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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
California Public Utilities Commission)
and the People of the State of)
California Petition for Waiver to)
Implement a Technology-Specific)
or Service-Specific Area Code)

NSD 99-36
CC Docket 96-98

OPPOSITION OF AT&T CORP.

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 California Public Utility Commission's ("CPUC's") Petition for Waiver.^{1/} The CPUC seeks authority to implement a wireless-only overlay, purportedly to "maximize the options available" to the CPUC in its numbering resources efforts.^{2/} As demonstrated below, the CPUC fails to satisfy the Commission's stringent standards for waiver requests and fails to address the Commission's long-standing concerns about service-specific and technology-specific overlays. Accordingly, the CPUC Petition should be denied.

Under the Commission's rules, waivers may only be granted "if good cause therefor is shown."^{3/} 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."^{4/} Further, a

^{1/} See Public Notice, Common Carrier Bureau Seeks Comment on a Petition of the California Public Utilities Commission and the People of the State of California for a Waiver to Implement Technology-Specific or Service-Specific Area Codes, NSD File No. L-99-36 (rel. May 14, 1999) ("CPUC Petition").

^{2/} Id. at 1.

^{3/} 47 C.F.R. §1.3.

^{4/} 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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petitioner's articulation of special circumstances must go substantially beyond factors considered during the rulemaking proceeding in which the rule in question was promulgated.^{5/} The CPUC falls well short of achieving this standard.

Far from demonstrating that special circumstances exist, the CPUC requests that the Commission take the drastic step of waiving its own rules to accommodate the CPUC's potential actions. Notably, the CPUC acknowledges that "[t]he CPUC may ultimately decide that implementing such an area code is technically infeasible or simply will not contribute significantly to easing pressure on the numbering system."^{6/} The CPUC's request to have another regulatory arrow in its quiver -- which it may or may not use -- fails to demonstrate special circumstances. Thus, as a legal matter, the CPUC Petition fails to meet the Commission's waiver standard.^{7/}

The Commission has twice rejected arguments that states should have a right to adopt wireless-only overlays as a form of area code relief. In 1995, the FCC concluded that Ameritech's proposed wireless-only overlay would unreasonably discriminate against wireless carriers, in violation of the principle of technological neutrality, and would thwart the FCC's goals of encouraging new services and additional competition.^{8/} The following year the Commission reaffirmed this reasoning,

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

^{5/} See Industrial Broadcasting Co. v. FCC, 437 F.2d 680, 683 (D.C.Cir. 1970).

^{6/} CPUC Petition at 7.

^{7/} AT&T recently opposed a waiver request proffered by the Massachusetts Department of Telecommunications and Energy because it, similar to the CPUC request, fell short of the Commission's waiver standard. See Comments of AT&T Corp., NSD File No L-99-17 (filed April 5, 1999). AT&T's comments on the Massachusetts Petition are herein incorporated by reference.

^{8/} Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, 10 FCC Rcd 4596, 4604-05 ¶ 20 (1995) ("Ameritech Order").

concluding in its Second Local Competition Order^{9/} that a technology specific overlay proposed by the Texas Public Utilities Commission (the “Texas PUC”) violated the Ameritech Order.^{10/} The FCC specifically found unpersuasive the Texas PUC’s arguments that a wireless-only overlay would extend the life of existing NPAs.^{11/}

In this regard, there is no evidence that wireless-only overlays are an efficient numbering resource mechanism.^{12/} Indeed, the only wireless-only overlay implemented to date (the 917 NPA in New York City) was recently terminated and the New York Public Service Commission reinstated wireless carriers’ access to codes in the 718 NPA and gave other carriers the ability to take codes out of the 917 code.^{13/} It is significant that while the 917 NPA was laid over two existing area codes (212/718) in the largest wireless market in the country, New York City, and that all wireless numbers were assigned only from the 917 code for approximately eight years, there are still a significant number of full NXXs in the 917 NPA available for assignment. This calls into question the utility of wireless-only overlays.

