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

In the Matters of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

FIRST ORDER ON RECONSIDERATION

Adopted: July 12, 1999 Released: July 19, 1999

By the Commission: Commissioner Furchtgott-Roth concurring in part, dissenting in part, and issuing a statement

I. INTRODUCTION

1. In amending the Communications Act of 1934[1] by passing the Telecommunications Act of 1996,[2] Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.[3] On August 8, 1996, the

[1] 47 U.S.C. §§ 151 *et seq.* ("Communications Act" or "the Act").

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

[3] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Joint Explanatory Statement).

Commission sought to implement this policy by adopting and releasing the *Local Competition Second Report and Order.*[4] Among the rules and policies that the Commission adopted to implement the 1996 Act were rules implementing section 251(e) of the Act, which sought to ensure that telephone numbers would be distributed, and area code relief implemented, in a competitively neutral manner. In this First Order on Reconsideration, we resolve one issue concerning numbering administration raised in the Petition for Reconsideration or Clarification filed in response to the *Local Competition Second Report and Order* by Beehive Telephone Company, Inc. (Beehive). For the reasons stated below, we deny Beehive's petition. We affirm our conclusion in the *Local Competition Second Report and Order* that we have satisfied the statutory requirement of section 251(e)(1) of the Act that we establish procedures leading to the designation of an impartial North American Numbering Plan (NANP) administrator and to the designation of an impartial toll free number administrator.[5]

II. PETITION OF BEEHIVE TELEPHONE COMPANY

A. Background

2. Congress, in enacting the 1996 Act, and the Commission, in various proceedings, have recognized that fair and impartial access to telephone numbering resources is critical for entities seeking to provide telecommunications services because "telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network."[6] The Act effectuates impartial access to telephone numbers on a national scale by granting to the Commission, in section 251(e)(1) of the Act, exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States. Section 251(e)(1) also requires the Commission to "create or designate one or more impartial entities to

[4] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*).

[5] We will address in future orders petitions for reconsideration filed in response to the *Local Competition Second Report and Order*'s other rules implementing numbering administration under section 251(e)(1) of the Act, 47 U.S.C. § 251(e)(1), as well as petitions concerning rules implementing the dialing parity and nondiscriminatory access provisions of section 251(b)(3) of the Act, *id.*, § 251(b)(3), and the network disclosure requirements of section 251(c)(5) of the Act, *id.*, § 251(c)(5).

[6] *Local Competition Second Report and Order*, 11 FCC Rcd at 19508; *see* Administration of the North American Numbering Plan, CC Docket No. 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591 ¶ 261 (1995) (*NANP Order*).

administer telecommunications numbering and to make such numbers available on an equitable basis."[7]

3. Prior to October, 1997, the incumbent local exchange carrier (LEC) within each geographic area had performed central office (CO) code assignment and area code relief functions.[8] Bell Communications Research (Bellcore)[9] performed other numbering administration functions. The *Local Competition Second Report and Order* concluded that the action taken by the Commission in the 1995 *NANP Order,* which required NANP administration functions to be transferred to a new, neutral NANP administrator (now Lockheed Martin), satisfied that requirement.[10] In the *NANP Order*, the Commission expressed its intention to create the North American Numbering Council (NANC) and directed the NANC to recommend as NANP administrator an independent, non-governmental entity that is not closely associated with a particular industry segment.[11] The Commission also observed that, while the *NANP Order* outlines broad objectives for numbering administration for all telecommunications services, the specific details of implementation for toll free services would be addressed in the ongoing toll free proceeding, CC Docket No. 95-155.[12]

4. On October 9, 1997, we released an Order affirming the NANC's recommendations of Lockheed Martin IMS as the new NANP administrator and the National Exchange Carrier

[7] 47 U.S.C. § 251(e)(1)

[8] "Central office code" or "NXX code" refers to the second three digits (also called digits D-E-F) of a ten-digit telephone number in the form NXX-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9. 47 C.F.R. § 52.7(c). "Area code relief" refers to the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and a new area code is introduced. 47 C.F.R. § 52.7(b).

[9] In 1997, Bellcore was acquired by Science Applications International Corporation (SAIC) and, in March, 1999 changed its name to Telcordia Technologies.

[10] *Local Competition Second Report and Order,* 11 FCC Rcd at 19510, ¶¶ 264-265. *See NANP Order*, 11 FCC Rcd at 2591 *NANP Order* ¶ 5. The NANP establishes the ten-digit telephone number format used by 18 nations, including the United States and Canada, that share a common numbering system in North America. In the telephone number (708) 555-6000, the area code is 708, the CO code is 555, and the line number is 6000. Area codes are more formally called "Numbering Plan Area" codes or NPA codes. CO codes are also called NXX codes. *See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (*Ameritech Order*).

