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Before the

Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Florida Public Service Commission Petition to)
Federal Communications Commission for)
Expedited Decision for Grant of Authority to)
Implement Number Conservation Measures)

NSD File No. L-99-33
CC DOCKET 96-98

Received

MAY 17 1999

To: Chief, Common Carrier Bureau

Common Carrier Bureau
Network Service Division
Office of the Chief

**COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PRIMECO PERSONAL COMMUNICATIONS, L.P.

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May 14, 1999

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SUMMARY

The FPSC Petition contravenes the Commission's rules and fails to demonstrate good cause for waiver. The Commission must deny the petition if it is to preserve its plenary authority over the North American Numbering Plan ("NANP"), maintain the balance of federal and state interests adopted in the *Pennsylvania PUC Order*, and ensure the impartiality and competitive neutrality of numbering administration and conservation efforts.

Wireless carriers are efficient users of CO codes. The FPSC, however, fails to acknowledge fundamental differences between wireless and wireline carriers' use of number resources. By not doing so, the FPSC's facially technology-neutral proposals improperly "lump" wireless and wireline carriers together, to solve problems that are predominantly wireline in origin.

In enacting Section 251(e), Congress mandated a comprehensive Federal mechanism for numbering administration. Contrary to what the FPSC petition implies, the authority it requests is far broader than that granted to California and, in fact, the Commission has already determined that much of the authority the FPSC requests "falls outside of the authority granted the states to initiate traditional area code relief, and would interfere with the code administrator's functioning pursuant to" Section 52.15 of the Commission's rules.

First, the Commission should not authorize the FPSC to require the return of NXX Codes or 1000 Number Blocks; rather, *nationwide* solutions, such as those under consideration before NANC and the Commission, are more appropriate and effective than state-specific measures. Also, state imposition of local number portability ("LNP") and LNP-based measures would be unlawful and should be rejected; the Commission has already determined that numbering administration concerns do not warrant imposing LNP on CMRS providers at this time, and the FPSC provides no basis for reconsideration of that decision. In addition, the FPSC's open-ended request for authority to implement CO code rationing undermines the regulatory bargain implicit in the *Pennsylvania PUC Order*. In addition, the Commission should reject any state consultation requirement in CO code assignment procedures. Finally, requested quarterly reporting requirements for COCUS data should be rejected until the Commission can determine whether the new semiannual filing requirement improves NANPA's forecasting.

In conclusion, the FPSC does not meet the standards for waiver of the rules; indeed, deviation from the rules would disserve the public interest. The Commission should instead confirm state commission responsibilities to expeditiously implement area code relief based on existing authority, and should further encourage state commissions to exercise their authority to implement rate center consolidation.

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To: Chief, Common Carrier Bureau

**COMMENTS OF
PRIMECO PERSONAL COMMUNICATIONS, L.P.**

PrimeCo Personal Communications, L.P. ("PrimeCo"),¹ hereby submits comments in response to the Common Carrier Bureau's Public Notice of April 15, 1999, seeking comment on the above-captioned petition submitted by the Florida Public Service Commission ("FPSC").² The Petition contravenes the Commission's rules and fails to demonstrate good cause for waiver.³ The Commission should therefore deny it.

The FPSC is justifiably concerned for the efficient use of numbering resources in Florida and, indeed, PrimeCo is currently affected by the situation there. PrimeCo nevertheless strongly opposes the FPSC Petition. The Commission must deny the petition if it is to preserve

¹ PrimeCo is the A/B Block broadband PCS licensee or is the general partner/majority owner in the licensee in a number of MTAs.

² See *Public Notice, Common Carrier Bureau Seeks Comment on the Florida Public Service Commission's Petition for Authority to Implement Number Conservation Measures*, NSD File No. L-99-33, DA 99-725 (Com. Car. Bur. rel. Apr. 15, 1999) ("*Public Notice*").

³ See 47 C.F.R. § 1.3.

its plenary authority over the North American Numbering Plan (“NANP”), maintain the balance of federal and state interests adopted in the *Pennsylvania PUC Order*,⁴ and ensure the impartiality and competitive neutrality of numbering administration and conservation efforts. While the FPSC Petition should be denied, PrimeCo respectfully submits that it remains imperative for Florida to continue its various area code relief proceedings and implement rate center consolidation independent of this proceeding.

