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April 16, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hon. Magalie Roman Salas
Secretary
Federal Communications
Commission
445 12th Street, S.W., TWA-325
Washington, D.C. 20554

Re: In the Matter of Petition for Declaratory Ruling and Request Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717, NSD File No. L-97-42; In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Docket No. 96-98; In the Matter of New York Department of Public Service Petition For Additional Authority to Implement Number Conservation Measures, NSD File No. L-99-21

Dear Secretary Salas:

Enclosed is an original and four copies of the Reply Comments of the New York State Department of Public Service in the above-captioned proceeding. In addition, a copy was filed using the Commission's Electronic Comment Filing System and copies were sent to all parties on the attached service list.

Sincerely,

Lawrence G. Malone
General Counsel

Enclosure
cc: All Parties

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of Petition for) NSD File 97-42
Declaratory Ruling and Request) **RECEIVED**
Expedited Action on the July 15,)
1997 Order of the Pennsylvania)
Public Utility Commission)
Regarding Area Codes 412, 610,)
215 and 717)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Implementation) CC Docket No. 96-98
of the Local Competition)
Provisions of the Telecommunications)
Act of 1996)

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

REPLY COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION AND SUMMARY.....	1
I. Delegating Additional Number Administration Authority To State Commissions Certainly Will Not Imperil Federal Policies.....	2
A. Mandatory 1,000 Block Pooling, ITN Pooling Trials, and Interim UNP Will Not Hinder the Adoption of Federal Rules.....	3
B. Additional Delegated Authority Will Not Hamper New York's Policy of Acting Promptly to Implement Area Code Relief.....	6
C. New York's Request For Enforcement And Auditing Responsibility Will Not Undermine The Commission's Initiatives.....	8
II. In a Competitive Environment, the Manner in Which Finite Resources, Such As Telephone Numbers, Are Allocated Cannot Be Left Solely To The Industry.....	9
CONCLUSION.....	12

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REPLY COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York Department of Public Service (New York or NYDPS) submits these reply comments in response to the comments filed by parties opposing our petition for additional delegated authority. Various carriers contend that additional state delegation would impede national policies and that procedures for allocating numbering resources should be at the discretion of the industry. In effect, these carriers seek to forestall conservation measures in the name of national uniformity and industry convenience. Their approach would only exacerbate the currently inefficient allocation and use of numbering resources. State authority to adopt mandatory number pooling, individual telephone number (ITN) pooling, unassigned number porting (UNP),

and need-based number assignment (along with enforcement and auditing requirements) is necessary to alleviate premature exhaustion of area codes.¹ The measures we propose will serve as a stop-gap until federal guidelines are in place. In the event the Commission establishes federal standards, New York will conform its policies to those requirements.

I. Delegating Additional Number Administration Authority to State Commissions Certainly Will Not Imperil Federal Policies

Various parties claim that granting state commissions additional delegated authority would imperil national rules (See MCI Comments 2). For example, MCI argues that allowing the states to set numbering policies before national rules are in place would effectively delegate to individual states authority

¹ Several carriers support our petition, either in part or in its entirety. See Comments of Cablevision Lightpath, Inc. (Cablevision), MediaOne Group, Inc. (MediaOne), RCN Telecom Services, Inc. (RCN), Level 3 Communications, Inc. (Level 3), NexTel Communications, Inc. (NexTel), and Focal Communications Corp. (Focal). Cablevision notes New York's leadership in opening the local exchange market to competition and points out that the measures proposed in our petition will curtail number exhaustion and will ensure that the potential for robust competition in the local exchange market is not slowed (Cablevision Comments 2). RCN and Level 3 agree that allowing states to authorize reclamation of inactive central office codes and to administer central office code rationing are reasonable (RCN Comments 7-8 and Level 3 Comments 3-4). MediaOne also supports state authorized reclamation of unneeded central office codes (MediaOne Comments 4-6). MediaOne, Focal and NexTel support our mandatory 1,000 block pooling proposal (MediaOne Comments 7, Focal Comments 3, and Nextel Comments 5). Focal also supports our UNP proposal (Focal Comments 14).

to set national policy (MCI Comments 7-10).² If the approach suggested in the opposing comments is adopted, insufficient number allocations and deleterious usage patterns would only worsen.

