the Commission

The NYDPS seeks authority to establish fill rate requirements for carriers' requests for numbering resources and to require that utilization reports be filed prior to assigning additional numbers to carriers.[36/] Similarly, the MDTE seeks authority to set code allocation standards, including the authority to "address fill rate and inventory level requirements."[37/] The MDTE also requests authority to address the claims of carriers seeking additional codes.[38/]

Neither of the petitioners provide any description of the programs they propose to adopt, however, making it impossible for the Commission to evaluate whether delegation of the requested authority would actually promote number optimization. Similarly, the petitions fail to show that the proposals would be competitively neutral and would otherwise comply with the Commission's rules and orders. In light of this lack of detailed showing and because of the serious threat to carrier and consumer interests posed by a poorly implemented fill rate regime, AT&T urges the Commission to deny this aspect of the petitions as well.

As a threshold matter, establishing fill rate or utilization threshold requirements is a complex exercise that could both impede number conservation efforts and interfere with a carrier's ability to meet customers' demands for new services. Such requirements are

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[36/] NYDPS Petition at 11, 13.

[37/] MDTE Petition at 9.

[38/] MDTE Petition at 8.

problematic because utilization thresholds bear little relationship to the date at which a carrier should reasonably be expected to need additional numbers.[39] A carrier may meet a utilization threshold before it has a legitimate need for additional codes or may need additional codes to meet demand before it reaches the utilization threshold. For these and other reasons, the Industry Numbering Committee ("INC") has considered and rejected fill rates in favor of a "months to exhaust" forecasting mechanism.[40] The industry has recognized that forecasting better reflects a carrier's need for numbers because it is based on projected demand, which in turn is based on factors such as historical activation rates, seasonal fluctuations, planned promotions, and

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[39] By way of example, assume two carriers have five NXX codes each in a particular rate center. Carrier A has an activation rate of 1000 subscribers a month and expects that rate to stay constant for the next six months. Carrier B is activating 5000 customers a month. Under a utilization threshold of 70 percent, Carrier A could request new numbers when it still has 15,000 numbers and 15 months to exhaust. Carrier B, however, would not be able to request an additional code until it reached three months to exhaust. Given that it takes 66 days to activate a code in the LERG, Carrier B would have just enough time to activate a new code before it ran out of numbers. There are significant administrative costs to carriers associated with "just-in-time" number management such as that facing Carrier B – costs that Carrier A would not be forced to bear. Moreover, permitting Carrier A to order new codes long before its projected exhaust would run directly counter to number optimization efforts.

[40] Illinois, to the best of AT&T's knowledge, the only state to adopt a utilization threshold, recognized the inherent limitation associated with such a plan and created an exception process based on forecasted demand. See Citizen Utility Board, Petition to Implement a Form of Number Conservation known as Number Pooling within the 312, 773, 847, 630, and 708 Area Codes; Illinois Bell Telephone Company, Petition for Approval of an NPA Relief Plan for the 847 NPA, Nos. 97-0192, 97-0211, Order of the Illinois Commerce Commission, at 26 (rel. May 6, 1998).

introductions of new rate plans. Moreover, the current INC guidelines place limits on the number of growth codes a carrier can request.[41]

The petitioners fail to demonstrate that mechanisms in place at the national level to assess carriers' needs for new codes are inadequate. Neither petition shows that the NANP Administrator (the "NANPA") – the body in charge of administering these guidelines – does not follow current guidelines or that the guidelines are themselves insufficient. Nor do the petitioners explain how the establishment of fill rate or utilization threshold requirements would be superior to the existing guidelines.

In any event, if state commissions want to improve the existing forecasting and reporting mechanisms or propose additional code administration guidelines, they have ample opportunity to do so in various industry fora, through the NANC, or through the Commission's rulemaking process. In this regard, INC is constantly looking at ways to tighten the requirements for requesting additional growth codes. For example, the INC agreed on February 26, 1999 to require the months-to-exhaust worksheet to be provided with all growth code requests.[42] The advantage of such industry fora is that these bodies are well equipped to ensure that all relevant economic and technical concerns are considered as guidelines are developed and revised. Moreover, the INC meetings are open to all participants, including representatives of state commissions, and the INC undertakes its work under the direction of the NANC, which includes

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[41] In non-jeopardy situations, each code holder must certify that existing codes will exhaust within twelve months and must retain documentation of the numbers currently in its inventory, its growth history for the preceding six months, and projected demand for the next twelve months. See INC Central Office Code (NXX) Assignment Guidelines, 95-0407-008, at § 4.2.1 (Reissued January 1999) ("CO Assignment Guidelines").