BACKGROUND

PrimeCo’s Major Trading Area (“MTA”) service areas encompass the entire state of Florida and, therefore, PrimeCo’s ability to obtain CO codes (or “NXX codes”) to deploy service is directly implicated by the FPSC Petition.⁵ There is a numbering crisis in Florida and PrimeCo, as a relatively new, rapidly-growing CMRS provider, echoes the FPSC’s concern regarding numbering resources in Florida.⁶ The FPSC in this regard has initiated administrative

⁴ *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Utility Commission Regarding Area Codes 412, 610, 215, and 717, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd. 19009, 19025 ¶ 23 (1997) (“*Pennsylvania PUC Order*”).

⁵ PrimeCo’s MTA service areas include Miami-Fort Lauderdale, Orlando-Tampa-St. Petersburg, and Jacksonville.

⁶ In this regard, the 305 area code in the Florida Keys was declared to be in a jeopardy situation on March 22, 1999; the 407 code was declared in jeopardy November 17, 1998 and a split boundary extension concentrated overlay, with a new 321 area code, is currently being implemented; the 561 area code in Palm Beach, Martin, St. Lucie and Indian River was declared in jeopardy on March 8, 1999; the 954 code in Broward County on March 8, 1999; the 941 area code in southwest Florida on March 12, 1999; and the 904 code in northeast Florida on April 21, 1999. See Lockheed Martin NANPA Website, www.nanpa.com/news.

proceedings to initiate area code relief plans for area codes in jeopardy and, except for the 407 code, an FPSC area code relief decision remains pending for each.⁷

These legitimate efforts should continue and area code relief should be expeditiously implemented. Should NXX codes become unavailable for PrimeCo, or should NANPA or the Commission restrict the extent to which NXX codes may be allocated to wireless carriers, PrimeCo's ability to enter new markets or expand service in existing markets in Florida will be severely affected. In fact, PrimeCo and the rest of the industry are already affected by the current freeze of NXX codes for assignment in the 305 NPA for the Florida Keys. In sum, the FPSC should continue its ongoing state-level area code relief efforts.

However, on April 2, 1999, shortly after several Florida codes were declared in jeopardy, the FPSC filed its nine-page petition requesting additional numbering authority from the Commission. More specifically, the FPSC has requested broad, comprehensive numbering administration authority, including authority to:

- implement 1000 block number pooling (and perhaps 100 block) prior to adoption of any federal rules;
- require sharing of NXX codes in rate centers;
- implement NXX lotteries prior to adoption of area code plans;
- reclaim unused and reserved NXX codes, including authority to "investigate whether any" reserved codes "can be reclaimed for future distribution without causing disruption to carriers' network operations;"
- maintain existing NXX rationing measures for at least 6 months after implementation of area code relief plans;
- expand deployment of permanent number portability;

⁷ See FPSC Dockets 990223 (941 Code), 990455 (305 Code), 990456 (561 Code), 990457 (954 Code), 990517 (904 Code).

- implement unassigned number porting;
- impose rate center consolidation;
- use LINUS to run NXX reports quarterly; and
- require wireless carriers to provide “COCUS and other information” such as utilization data.⁸

The FPSC also requests that the Commission direct NANPA to update COCUS reports quarterly rather than annually, and that code allocation standards should be established, including a requirement that NANPA consult with the FPSC prior to issuance of additional NXX codes.⁹

Citing circumstances “comparable to those in California,” the FPSC seeks “a letter endorsing a grant of authority to fashion a Florida specific solution to the existing number crisis” in a manner similar to that purportedly granted to the California PUC.¹⁰ The Bureau has requested comment on the issues raised in the FPSC’s request.

DISCUSSION

I. THE FPSC FAILS TO ADDRESS THE IMPLICATIONS OF ITS PETITION FOR CMRS PROVIDERS

The FPSC asserts that area codes currently in jeopardy have utilization rates ranging from 35 percent to 50 percent. While PrimeCo is uncertain how the FPSC arrived at these numbers, nowhere in its petition does the FPSC distinguish between wireless and wireline

⁸ See State of Florida Public Service Commission, Petition for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, filed April 2, 1999, at 3-5 (“FPSC Petition”).