The CPUC neither rebuts the FCC’s conclusions on wireless-only overlays nor distinguishes its request from the failed wireless-only overlay in New York. Rather, the CPUC simply states that

^{9/} 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.”).

^{10/} Second Local Competition Order, 11 FCC Rcd at 19527 ¶ 304.

^{11/} Id., 11 FCC Rcd at 19528 ¶ 306.

^{12/} See In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking, CC Docket No. 99-200 ¶ 259 (rel. June 2, 1999) (“NRO NPRM”) (explaining that service-specific overlays would provide wireless carriers with “more NXX codes than they need, which would, at the same time, be unavailable to wireline carriers that need them”).

^{13/} 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

because wireless carriers will not be able to participate in number pooling as soon as wireline carriers, “it seems reasonable to the CPUC that it may wish to consider . . . creating a separate NPA for non-LNP-capable carriers.”^{14/} This rationale fails to support the Commission’s requested relief. The fact that, for some period, wireless carriers will have to obtain codes in full 10,000 blocks after pooling begins for other carriers does not provide either a technical or policy basis for relegating wireless services to a separate area code. The status of a carrier’s LNP roll out does not and cannot justify discriminatory number administration policies.

In any event, the Commission has recently commenced a full-scale proceeding on a whole host of number optimization proposals and policies, including a reexamination of its current rules concerning service-specific and technology-specific overlays in the NRO NPRM. While the Commission has reiterated that such overlays are discriminatory,^{15/} it has sought comment on whether there might be circumstances in which a service-specific overlay is warranted. In that regard, the Commission has asked a series of questions, including:

- Whether technology-specific and service-specific overlays yield potential numbering resource optimization benefits that would not also result from implementation of an all-services overlay?^{16/}
- To what extent would concerns about the discriminatory impact of service or technology-specific overlays be mitigated if such overlays were prospective only and did not involve the taking back of numbers from existing customers?^{17/}

July 1, 1991 in Case 90-C-0347 and December 10, 1997 in Case 96-C-1158, Order Granting Petition (Feb 3, 1999).

^{14/} CPUC Petition at 7.

^{15/} NRO NPRM at ¶ 257 (“We continue to believe that service-specific or technology-specific overlays raise serious competitive issues . . .”).

^{16/} Id.

^{17/} Id.

- Could technology-specific and service-specific overlays yield potential new benefits that were not previously contemplated?^{18/}
- How can a technology-specific or service-specific overlay be implemented in a manner that would promote the Commission’s number optimization objectives?^{19/}

The CPUC Petition does not address any of the above issues, but instead discusses the pace of number exhaust in California and contends that it needs to “develop a broad slate of solutions to the address the problem.”^{20/} Indeed, the CPUC does not allege that wireless carriers are inefficient users of numbering resources or that a service-specific overlay would provide the sought-for relief. To the contrary, the Petition simply seeks to “maximize the options available to gain control of the ongoing number crisis we face.”^{21/}

While the CPUC understandably wants the flexibility to adopt measures that it believes might potentially alleviate number exhaust problems, the Commission should not permit it to adopt a form of NPA relief that has repeatedly been held to be discriminatory without persuasive evidence that the policy ultimately will be an effective form of number conservation. Certainly, no one state should be granted special authority to order wireless-only overlays unless or until the Commission has determined, based on the record gathered in response to the NRO NPRM, that this “conservation” measure is appropriate.

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

^{18/} Id.

^{19/} Id. at ¶ 259 (noting that “wireless carriers often require, on average, fewer NXXs than wireless carriers”).

^{20/} CPUC Petition at 4.

^{21/} Id. at 1.

Communications Act. Nothing in the CPUC Petition calls the Commission's prior conclusions into question, or even purports to demonstrate unique or changed circumstances that might warrant the relief requested. Although the Commission has recently sought comment on its policy against wireless-only overlays, the CPUC Petition does not address the issues the Commission found relevant to reexamining its rules governing NPA relief. Accordingly, AT&T respectfully urges the Commission to deny the CPUC Petition.

Respectfully submitted,

AT&T Corp.

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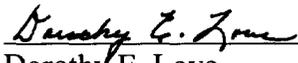
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