[42] This agreement will be incorporated in all appropriate guidelines upon final closure, anticipated April 26, 1999.

state representation. In addition, the Commission will soon commence a rulemaking proceeding regarding new administration and reporting procedures that presumably will address the petitioners' concerns regarding number resource optimization. State commissions interested in these issues will have ample opportunity to provide comments in that proceeding.

It is critical that the Commission retain the current process of national code administration guidelines, including guidelines relating to reporting and forecasting, and if appropriate, utilization or fill rate levels. Uniform national reporting and forecasting guidelines are more likely to produce relevant information at minimum cost to the industry and, ultimately, to the public. Such guidelines also ensure the fairness and uniformity of reporting requirements across jurisdictions and among individual carriers. The need for a well-considered national solution in instances that directly affect a carrier's ability to maintain sufficient numbers to serve customers is absolutely crucial. The Commission should therefore reject the instant waiver requests.

Because the petitioners should not be permitted to implement fill rate requirements, granting them authority to require number utilization reports from carriers would be superfluous.[43/] Similarly, there is no basis for the Commission to grant the MDTE's request for authority to hear carriers' claims for additional codes,[44/] as this issue is currently being

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[43/] NYDPS Petition at 13; MDTE Petition at 9.

[44/] MDTE Petition at 8.

considered by the NANC at the Commission's direction.[45] On this point, as with the other waiver requests, petitioners do not even attempt to show that their states' situations warrant deviation from the general rule the Commission will soon establish.

C. The Commission Is Considering Enforcement and Auditing Procedures and Should Not Permit Petitioners To Implement Their Own Processes

Citing its familiarity with local circumstances, the NYDPS requests authority to enforce number assignment and utilization requirements.[46] The exact nature of the authority being requested by New York, however, is difficult to discern. The NYDPS provides no information as to the types of disputes over which it seeks jurisdiction, or what procedures it will use to resolve them. And its petition makes no specific charges that the "streamline[d]" enforcement procedures established by the Commission are inadequate.[47] Instead, the NYDPS seeks blanket authority to resolve matters arising from number administration – authority the Commission has consistently and properly refused to give.[48]

The Commission has already requested and received extensive public comment on auditing and enforcement processes, as well as on which entity – the states, the Commission, or

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[45] Pennsylvania Order at 19039 ¶ 51. The National Association of Regulatory Utility Commissioners ("NARUC"), which represents the interests of the petitioners, sits on the board of the NANC and actively participates in numerous working groups and committees established by the Council. Through NARUC, the petitioners will have ample opportunity to contribute meaningfully to the NANC's review of this issue.

[46] NYDPS Petition at 15-16.

[47] See In the Matter of Administration of the North American Numbering Plan, 12 FCC Rcd 23040, 23087-88 at ¶¶ 95-97 (rel. Oct. 9, 1997).

[48] See Pennsylvania Order at 19025 ¶ 23; Second Report and Order at 19512 ¶ 271.

the NANPA – should enforce compliance with data submissions.[49] There is simply no reason for the Commission to short-circuit this rulemaking process by prematurely granting petitioners authority over auditing and enforcement procedures. Full consideration of the rulemaking record already assembled in connection with auditing and enforcement is essential because onerous requirements could potentially burden the industry without resulting in more or better information for use in number resource management. The NYDPS filed extensive comments with the Commission on the NANC NRO Report,[50] and the MDTE will have ample opportunity to file in the upcoming rulemaking proceeding stemming from the NANC NRO. Moreover, the petitioners have long been active, through NARUC, in the NANC. The NYDPS and MDTE have valuable expertise, and should continue to be full participants in the ongoing rulemaking process; however, the petitions provide no basis to circumvent that process via the requested waivers.

D. The Commission Should Reiterate the Limits Placed on State Authority To Order Code Reclamation

Both the NYDPS and MDTE seek authority to order carriers to return numbers in whole codes, thousands blocks, or both.[51] The Commission has never delegated code reclamation authority to state commissions and, in the Pennsylvania Order, it reaffirmed that the states do not

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[49] 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, at 1 (rel. Nov. 6, 1998).