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 1-2, 6-7 (referencing Letter to Ms. Helen Mickiewicz, California Public Utilities Commission, Deputy Chief, Common Carrier Bureau, 13 FCC Rcd. 23737 (1998) (“*California PUC Letter Ruling*”)).

carriers' respective utilization rates. Moreover, the FPSC Petition generally does not address the possible implications of its petition for wireless carriers, except to note its desire for wireless carriers' COCUS information. State-specific numbering requirements pose problems for CMRS providers because their service areas often cross state boundaries.¹¹ FPSC-imposed restrictions on the availability of NXX codes may thus have implications for customers outside of Florida.

Wireless carriers are efficient users of NXX codes because they typically use a single rate center to serve several rate centers or a large geographic area, instead of using at least one NXX code per rate center, as is typically the case in the wireline industry. As a result, wireless carriers generally have a limited number of efficiently-utilized NXX codes instead of many low-utilization codes in each rate center. Indeed, the Commission has recently acknowledged that data "suggests that CMRS carriers are using a relatively high percentage of their allocated numbering resources in high density and high-growth markets."¹² For example, PrimeCo's average utilization rate across the 305, 407, 561, 904 and 954 NPAs is 80.2 percent.¹³

The FPSC fails to acknowledge this critical distinction between wireless and wireline carriers. By not doing so, its facially technology-neutral proposals simply "lump" wireless and wireline carriers together, imposing burdens on wireless and wireline equally, to solve problems that are predominantly wireline in origin. This makes no sense and contravenes

¹¹ For example, the Pensacola, Florida BTA (B343), is part of PrimeCo's New Orleans-Baton Rouge MTA, and the Brunswick, Valdosta, and Waycross Georgia BTAs (B058, B545 and B467, respectively) are all part of PrimeCo's Jacksonville MTA.

¹² *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, CC Docket No. 95-116, ¶ 45 (rel. Feb. 9, 1999) ("*LNP Forbearance Order*").

¹³ Average NPA utilization is based on NXXs that have been activated for at least 120 days.

the Commission's rules.¹⁴ As discussed below, the negative impact of the FPSC's requested authority on wireless carriers alone requires that the Commission should deny its petition.

II. GRANT OF THE FPSC PETITION WOULD UNDERMINE THE COMMISSION'S EFFORTS TO CENTRALIZE NANP ADMINISTRATION AND WOULD BALKANIZE CO CODE ASSIGNMENTS

As discussed below, the authority sought by the FPSC already lies solely with the NANPA. The FPSC nevertheless asserts, in conclusory fashion, that its proposal "will be consistent with [Commission] policy, by ensuring that number resources are made available in an equitable efficient and timely basis to all carriers"; "will not unduly favor or disfavor any particular segment or group of telecommunications consumers"; and will not "unduly favor one telecommunications technology over another."¹⁵ The FPSC's questionable assurances notwithstanding, the numbering administration system already implemented by the Commission pursuant to its Section 251 authority remains best situated to provide efficient and competitively neutral numbering administration and CO code assignment services.

A. Congress Mandated, and the Commission Has Implemented, a Comprehensive Federal Mechanism for CO Code Administration

Congress expressly granted the Commission plenary numbering administration authority for the United States. Section 251(e)(1) of the Communications Act provides that:

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude

¹⁴ See 47 C.F.R. §§ 52.9(a)(2)-(3), (b).

¹⁵ FPSC Petition at 1.

the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.¹⁶

In implementing Section 251(e), the Commission acknowledged Congress' "recogni[tion] that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States."¹⁷ The Commission thus affirmed its decision to create a *centralized*, third party NANPA.¹⁸

The Commission, moreover, has expressly rejected "state-specific" solutions to numbering administration. Indeed, the Commission rejected -- even prior to the 1996 Act -- the notion that state regulators should have authority over NXX code administration, finding instead that:

To continue decentralized control over CO code administration would be inefficient. Having state regulators, or designated third parties in each state, administer CO codes could create fifty-one different administrators in the United States.¹⁹

Since the 1996 Act, the Commission has reiterated and elaborated on the merits of centralized CO code administration, which include: the efficient delivery of telecommunications services in the United States; consistent application of CO code assignment guidelines, including in the

¹⁶ 47 U.S.C. § 251(e)(1) (emphasis added). Given this explicit grant of plenary authority in the 1996 Act and the Commission's exercise of that authority, the FPSC's assertion that it "has a history of sustained action on numbering issues that predates the enactment of the FCC rules and the Telecommunications Act of 1996" is simply not relevant to the Commission's exclusive jurisdiction in this area.