A. Mandatory 1,000 Block Pooling, ITN Pooling Trials, and Interim UNP Will Not Hinder the Adoption of Federal Rules

Although they recognize the usefulness of 1,000 block pooling as a number conservation measure, various parties suggest that the Commission should not allow NYDPS to start mandatory 1,000 block pooling until national rules are in place.³ Indeed, Nextel suggests that a variety of state rules would make administration by the North American Numbering Plan Administrator (NANPA) and carriers difficult. Finally, various parties suggest that ITN pooling and UNP are untested and require further investigation (See, Level 3 Comments 8-9, AT&T Comments 12, RCN Comments 3-4).

As a general matter, mandatory 1,000 block pooling, ITN pooling trials, and interim UNP will allow more efficient number use and promote local competition. Assigning numbers in smaller quantities than blocks of 10,000 will allow underutilized

² Indeed, allowing state experimentation can assist in the development of national rules by providing laboratories for identifying and solving implementation problems.

³ See, MCI Comments 3-15, AT&T Comments 4-16, RCN Comments 2-5, and Level 3 Comments 5-11.

numbering resources to be distributed to carriers that need them. For example, without 1,000 block pooling, Focal Communications would have been unable to obtain telephone numbers in the 212 area code.⁴ It is also evident that, if mandatory pooling is allowed, new market entrants will be better able to launch service in a large geographic area without being required to take excess numbering resources.

The parties' arguments suggest that the Commission should decide administrative details, such as, whether to establish 1,000 block pooling on "pre-port" or "port-on-demand" basis.⁵ As with current number administration guidelines, the Commission should leave these details to state proceedings because different solutions, based on local industry requirements and on consumer needs, may be required. In fact, the industry has recognized that local circumstances may require different protocols. In New York, for example, the industry agreed to establish voluntary 1,000 block pooling based on "port-on-

⁴ Although Focal was able to obtain numbers because carriers voluntarily contributed numbers to the pool, the availability of numbering resources for new market entrants should not be subject to the whims of competitors. Carriers have expressed reluctance to participate in additional voluntary number pools.

⁵ Pre-port allows the carrier receiving the 1,000 block to receive the full block at once. Port-on-demand allows the receiving carrier to receive individual numbers from the 1,000 block as needed.

demand." In Illinois, the industry decided to use "pre-port" based 1,000 block pooling.⁶

With respect to Nextel's claim, requiring carriers to be familiar with the requirements and procedures in the local market would be far from onerous; indeed, it would merely reflect how numbers are assigned today. Currently, the central office code administrator does not assign numbers on a centralized basis despite the Commission's delegation of the function to a centralized entity. Rather, the central office code administrator manages local central office code requirements by assigning employees to work with the industry and individual state commissions to address these local issues. Indeed, the central office code administrator must be familiar with different jeopardy procedures adopted by the industry in each area code.⁷ Accordingly, the Commission should reject Nextel's argument.

The objections to ITN pooling trials and interim UNP are also without merit. Denying our request to test these measures because they are untested, is irrational. The Commission has long recognized the importance of testing before

⁶ We worked with New York carriers and the Illinois commission to develop our 1,000 block pooling guidelines, which in turn were used to develop the guidelines presented in the NANC NRO Report.

⁷ In New York, the industry has developed a different jeopardy procedure for each of the six area codes in which the NANPA has declared jeopardy (212, 718, 917, 516, 914, 716). Thus, the central office code administrator is already required to be familiar with local conservation measures.

adopting national policy. New York, for example, served as a testing ground for local number portability (LNP); the industry used lessons learned in New York as a foundation for national deployment. To accept the opposing arguments in the face of this experience would, therefore, deny the benefits of appropriate testing and lessons learned in the formulation of a national policy.⁸ Testing these measures on the state level, before deploying them nationally, is the reasonable course to follow.