[50] Comments of the New York State Department of Public Service, NSD File No. L-98-134, dated Dec. 21, 1998.

[51] MDTE Petition at 5; NYDPS Petition at 13.

have authority to reclaim codes.[52] Neither petitioner provides any reasoned basis that would support an outcome in their states different from the conclusion reached by the Commission just a few months ago, nor do they explain how the current process is deficient.[53] As the NYDPS acknowledges, the NANPA is responsible for code reclamation, with noncompliance problems referred first to the INC.[54] Although the petitioners argue that the current process is not working, they provide no examples of how the NANPA and industry have failed to carry out their duties, and no evidence that suggests carriers in their states have obtained or retained codes in violation of industry guidelines.[55] Nor do the petitioners explain how each individual state would be more efficient in pursuing code reclamation than would the NANPA. Moreover, as the Pennsylvania Order made clear, grant of the petitioners' requests to take back thousands blocks before other carriers can use them (through thousands block pooling) would be both unnecessary and

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[52] Pennsylvania Order at 19025-26 ¶ 24 (limiting state authority to reclaim codes in the context of pooling trials).

[53] Section 8 of the latest guidelines issued by the INC clearly and specifically addresses reclamation proceeding, CO Assignment Guidelines, 95-0407-008.

[54] See NYDPS Petition at 13.

[55] As the Commission has recognized, carriers must currently request numbers in blocks of ten thousand, and must obtain an NXX code in every rate center they seek to serve. See In the Matter of Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief, Order, 12 FCC Rcd 3783, 3786 ¶5 (rel. Apr. 4, 1997). Accordingly, the bare fact that a carrier has numbers in its inventory in no way shows that it is not justified in requesting additional numbers. For example, a carrier may need a new NXX because it intends to extend its service to a rate center it has not previously served; or may be nearing exhaust of its available numbers in a particular rate center, even though it has numbers available in other, different rate centers.

wasteful.[56] Once national standards for pooling are in place, the Commission may wish to revisit the issue of number reclamation.

The MDTE also seeks authority to investigate whether codes reserved to the ILEC can be placed into carriers' pools for allocation.[57] Although AT&T agrees that release of reserved codes will benefit competition and consumers by making more numbers available for assignment, it is unsure that the petitioners need a waiver to reclaim reserved codes. Any state commission can request that the incumbent carrier provide information regarding reserved codes, and the NANPA has the authority to then adjust the number of codes reserved. Indeed, the industry, the NANPA, and incumbent providers have examined this issue in other states, resulting in some additional codes being made available for assignment.[58]

E. Requiring States To Decide on a Relief Plan Before Implementing Code Rationing Measures Serves the Public Interest

The MDTE requests authority to maintain current central office code rationing measures until six months after the implementation of area code relief, as well as authority to revise current rationing procedures.[59] Similarly, the NYDPS requests authority to adopt rationing measures prior to a decision on NPA relief.[60] Neither petitioner, however, cites any examples of instances in which the industry in their states failed to adopt a rationing plan on a timely basis. Grant of

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[56] Pennsylvania Order at 19025-26 ¶ 24 (stating that because states lack the authority to implement mandatory pooling, they do not need the authority to order the return of codes).

[57] MDTE Petition at 7.

[58] For example, in the 251 NPA in Pennsylvania, the industry agreed to release the 800 and 888 NXXs into the available number pool.

[59] MDTE Petition at 7-8.

[60] NYDPS Petition at 15.

the petitioners' proposals would artificially extend code rationing, resulting in a spike of pent-up demand at a later date, and delaying required area code relief. This practice was expressly forbidden in the Pennsylvania Order,[61] and neither petitioner advances any reason that merits revisiting the issue.

F. The Commission Should Encourage the Adoption of Rate Center Consolidation Over Implementation of Extended Local Calling Areas or Inconsistent Rate Centers

The MDTE requests authority to implement Extended Local Calling Areas ("ELCAs") as well as Inconsistent Rate Centers ("IRCs").[62] The scope of authority being requested by the MDTE, however, is unclear. The MDTE does not specify whether it would mandate these measures or leave them to carriers' discretion. AT&T opposes the mandatory implementation of either of these measures. ELCAs may significantly increase affected carriers' cost of doing business, because ELCA-assigned carriers must pay additional fees to originating carriers as compensation for lost toll revenues.[63] Similarly, IRCs present a variety of administrative difficulties.[64] Not only do they require carriers to recognize new rate centers as defined by another carrier, they also present complex rating scenarios with respect to ported numbers in which a ported customer may be unable to call a neighbor as a local call, but can call a rate center

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[61] See Pennsylvania Order at 19024-25 ¶ 22 ("Conservation methods are not, however, area code relief and it is important that state commissions recognize that distinction and implement area code relief when it is necessary."); Id. at 19027-28 ¶¶ 27-28.