¹⁷ *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, 19508, ¶ 261 (1996) ("*Local Competition Order*").

¹⁸ *Id.* at 19510 ¶ 264.

¹⁹ *Administration of the North American Numbering Plan, Report and Order*, 11 FCC Rcd. 2588, 2621 ¶ 78 (1995).

context of dispute resolution; diminishing the administrative burden facing carriers seeking codes; and allowing the Commission and regulators from other NANP member countries to keep abreast of CO code assignments and predict potential problem areas.²⁰ Finally, the Commission further affirmed that its grant of plenary authority preempted even state regulatory oversight of NXX code administration, dismissing as moot state regulators' petitions arguing otherwise.²¹

Subsequently, in the *Pennsylvania PUC Order*, the Commission exercised its exclusive discretion to “delegate a limited amount of additional authority to state commissions that will allow them to order NXX code rationing in certain situations.” In that decision, the Commission authorized state commissions “to order central office code rationing in conjunction with area code relief decisions,” *but only under the following limited circumstances*:

- the carriers operating in the area have been unable to reach consensus on a rationing plan to extend the life of an area code;
- rationing is permissible only “until implementation of relief”; and
- “the state commission has decided on a specific form of area code relief (i.e., a split, overlay, or boundary realignment) and has established an implementation date for that relief.”²²

²⁰ See *Local Competition Order*, 11 FCC Rcd. at 19533 ¶¶ 320-322.

²¹ See *id.* at 19521 ¶ 293. In this regard, the Commission subsequently named a central NANP administrator and established a framework for carrier support of NANPA administration. See 47 C.F.R. §§ 52.15, 52.17; *Administration of the North American Numbering Plan, Third Report and Order, and Toll Free Service Access Codes, Third Report and Order*, 12 FCC Rcd. 23040, 23071-75 (1997).

²² See *Pennsylvania PUC Order* at 19025-26 ¶¶ 23-24; 47 C.F.R. § 52.19(a).

The *Pennsylvania PUC Order* emphasized that states do have a responsibility for area code relief and held that states' authority to engage in limited rationing measures, such as a lottery or usage threshold, is expressly contingent upon carrying out that responsibility.²³

B. The FPSC Seeks Authority Far Broader than that Granted to California

Contrary to what the FPSC Petition implies, the authority it requests is far broader than that granted to California. The California petition requested authority to conduct monthly lotteries for NXX codes prior to adoption of an area code relief plan or establishment of an area code relief date. Citing California state administrative procedures that may delay the adoption of area code relief plans, the Bureau granted that request on an interim basis, subject to a more formal review, with additional public notice and comment.²⁴

As discussed above, the FPSC Petition seeks much broader authority than California and does not suggest that the similar state administrative procedures will delay implementation of area code relief. Indeed, as noted above, the FPSC has already initiated area code relief proceedings and is currently implementing relief in the 407 area code. Given the broad implications of the FPSC Petition and the absence of supporting evidence provided therein, the Commission should *deny* the Petition.

C. Much of the FPSC Petition Is Flatly Inconsistent with and Effectively Seeks Reconsideration of the *Pennsylvania PUC Order*

This Commission has already determined that much of the numbering authority the FPSC requests “fall[s] outside of the authority granted the states to initiate traditional area code relief, and would interfere with the code administrator’s functioning pursuant to” Section

²³ See *id.* at 19025-26 ¶¶ 24-25 (“a state commission may not impose a rationing plan on its own to avoid making a decision on area code relief”).

²⁴ *California PUC Letter Ruling*, 13 FCC Rcd. at 23737-38.

52.15 of the Commission's rules.²⁵ The FPSC, moreover, does not provide an adequate basis for its requested authority. PrimeCo addresses below the FPSC's individual proposals and why they should be rejected.