[11] *NANP Order*, 11 FCC Rcd at 2610, 2613, 2616 ¶¶ 48, *57, 67.*

[12] *Local Competition Second Report and Order,* 11 FCC Rcd at 19511, ¶ 266.

Association (NECA) as the billing and collection agent for NANP Administration.[13] In the *NANP Order III*, the Commission affirmed the selection of Lockheed Martin IMS as the new North American Numbering Plan Administrator (NANPA), noting that it would perform the numbering administration functions previously performed by Bellcore, as well as area code relief planning and CO code administration.[14] In the *NANP Order III*, the Commission also resolved the issue of toll free database administration, and concluded that, as currently structured, the toll free database administration is inconsistent with section 251(e)(1) of the Communications Act, as amended.[15] We directed the NANC to examine the issue of toll free number administration and make a recommendation to the Commission regarding what entity would be an appropriate administrator for the toll free database within 120 days of the effective date of the Order.[16]

B. The Petition

5. Beehive argues that the Commission did not satisfy section 251(e)(1) because it did not adopt rules to implement section 251(e)(1) by August 8, 1996.[17] In Beehive's view, the Commission also did not satisfy section 251(d)(1), which required, that within 6 months after the date of enactment of the 1996 Act, the Commission was to have completed all actions necessary to establish regulations to implement the requirements of section 251.[18] According to Beehive, there is no regulation in the *Local Competition Second Report and Order* that "creates or designates" a NANP administrator or any other impartial numbering administrator, as required by the statute.[19] Beehive also argues that even if the Commission complied with section 251(e)(1) with respect to the NANP, it did not do so with respect to 800 numbers,[20] which are not under NANP

[13] *See* Administration of the North American Numbering Plan and Toll Free Service Access Codes, CC Docket Nos. 92-237 and 95-155, *Third Report and Order and Third Report and Order*, 12 FCC Rcd 23040, at 23041-42, 23051-52, 23071-72 (1997) (*NANP Order III*).

[14] *Id.* at 23071, 23075-76 ¶¶ 59, 68.

[15] *Id.* at 23094 ¶ 109.

[16] *Id.*

[17] Beehive Petition at 5.

[18] *Id.* at 4.

[19] *Id.*

[20] We note that a new toll free code, 888, was introduced on March 1, 1996, and that another toll free code, 877, was introduced on April 5, 1998. These new codes are administered in the same manner as the 800 code. We assume that when Beehive refers to 800 number administration, it also means 888 and 877 number administration. For ease of

administration but instead are administered separately by Database Service Management, Inc. (DSMI), under the Service Management System (SMS) Tariff.[21] Beehive contends that section 251(e)(1) requires an impartial toll free number administrator and that the current toll free number administrator, DSMI, is not impartial because it is aligned with the Regional Bell Operating Companies (RBOCs).[22] Further, Beehive argues that that the Commission failed to implement section 251(e)(2) by allowing the SMS Tariff to remain in effect. In Beehive's view, even if the Commission had adopted a rule by August 8, 1996, that specified DSMI as the toll free number administrator, DSMI would have had to offer access to the toll free database in interconnection agreements between DSMI and competitors, or else designate some other entity to perform DSMI's role. In either event, Beehive contends that it violates the 1996 Act to provide toll free service through a tariff.[23]

C. Discussion

6. We disagree with Beehive's contention that the actions taken in the *NANP Order* did not satisfy section 251(e)(1). The statute does not require that the Commission appoint an impartial numbering administrator by August 8, 1996, but rather that the Commission "complete actions necessary" to establish such regulations.[24] As we discussed in the *Local Competition Second Report and Order*, the Commission took the action necessary to establish regulations leading to the designation of an impartial number administrator prior to August 8, 1996, as required by section 251(d)(1) and section 251(e)(1).[25] In the *NANP Order*, released July 13, 1995, the Commission required that there be a new, impartial number administrator and established the framework from which that administrator will be chosen. The NANC has been meeting regularly since October 1, 1996. On May 15, 1997, the Commission received the NANC's recommendation for the NANP administrator. The NANC also recommended proposed rules to govern the performance of the NANP administrator and to resolve numbering disputes.[26] On October 9, 1997, we released an

reference, we will use "toll free number administration" in this order to refer to 800, 888, and 877 number administration as well as to all subsequent "toll free" numbers that may be hereafter assigned.

[21] Beehive Petition at 6.

[22] *Id.* at 6-7. DSMI is a subsidiary of Telcordia Technologies, Inc. (formerly Bellcore).

[23] Beehive Petition at 7-8.

[24] 47 U.S.C. § 251(d).

[25] *Local Competition Second Report and Order*, 11 FCC Rcd at 19510 ¶ 265.