B. Additional Delegated Authority Will Not
Hamper New York's Policy Of Acting Promptly
to Implement Area Code Relief

Sprint criticizes the NYDPS for investigating the efficiency of number usage and for providing an orderly plan for making additional central office codes and/or area codes available in New York. While the NYDPS is committed to ensuring prompt area code relief, when and where it is needed, we are reluctant to deploy a new NPA when substantial underutilization of numbering resources exists. The cost, inconvenience, and consumer/industry disruption that will follow premature deployment far outweigh the benefits of introducing new area codes when other reasonable options exist. We are fully

⁸ Furthermore, the purpose of the delegation request is to "further investigate" the effectiveness of ITN pooling and UNP before national deployment.

prepared, nevertheless, to implement area code relief once it has been established that relief is needed.⁹

During our recent investigation of area code relief for Long Island (516 NPA), we learned that, out of the eight million numbers in that area code, only five million were in use. Yet, we had to open a whole new area code with another eight million numbers because of the system's inability to provide numbers to carriers who needed them in the quantities needed. The measures we propose in our petition would substantially alleviate this problem and make number use more efficient.

Contrary to Sprint's claims, we have taken prompt action to implement area code relief when needed.¹⁰ A first step in implementing area code relief is for the NANPA to present an

⁹ We have recognized one reason for the increased demand for telephone numbers is a result of the growth in the telecommunications market. However, declining efficiency in number utilization is also a substantial contributing factor. During the 1960s, 1970s, and 1980s, one area code was needed every two years in the United States. At present, the national demand for new area codes exceeds 25 new area codes per year. More efficient number assignment practices and utilization are needed to address premature exhaust of area codes.

¹⁰ Sprint claims that area code relief for 516 took too long. Hurried decision-making, as suggested by Sprint, would have been unwise and would have done little to alleviate current number use inefficiencies. Moreover, Sprint has been the benefactor of expeditious action by the NYDPS. When it needed numbering resources in the 516 area code, Sprint petitioned us for emergency relief. We allowed parties to comment on Sprint's request on an expedited basis. After Sprint satisfactorily demonstrated its need for the requested relief, we acted immediately. The need-based factors noted below were used to evaluate Sprint's petition.

industry-developed area code relief plan to state commissions. After the NANPA presents industry-developed area code relief options to us, we urge carriers to increase number use efficiency and we begin to evaluate options for implementing appropriate area code relief. So far, we have completed the investigation of relief plans for four (212, 718, 917, 516) of the eight area codes in New York. The evaluations for two other area codes are underway (914 and 716). The measures we propose here would help increase number assignment and usage efficiencies so that artificial demand for numbering resources will not drive area code exhaust.

C. New York's Request For Enforcement And Auditing Responsibility Will Not Undermine The Commission's Initiatives

Parties objecting to New York's request for delegated authority imply that, until the Commission allocates sufficient resources for specific enforcement and widespread auditing, industry self-policing is sufficient.¹¹ Self-policing is not practical in this situation because carriers do not want their competitors evaluating their need for numbers. Moreover, the industry consensus process is not conducive to addressing

¹¹ With respect to enforcing reclamation procedures, Level 3 and RCN argue that carriers should not be forced to return central office codes prematurely if their business plans call for their use in the foreseeable future (Level 3 Comments 3, RCN Comments 7). We agree that if carriers have a demonstrated need for numbers, then they should not be reclaimed.

emergency numbering requests and other competitive issues.¹² The state commissions and the Commission should work cooperatively on enforcement and auditing initiatives.

II. In a Competitive Environment, the Manner in Which Finite Resources, Such As Telephone Numbers, Are Allocated Cannot Be Left Solely to The Industry to Decide

Level 3 objects to our request to develop need-based number assignment procedures on the ground that carriers are better positioned to understand their need for numbering resources (Level 3 Comments 3). Ideally, in a competitive environment carriers should be able to decide their need for numbering resources. However, we are dealing with finite resources that must be made available to all carriers on an equitable basis. Thus, requiring carriers to demonstrate the need for numbering resources is appropriate. Moreover, current assignment practices -- where carriers simply certify that they need numbering resources (without any independent verification of need or the quantity of numbers needed) -- suggest that carriers are not tailoring their number assignment requests to the quantity of numbers needed to serve their customers. One carrier, for example, has over 100,000 telephone numbers and fewer than 4,000 customers. Most carriers with excess numbering

¹² Any suggestion that the NANPA take on this responsibility requires further consideration, and time is of the essence in New York.

resources simply prefer to keep them.¹³ Carriers who do not have adequate numbering resources, on the other hand, avail themselves of our services to obtain additional numbers.