1. Return of NXX Codes or 1000 Number Blocks

This Commission has made clear that the FPSC does not have authority to order return of NXX codes or 1000 number blocks to the code administrator. Nevertheless, the FPSC asserts simply that "code conservation measures are essential in Florida in order to extend the lives of the current area codes."²⁶ In fact, CO code depletion is hardly unique to Florida.²⁷ Indeed, this situation again indicates that *nationwide* solutions, such as those under consideration before NANC and the Commission, are more appropriate and effective than state-specific measures.²⁸ The Commission should not encourage piecemeal, inconsistent approaches by each of the fifty states to a problem that is national in scope. The FPSC's attempt to enlarge on the *California PUC Letter Ruling* makes clear the need for the Commission to carefully limit state-by-state deviations from a national approach, lest the NANPA become hopelessly balkanized.

It is particularly critical that standards for reclaiming unused codes be uniformly administered by NANPA. The Industry Numbering Committee's ("INC") CO Code Assignment

²⁵ See *Pennsylvania PUC Order* at 19026-27 ¶ 25.

²⁶ *Id.* at 19025-26 ¶ 24; FPSC Petition at 4.

²⁷ See *Common Carrier Bureau Seeks Comment on the Maine Public Utilities Commission's Petition for Additional Authority to Implement Number Conservation Measures, Public Notice*, NSD File No. L-99-27, DA 99-638 (rel. Apr. 1, 1999); *Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority*, filed in CC Docket No. 96-98, and NSD File No. L-97-42, April 26, 1999.

²⁸ See *Public Notice, Common Carrier Bureau Seeks Comment on North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-124, DA 98-2265 (rel. Nov. 6, 1998) ("*Optimization Notice*").

Guidelines already contain some provisions for reclamation.²⁹ (Indeed, PrimeCo itself recently returned two NXX codes in Florida.) Formal standards also are under consideration at NANC.³⁰

In addition, the FPSC maintains that it would need to obtain utilization data from COCUS/LINUS in order to administer such a scheme. This information is highly commercially sensitive and proprietary, and PrimeCo opposes giving the FPSC or any state agency access to it. The confidential treatment afforded to such information is an important aspect of the NANPA's role as a centralized independent third party administrator, and grant of the FPSC's request would open the possibility of carriers being subject to information requests from 51 different state commissions and 51 different public disclosure statutes. Moreover, because of the FPSC's limited jurisdiction, there is simply no need for the FPSC to have access to such information. Lastly, assuming *arguendo* that the FPSC needs carrier data, aggregated information should be provided by NANPA for this purpose.

2. State Imposition of LNP-Based Solutions Such as Number Pooling, Number Porting, and NXX Code Sharing in Rate Centers on CMRS Carriers Would be Unlawful

The Commission expressly declined in the *Pennsylvania PUC Order* to authorize states to order mandatory number pooling, or to order either a partial or entire NXX as part of a number pooling trial, in large part because of "activity already occurring at the federal level to develop [] national standards."³¹ The FPSC nevertheless requests thousand number block pooling in advance of any federal rules on the basis that thousand-block (and perhaps even 100

²⁹ See ATIS/INC Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, § 8.0 (revised January 1999).

³⁰ See NANC Report on Number Resource Optimization, Oct. 20, 1998, § 11 ("NANC Report").

³¹ *Pennsylvania PUC Order* at 19025-26, 19027-28 ¶¶ 24, 27.

block pooling) “represents a possible vehicle for conserving numbering resources” and “mandatory national thousand-block pooling guidelines could take considerable time.”³² The FPSC similarly requests authority to require sharing of NXX codes in individual rate centers.³³

The FPSC has presented nothing new for the record here. The Commission is already evaluating number pooling as a conservation measure, and industry/NANC guidelines are still under consideration.³⁴ Indeed, NANC has already considered -- and summarily rejected -- sharing of NXX codes in individual rate centers as a viable option.³⁵

Moreover, the FPSC provides no details of the nature of its pooling plan, even though the Commission has expressly limited the extent to which states may engage in number pooling experiments.³⁶ Thus, it is virtually inconceivable that the FPSC could implement number pooling in a timely enough manner to resolve its existing jeopardy situations. For that reason alone, the FPSC’s open-ended request for number pooling authority should be rejected.