[26] On May 19, 1997, the Commission issued a public notice seeking comment on the NANC's recommendation. Comments were filed on June 20, 1997 and replies were filed on July 3, 1997. Administration of North American

Order affirming NANC's recommendations for the NANP administrator and the billing and collection agent for NANP administration. The transition from Bellcore to Lockheed Martin is complete. We thus affirm the conclusion in the *Local Competition Second Report and Order* that actions taken in the *NANP Order* satisfied the section 251(e)(1) requirement that the Commission create or designate an impartial numbering administrator.[27]

7. We also disagree with Beehive's contention that the Commission has not complied with sections 251(e)(1) and 251(e)(2) with respect to toll free number administration, and that the Commission violated the Act by allowing the SMS tariff to remain in place. In 1995 in the *Toll Free NPRM*,[28] we sought comment on whether DSMI should continue to administer the toll free databases or whether another entity, such as the NANP administrator or another neutral party, should administer the toll free databases.[29] The Commission asked parties to comment on whether independent third parties not affiliated with Bellcore or the RBOCs should perform the administrative database functions instead of DSMI and Lockheed, which currently perform those functions.[30]

8. Although the Commission had taken significant steps concerning toll free number administration prior to the passage of the 1996 Act, upon passage of the 1996 Act, we solicited further comment concerning the appointment of a toll free administrator to ensure that the Commission had taken "all actions necessary to establish regulations to implement" this portion of section 251. Subsequently, in early 1997, we issued a *Further Notice of Proposed Rulemaking* that requested comment on the issue of what entity should administer the toll free database.[31] In light of section 251(e)(1) and the fact that the 1996 amendments to the Act open all telecommunications

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Numbering Plan, *Public Notice*, CC Docket No. 92-237 (May 19, 1997).

[27] *Local Competition Second Report and Order*, 11 FCC Rcd at 19510 ¶ 265.

[28] Toll Free Service Access Codes, CC Docket No. 95-155, *Notice of Proposed Rulemaking*, 10 FCC Rcd 13692 (1995) (*Toll Free NPRM*).

[29] *Toll Free NPRM*, 10 FCC Rcd at 13705 ¶ 49.

[30] *Id.* The Commission noted that DSMI is currently the primary administrator of the toll free database. In response to industry concerns, Bellcore established DSMI for the purpose of administering the SMS/800 database and subcontracted functions requiring access to proprietary customer information to a neutral third party, Lockheed Martin IMS. The SMS/800 Management Team, however, has notified Responsible Organizations that it has chosen a new provider, Sykes Enterprises, Inc., for the services formerly provided by Lockheed.

[31] Toll Free Service Access Codes, CC Docket No. 95-155, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162 (1997) (*Toll Free Second Report and Order*).

markets to competition, we stated that Bellcore, which then owned the current toll free database administrator,[32] was affiliated with the RHCs, which, as a matter of first impression, would appear to be an affiliation with a discrete industry segment.[33] The Commission tentatively concluded that, given DSMI's then-current ties to the RHCs, DSMI's continuation as the toll free database administrator would violate section 251(e)(1) of the Act.[34] The *Toll Free Second Report and Order* also noted that the RHCs had entered into an agreement to sell Bellcore and sought comment as to how that agreement might affect resolution of the question of who should administer the database.[35] As discussed above, we directed the NANC to recommend which entity should administer the toll free database. On March 25, 1998, the NANC responded to this directive by sending a letter to the Chief, Common Carrier Bureau, recommending that DSMI remain the toll free number database administrator. On June 11, 1998, the Common Carrier Bureau released a public notice in which it sought comment on the NANC recommendation.[36] The pleading period for that proceeding closed on July 13, 1998, and is presently pending.

9. Although the issue is under consideration in CC Docket No. 95-155, the *NANP Order* established a structure that could be used for determination of issues pertaining to toll free administration, if necessary. The Commission has requested that NANC recommend a toll free number administrator.[37] The plain language of section 251(d)(1) of the Act required the Commission to complete all actions necessary to establish regulations to implement the requirements of section 251 within a six-month period.[38] We conclude that, as the above discussion indicates, this Commission completed those actions that were necessary to establish regulations to implement section 251(e)(1) with regard to toll free number administration within that time period.

[32] Currently, the toll free database is administered by Database Service Management, Inc. (DSMI). Bellcore, now owned by SAIC and renamed Telcordia Technologies, still owns DSMI.

[33] *Toll Free Second Report and Order*, 12 FCC Rcd at 11223-24 ¶ 101. Comments in response to the *Further Notice of Proposed Rulemaking* were received on May 22, 1997, and reply comments were received on June 23, 1997. The proceeding is currently pending before the Commission.

[34] *Id.*

[35] *Id.*

[36] *See* Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation that Database Service Management, Inc. Remain the Toll Free Database Administrator, *Public Notice*, DA 98-1112 (rel. June 11, 1998).

[37] *NANP Order III, supra*, n. 9.