[62] MDTE Petition at 10-11.

[63] NANC NRO at § 3.7.2.3 ("ELCAs could reduce the amount of wireline intra-LATA toll or other non-local service revenue. However, wireline SPs may be able to recover these revenues through ELCA usage rates paid by CMRS providers.").

[64] See NANC NRO at § 5.3 (stating that agreements among service providers must be reached and tariffs must be developed and filed before IRC can be implemented).

dozens or hundreds of miles away as a local call. IRCs also make area code relief more difficult and raise potential competitive neutrality concerns.[65]

The benefits petitioners believe will flow from IRCs and ELCAs can more readily be achieved through rate center consolidation ("RCC"). RCC can extend the life of an existing area code, provided that a shortage situation has not already been reached, by reducing the demand for new numbers.[66] Common sense dictates that if a code of 10,000 numbers can be used over a wider territory, there are likely to be fewer requests for initial or additional codes. RCC also complements other number optimization measures, such as number pooling, and expands the geography over which customers can port their numbers.

Significantly, implementation of RCC is well within the states' jurisdiction. While there is no need for direct federal involvement in local tariff-based number conservation measures such as RCC, the Commission has encouraged petitioners, and all the states, to implement RCC whenever feasible.[67] AT&T cautions, however, that RCC should be implemented in a manner that minimizes negative effects on markets where competition is emerging.[68]

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[65] As the industry has recently been reminded in Phoenix, Arizona, splitting rate centers in an NPA split requires significant line level translation and creates the need for carriers with split rate centers to request duplicate codes, reducing the efficiency of CO Code utilization. IRCs make NPA splits that do not split some carriers' rate centers difficult, if not impossible, to achieve.

[66] NANC NRO at § 1.5.1.

[67] Pennsylvania Order 19028 ¶ 29.

[68] By enlarging local calling areas, RCC may increase the size of the non-competitive local market at the expense of the more competitive intraLATA toll market. NANC NRO at § 1.7.2.3. RCC may also negatively affect some customers by shifting toll call boundaries and changing the balance of traffic between local and toll calls. Id. at § 1.7.2.1. Further, RCC may complicate the routing of emergency calls. Id. at § 1.9.1.

CONCLUSION

For the foregoing reasons the Commission should reject the petitioners' requests. The Commission has repeatedly made clear that national standards should govern number administration, and petitioners provide no evidence to demonstrate that their particular circumstances merit waivers, or that the Commission should revisit these well-settled principles. State commissions have a vital role to play in the development of national policies to govern number administration and carriers' use of numbers. As the Commission recently stated:

> The Commission, the state commissions, and the industry should work together to bring about as quickly as possible national methods to conserve and promote efficient use of numbers that do not undermine that uniform system of numbering. Such attempts, however, cannot be made on a piecemeal basis without jeopardizing telecommunications services throughout the country.[69]

AT&T urges the Commission to establish national conservation standards as expeditiously as possible in order to provide necessary relief to all states, carriers, and consumers on an equitable basis.

Respectfully submitted,

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April 5, 1999

[69] Pennsylvania Order at 19023-24 ¶ 21 (emphasis added).

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of the	)	
Massachusetts Department of	)	
Telecommunications and Energy	)	**NSD-L-98-17**
for Waiver to Implement a	)	
Technology-Specific Overlay in the	)	CC DOCKET 96-98
508, 617, 781, and 978 Area Codes	)	

AT&T CORP. OPPOSITION

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. §1.3, AT&T Corp. ("AT&T") hereby submits its opposition to the Petition for Waiver filed by the Massachusetts Department of Telecommunications and Energy ("DTE").[1/] In its Petition, the DTE seeks authority to implement a wireless-only overlay, purportedly to avoid the consumer confusion and inconvenience associated with area code relief. As demonstrated below, the DTE's request fails to satisfy the Commission's stringent standards for waiver requests. Accordingly, the Petition should be denied.