Equally important, however, is that for wireless carriers mandatory number pooling and the sharing of CO codes in rate centers is no solution. Both of these techniques require that a carrier have local number portability (“LNP”) capability.³⁷ CMRS providers,

³² FPSC Petition at 3.

³³ *Id.*

³⁴ *See Optimization Notice* at 4.

³⁵ NANC Report § 8.1.

³⁶ *See Pennsylvania PUC Order* at 19027-28 ¶¶ 27-28. Specifically, state commissions may order that a certain number of NXX codes in a new area code be withheld from assignment and saved for number pooling, but no carrier may be denied a code so that it can be saved for pooling purposes, and pooling may not continue in jeopardy situations.

³⁷ *See Optimization Notice* at 4; NANC Report §§ 5.2, 8.1.

however, are not now subject to the Commission's LNP requirements and will not be until November 24, 2002.³⁸ We note in this regard that the FPSC also requests authority to "expand deployment of permanent number portability" and to implement unassigned number porting.³⁹ The Commission has expressly addressed the implications of LNP forbearance for CMRS providers and concluded that the record "demonstrate[s] 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."⁴⁰ The Commission has already considered -- and rejected -- arguments that LNP should be imposed on CMRS carriers to promote numbering conservation at the current time, and the FPSC adds nothing new here.⁴¹

The FPSC's request for authority to impose number portability on carriers -- at least to the extent that its request applies to wireless carriers -- clearly cannot be reconciled with the Commission's lawful exercise of its Section 10 authority in the *LNP Forbearance Order*, especially given the Commission's statutory primacy on numbering issues.⁴² In any event, it is

³⁸ 47 C.F.R. § 52.31(a); *LNP Forbearance Order* ¶ 39. Moreover, the wireless LNP requirement is subject to pending challenges at the Commission and in federal appeals court.

³⁹ FPSC Petition at 4. The FPSC asserts that unassigned number porting ("UNP") "is already being used by certain carriers during a rationing period." *Id.* at 5. The FPSC does not specify which carriers are using "UNP," but presumably these do not include CMRS carriers.

⁴⁰ *LNP Forbearance Order* ¶ 47.

⁴¹ *See id.* ¶¶ 43, 48.

⁴² *See* 47 U.S.C. § 160; *LNP Forbearance Order* ¶¶ 17-48; *Pennsylvania PUC Order* at 19035 ¶ 40 n.115 (noting that grant of CTIA's then-pending forbearance petition would preclude wireless carriers from being able to participate in number pooling). PrimeCo also notes that ILECs outside of the top 100 MSAs have only limited LNP obligations. *See* 47 C.F.R. §§ 52.23(b)-(c).

questionable whether authority to impose LNP on *any* telecommunications carrier can be delegated to states.⁴³

Moreover, the FPSC's request for LNP authority, to the extent it applies to CMRS providers, directly undermines the objectives the Commission's recent conclusion that "the public interest in efficient use of numbering resources is not harmed by [its] limited extension of the LNP deadline"⁴⁴ In short, this is a situation in which "it will be impossible for carriers to comply with federal and state CMRS number portability requirements,"⁴⁵ and PrimeCo respectfully submits that the FPSC has presented no facts or arguments warranting such a prompt reversal of its decision in the *LNP Forbearance Order*.

3. **CO Code Lotteries and Maintenance of CO Code Rationing Measures for at Least 6 Months After Implementation of Area Code Relief Plans**

The FPSC requests authority to "revise rationing procedures and institute NXX lotteries (prior to adoption of area code plans or establishment of an area code relief date) to prolong the life of existing area codes" and "to institute a NXX lottery which would afford each

⁴³ See *Telephone Number Portability, Third Report and Order*, 13 FCC Rcd. 11701, 11719-20 ¶ 28 (1998) ("*LNP Third Report and Order*"); *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8352, 8371 ¶ 37 (1996) ("allowing number portability to develop on a state-by-state basis could potentially thwart the intentions of Congress in mandating a national number portability policy, and could retard the development of competition in the provision of telecommunications services").

⁴⁴ See *LNP Forbearance Order* ¶ 48.