[38] 47 U.S.C. § 251(d)(1).

10. We also reject Beehive's contention that the Commission has violated section 251(d)(1) of the Act by allowing the SMS tariff to remain in place. Section 251(d)(1) requires the Commission only to "complete all actions necessary to establish regulations to implement" Section 251 by August 8, 1996;[39] it does not compel the agency by that date to invalidate tariff provisions that allegedly are inconsistent with Section 251. We thus find that Section 251(d) did not require the Commission by a date certain to detariff SMS access or invalidate specific provisions of that tariff. We note further that the issue as to whether the FCC should detariff SMS access is currently under consideration in the toll free docket, [40] and in a petition for declaratory ruling filed on January 29, 1999 by Beehive. Beehive's petition for declaratory ruling also raises the issue of whether the SMS tariff is inconsistent with the cost recovery requirements of Section 251(e)(2). We believe that the issues Beehive raises regarding the SMS tariff are more appropriately addressed in those proceedings. We thus deny Beehive's request for reconsideration of this issue.

III. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that the petition for reconsideration and clarification filed by Beehive Telephone, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Magalie Roman Salas WFC
Secretary

[39] *Id.*

[40] *Toll Free Second Report and Order* at 11225 ¶ 104 ("We seek comment on what effect the selection of a new administrator for the toll free database would have on the Commission's *800 Proceeding Order* in which the Commission concluded that, under the RBOC plans for providing SMS access such SMS access is a Title II common carrier service and must be provided under tariff. Specifically we seek comment on whether access to the database should still be provided pursuant to tariff if there is ultimately a new administrator of the database and if so, what party or entity should file the tariff." *See also* Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation that Database Service Management, Inc. Remain the Toll Free Database Administrator, *Public Notice*, DA 98-1112 (rel. June 11, 1998).

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH DISSENTING IN PART

Re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Order on Reconsideration and Memorandum Opinion and Order, (CC Docket No. 96-98)

I respectfully dissent from portions of this item denying a petition for Reconsideration or Clarification by Beehive Telephone Company, Inc. I cannot support the Commission's conclusion that the act of seeking public comment on an issue constitutes complete action necessary to establish regulations to implement requirements imposed by Congress. To the extent that the Commission has ultimately appointed a numbering administrator for the North American Numbering Plan (NANP), however, I support denial of the petition.

The most important mission of this Commission is to carry out the statutory directives of Congress. Any dereliction of this obligation frustrates the very purpose of this agency. In Section 251(d)(1) of the Communications Act of 1934, as amended, Congress clearly directed the Commission to "complete all actions necessary to establish regulations to implement the requirements of this section." One such requirement, found in Section 251(e)(1), directs the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis." Pursuant to this requirement, the Commission must create or designate a toll-free administrator.[41]

It appears that the Commission has done little more than repeatedly seek comment on whether Database Service Management, Inc. (DSMI) should continue to administer the toll-free database. The majority notes that the Commission or the Common Carrier Bureau has sought comment on this issue on four separate occasions: (1) in a 1995 NPRM, the Commission sought comment on whether independent third parties not affiliated with industry participants should perform administrative database functions; (2) after passage of the 1996 amendments to the Act, the Commission solicited further comment concerning the appointment of a toll free administrator; (3) in 1997, the Commission adopted a Further Notice of Proposed Rulemaking requesting comment on the issue of what entity should administer the toll free database; and (4) in 1998, the Common Carrier Bureau sought comment on a recommendation by the North American Numbering Council that DSMI remain the toll free number database administrator.[42]

[41] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Order on Reconsideration and Memorandum Opinion and Order, (CC Docket No. 96-98)* at para. 8.

[42] *See id.* at paras. 7-8.

The Commission also notes that, in 1997, it requested that the North American Numbering Council recommend a toll free number administrator.[43]

I cannot accept that these actions satisfy the mandate of Congress in section 251(d)(1). If I commission a contractor to paint my house by close of business on Thursday, I would find it difficult to conclude that she had completed all action necessary to do so if all she has done by the deadline is to ask what color to paint it. I believe that more is required of us as well.

I have been critical of the Commission in other areas where it has been delinquent in meeting strict time-frames established by Congress. Despite the clear requirement that the Commission complete its proceeding to implement the recommendations of the Joint Board on Universal Service, for example, the Commission has delayed fulfilling this obligation, instead choosing to focus its attention on finding support for new, excessive programs.[44]

While it is not apparent that the Commission satisfied the Congressional time-limit on action necessary to designate a numbering administrator for the North American Numbering Plan, it has ultimately done so. Thus, I support the decision to deny the petition with respect to this issue.

[43] *See id.* at para. 9.

[44] *See* Federal-State Joint Board on Universal Service, Report to Congress, CC Docket No. 96-45, Dissenting Statement of Commissioner Harold Furchtgott-Roth.