Under the Commission's rules, waivers may only be granted "if good cause therefor is shown."[2/] This standard requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[3/] Further, a petitioner's articulation of special circumstances must go substantially beyond factors considered

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1/ See 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 879 Area Codes DA 99-46, NSD File No. L-99-17 (rel. Mar. 4, 1999).

2/ 47 C.F.R. §1.3.

3/ Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C.Cir. 1990), citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C.Cir. 1970) (indicating that waiver of the Commission's rules is appropriate only if

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during the rulemaking proceeding in which the rule in question was promulgated.[4] The DTE Petition falls far short of this standard.

Far from demonstrating that special circumstances exist, the DTE requests that the Commission act on the mere possibility that some unspecified special circumstances might exist. Specifically, the DTE asks that its waiver be granted because "the circumstances in Massachusetts may be different from the circumstances in existence when the Commission originally prohibited technology specific or service specific area code overlays in 1995."[5] The DTE fails to elaborate on what these potential differences might be, or to articulate their relevance to the Commission's long-standing ban on wireless overlays. Instead, the DTE merely argues that "state regulators should have the option of investigating and weighing the advantages of a technology-specific overlay."[6] This contention is plainly inadequate – a waiver of the Commission's long-standing and well-reasoned policy cannot rest on sheer ipse dixit.

The Commission has considered and explicitly rejected other states' arguments that they should have a right to adopt wireless-only overlays as a form of area code relief. The DTE's petition adds nothing new to the record. In 1995, the FCC concluded that Ameritech's proposed wireless-only overlay would unreasonably discriminate against wireless carriers, in violation of the principle of

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special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.).

[4] See Industrial Broadcasting Co. v. FCC, 437 F.2d 680, 683 (D.C.Cir. 1970).

[5] Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 879 Area Codes, DA 99-46, NSD File No. L-99-17 (filed February 12, 1999) (emphasis added) ("DTE Petition").

[6] DTE Petition at 3.

technological neutrality, and would thwart the FCC's goals of encouraging new services and additional competition.[7]

The following year the Commission reaffirmed this reasoning, concluding in its Second Local Competition Order[8] that a technology specific overlay proposed by the Texas Public Utilities Commission (the "Texas PUC") violated the Ameritech Order.[9] The FCC specifically found unpersuasive the Texas PUC's arguments that a wireless-only overlay would extend the life of existing NPAs and reduce customer confusion.[10] The DTE presents no evidence challenging the Commission's prior reasoning, but simply reasserts an argument that the Commission has twice rejected – that states should be able to consider wireless only overlays as an area code relief option. The petition is plainly inadequate to warrant the extraordinary relief sought by the DTE.

CONCLUSION

As the Commission has repeatedly found, isolating wireless customers into a new area code would discriminate unfairly and unnecessarily based on technology, in violation of the Communications Act. Nothing in the DTE's petition calls the Commission's prior conclusions into

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[7] Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596, 4604-05, ¶ 20 (1995) ("Ameritech Order").

[8] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19508 ¶ 281 (1996) ("Second Local Competition Order") ("We find that the guidelines and the reasoning enumerated in [the Ameritech] decision should continue to guide the states and other entities participating in the administration of numbers because these guidelines are consistent with Congress' intent to encourage vigorous competition in the telecommunications marketplace.").

[9] Second Local Competition Order, 11 FCC Rcd at 19527 ¶ 304.

[10] Id., 11 FCC Rcd at 19528 ¶ 306. Moreover, the only wireless-only overlay implemented to date (the 917 NPA in New York City) was recently terminated. See Case No. 98-C-1331, Joint Petition of Nextel Communications of Mid-Atlantic, Inc. Cellco Partnership d/b/a Bell Atlantic Mobile, Omnipoint Communications, Inc., Cellular Systems Inc. d/b/a AT&T Wireless Services and AT&T Communications of New York, Inc. to Amend the Commission's Orders Issued July 1, 1991 in Case 90-C-0347 and December 10, 1997 in Case 96-C-1158, Order Granting Petition (Feb 3. 1999). In this Order, the New York Public Service Commission reinstated wireless carriers' access to codes in the 718 NPA. The Order followed an industry consensus decision to allow wireline carriers access to codes in the 917 NPA.

question, or even purports to demonstrate unique or changed circumstances that might warrant the relief requested. AT&T urges the Commission to deny the DTE's petition forthwith.

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