⁴⁵ See *Telephone Number Portability, Second Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, 13 FCC Rcd. 21204, 21234 ¶¶ 64-65 (1998) ("*Second LNP Reconsideration Order*") (finding no "basis in the [record at that time] for concluding that it will be impossible for carriers to comply with federal and state CMRS number portability requirements"); see also *LNP Third Report and Order*, 13 FCC Rcd. at 11719-20 ¶ 28.

applicant an equal opportunity.”⁴⁶ The FPSC also asserts that “[o]nce an area code relief plan is announced, this accelerates the demand for the remaining NXXs in the old area code” and, “[b]y using code rationing as a supply constraint,” allowing states to maintain “rationing measures for *at least* six months after the implementation of all area code relief plans” will “control[] the artificial increase in demand.”⁴⁷

The Commission has already determined when code rationing measures, such as lotteries, are appropriate. In this regard, PrimeCo does not object to lotteries implemented on an NPA-wide basis. The FPSC in its brevity, however, does not spell out the scope of the authority it requests. Lotteries implemented on an individual rate center basis, for example, would discriminate against wireless carriers, which can use a single rate center to serve several individual rate centers. Even the limited authority granted to California arguably will undermine incentives for state commissions to use their full panoply of tools (*e.g.* overlays and rate center consolidation) to make difficult but necessary area code relief decisions.⁴⁸

Indeed, both of these FPSC proposals would sever states’ limited CO code rationing authority from their obligations to make difficult area code relief decisions, and would seriously undermine the regulatory bargain implicit in the *Pennsylvania PUC Order*. The FPSC’s request for post-relief plan authority to ration CO codes is disturbingly open-ended. The FPSC does not even propose a time limit for authority to continue rationing measures, only providing that such authority could be “at least six months” after implementation. This is

⁴⁶ FPSC Petition at 3-4.

⁴⁷ *Id.* at 4.

⁴⁸ See Comments of Sprint PCS in NSD File No. L-98-136, filed Feb. 5, 1999, at 2-4 (“the current crisis in California likely could have been averted had either rate centers been consolidated . . . or overlay relief plans been adopted instead of geographic splits”).

particularly problematic for new carriers with an expanding subscriber base. Wireless carriers' demand for numbers is not simply a matter of a customer switching from one carrier to another -- rather, it is a matter of rapidly-growing total wireless subscribership. Limiting the extent to which wireless carriers -- which are efficient users of CO codes -- can obtain CO codes will inhibit new market entry. Any "supply constraint" measures should be implemented nationwide by the Commission, NANC and the NANPA. The FPSC has not demonstrated good cause for this open-ended waiver of the Commission's rules.

4. The Commission's Code Allocation Standards Should Not Require State Commission Consultation

PrimeCo agrees with the FPSC that the Commission and NANPA should "establish code allocation standards to more efficiently manage numbering resources." As noted above, the Commission has already initiated this effort.⁴⁹ In addition, wireless carriers have submitted a number of proposals, including utilization thresholds, auditing COCUS reports, and Commission enforcement, which would significantly improve the efficient use of the numbering resource.⁵⁰ The FPSC adds, however, that such standards should "include a requirement that NANPA consult with the FPSC prior to issuance of additional NXX codes."⁵¹ It is unclear from the FPSC Petition whether it merely requests authority to comment on the issuance of an additional NXX code, or authority to effectively veto a CO code assignment. In any event,

⁴⁹ See *Optimization Notice*; NANC Report.

⁵⁰ See *LNP Forbearance Order* ¶ 46; AirTouch Comments in NSD File No. L-98-134, filed Dec. 21, 1998; PrimeCo *Ex Parte* Presentation, Jan. 6, 1999; CTIA Letter to Yog Varma, Dep. Chief, Common Carrier Bureau, Jan. 28, 1999; Sprint PCS *Ex Parte* Presentation, Jan. 29, 1999.

⁵¹ FPSC Petition at 5.

adding another layer to the CO code assignment procedures is unnecessary and the Commission should reject a mandatory state consultation requirement.⁵²

Moreover, it is the NANPA -- not the FPSC -- which will have ongoing numbering administration responsibilities. The FPSC is a political body whose responsibilities include activities beyond area code relief and beyond the regulation of telecommunications carriers, and it necessarily has limited resources to conduct numbering activities. In contrast, the NANPA, by statutory and regulatory design, is committed entirely to numbering administration. As such, the NANPA is the primary repository for and monitor of COCUS and numbering resource information, the sole arbiter of when NPAs enter a jeopardy situation and, together with the Commission, will be the sole, centralized body with CO code assignment authority. In short, and with all due respect to the FPSC, in terms of the demand and depletion times for CO codes, there is little information that the FPSC could contribute to an individual NANPA CO code assignment decision that the NANPA does not have already. Requiring the NANPA to accommodate individualized state-by-state concerns will not promote the efficient use of the numbering resource and, indeed, undermines the Commission's underlying objectives in establishing NANPA as an independent, neutral third party.