Rather than hinder competitive entry into the local exchange market, as some commenters suggest, our proposal to develop need-based number assignment procedures would help facilitate competitive entry by making numbers available to all carriers on an equitable basis.¹⁴ In fact, when Sprint and American Cellular requested our assistance to obtain numbering resources outside the industry rationing plans, we evaluated their needs before advocating on their behalf. Our analysis weighed the following factors:

1. **Current NPA Relief Plans** - What is the projected NPA relief implementation date? Has extraordinary jeopardy been declared in the particular NPA?
2. **Historical Utilization** - What is the carrier's historical demand data? Is the carrier's use of past and current number resources reasonable? Does the carrier have any unused numbers in the

¹³ This is evidenced by the low participation in voluntary pooling trials and by underutilization of existing numbering resources.

¹⁴ Also, MCI states that New York would like to impose central office code rationing before addressing area code relief (MCI Comments 15). MCI overstates our request. We simply request the flexibility to address rationing issues while appropriate area code relief is under consideration. Rationing procedures, like number assignments generally, should be need-based. While we disagree with MCI's premise that rationing is anticompetitive, we would prefer not to have to ration number assignments. However, if carriers do not act responsibly when making assignment requests and the process for implementing relief is underway, we should have the flexibility to address rationing issues.

particular NPA? How many of these numbers are in "reserve"? What customers have the numbers in reserve and for what purpose(s)?

3. **Demand Forecasts** - What is the carrier's forecast data? Are the carrier's forecasts reasonable and consistent with historical data?
4. **Number Conservation Efforts** - What is the carrier's conservation effort? Has the carrier reduced the time disconnect numbers are on intercept? How many rate centers does the carrier have in the particular NPA?
5. **Need vs. Availability** - What is the length of time between the carrier's request for relief and the date when numbering resources are to be assigned?
6. **Industry Consensus** - Has the requesting carrier attempted to address this need before the industry? Has the carrier attempted to form a coalition with other carriers that have unused resources or similar needs?

This approach provides an effective means for ensuring that carriers obtain needed numbering resources. In order to advance competitive market entry and efficient number usage, carriers should receive numbers when they need them and in the quantities needed.¹⁵ A need-based approach, like the one we have used, is appropriate for providing sound, efficient assignment of numbering resources and area code relief.

¹⁵ Many carriers are forced to take more numbering resources than needed to launch service in a wide geographic area. Current assignment practices, requiring carriers to take 10,000 numbers in each rate center, are inefficient and do little to promote competitive entry. We are also examining rate center consolidation to reduce the number of central office codes required by new entrants. This goal, however, must be balanced against the need to avoid adverse rate impacts.

CONCLUSION

The Commission should reject the arguments opposing New York's petition. Delaying our request until federal policies are in place would exacerbate premature exhaust and delay rational area code relief.

In view of New York's and the Commission's common interest in an adequate and timely supply of telephone numbers and in an efficient use of numbering resources, the Commission should authorize us to implement mandatory 1,000 block pooling, ITN pooling trials, interim UNP, need-based number assignment standards, and enforcement and auditing requirements.

Respectfully submitted,



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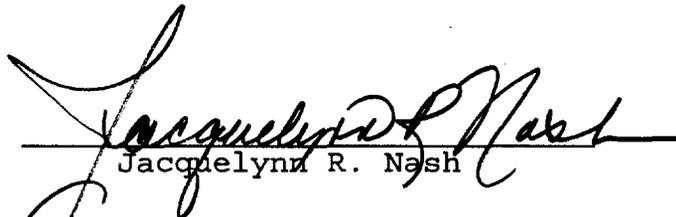
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CERTIFICATE OF SERVICE

I, Jacquelynn R. Nash, hereby certify that an original and four (4) copies of comments in the above-captioned proceeding were sent via Airborne Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, a copy was filed using the Commission's Electronic Filing System and copies were sent by First Class Mail, postage prepaid, to all parties on the attached service list.


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