5. Reporting and Auditing Requirements

The FPSC requests authority to use LINUS to run NXX reports quarterly, and to require CMRS carriers "to provide the necessary COCUS and other information needed to carry out [its] responsibilities," including utilization data at the block level. This is needed, according

⁵² See *Local Competition Order*, 11 FCC Rcd. at 19521 ¶ 293 (rejecting state authority due to additional administrative burden on carriers).

to the FPSC, “in order to investigate the feasibility of various pooling scenarios.”⁵³ As discussed above, the FPSC has no authority to require number pooling and may engage in only experimental, limited pooling trials.⁵⁴ Because the reason given for obtaining this additional authority is invalid, there is no reason for the Commission to grant this request. Also, as discussed above, compiling information at the “block level” is extremely difficult. Finally, as discussed above, PrimeCo opposes the provision of individual carriers’ LINUS/COCUS data directly to any state commission, as this could subject carriers to multiple information requests and, because of the FPSC’s limited jurisdiction, there is simply no need for the FPSC to have access to such competitively-sensitive information.

As a related matter, the FPSC requests that the Commission direct NANPA to update the COCUS report quarterly instead of annually. This, according to the FPSC, is necessary to “provide a much more current basis for planning area code relief.”⁵⁵ COCUS reports in the future already are to be updated semiannually rather than annually. Given the difficulties in compiling COCUS information, PrimeCo submits that the Commission should wait to determine whether the semiannual requirement improves NANPA’s demand and depletion forecasts before carriers’ reporting requirements are again doubled.

III. THE FPSC ALREADY HAS RATE CENTER CONSOLIDATION AUTHORITY AND SHOULD INITIATE PROCEEDINGS EXPEDITIOUSLY

PrimeCo strongly supports the implementation of rate center consolidation in Florida. By reducing the number of rate centers in a metropolitan region, demand for NXX

⁵³ FPSC Petition at 5-6.

⁵⁴ *See supra* Section II.C.2.

⁵⁵ FPSC Petition at 5.

codes is reduced because carriers who need a presence in every rate center can do so with fewer NXX codes. Wireless carriers already serve multiple rate centers or a large geographic area with a single rate center and, by expanding the area of local calling, rate center consolidation for wireline carriers -- currently the most inefficient users of NXX codes -- would emulate the CMRS model. Indeed, a number of state commissions have already implemented rate center consolidation proceedings.⁵⁶

For these reasons, PrimeCo does not object to this provision of the FPSC's request. Given that state commissions already have this authority, however, it is unclear why the FPSC has requested this authority from the Commission. PrimeCo thus recommends that the Commission (1) clarify that state commissions already have this authority and (2) encourage them to exercise it, particularly for metropolitan areas.

CONCLUSION

For the foregoing reasons, the Commission should preserve the existing balance of state and federal interests set forth in its rules and the *Pennsylvania PUC Order* and deny the FPSC's request for additional numbering administration authority. The FPSC does not meet the standards for waiver of the rules; indeed, as discussed above, deviation from the rules would disserve the public interest.⁵⁷ The Commission should instead confirm state commission

⁵⁶ See NANC Report § 15.4.

⁵⁷ See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

responsibilities to expeditiously implement area code relief and encourage state commissions to exercise their authority to implement rate center consolidation.

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May 14, 1999

CERTIFICATE OF SERVICE

I, Jo-Ann G. Monroe, hereby certify that on this 14th day of May, 1999 copies of the foregoing Comments of PrimeCo Personal Communications, L.P. were served by first class U.S. mail, postage prepaid, to the following:

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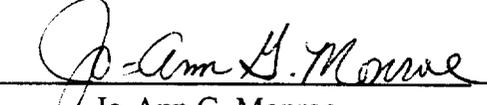
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