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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:	)	
	)	
Petition of the California Public Utilities Commission and the People of the State of California for Waiver	)	NSD File No. L-00-185
	)	
Petition of the Maine Public Utilities Commission for Waiver	)	NSD File No. L-00-186
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

OPPOSITION OF WORLDCOM, INC.

The Commission should deny the petitions for waiver filed by the California Public Utilities Commission ("CPUC") and the Maine Public Utilities Commission ("MPUC"). Both parties seek a waiver of the requirement that state pooling trials conform to the national rules established by the Commission, in order to mandate a 75% utilization threshold for pooling carriers.[1] The MPUC also seeks a waiver of the Commission's sequential assignment rule so that it can continue to enforce its own approach to sequential assignment. Petitioners have shown no "special circumstances" to justify deviation from the Commission's rules. Instead, they have essentially argued that their rules are superior to those adopted by the Commission. If Petitioners' arguments were sound, they would justify not a waiver, but substitution of the Maine

[1] Petition of the California Public Utilities Commission and the People of the State of California for Waiver ("California Petition")(filed August 4, 2000), CC Docket No. 99-200; Petition of the Maine Public Utilities Commission for Waiver ("Maine Petition")(filed August 14, 2000), CC Docket No. 99-200.

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and California rules for the national rules. As it happens, their petitions are flawed by inaccurate premises and unsupported assertions.

I. Petitioners have neither alleged nor shown "special circumstances" that would justify a waiver.

The Commission will waive rules of general application when "good cause" is shown.[2] To make such a showing here, Petitioners would have to demonstrate that circumstances particular to California and Maine justify deviation from the Commission's pooling and sequential assignment rules.[3] No such showing has been made.

According to the CPUC, application of a 75% utilization threshold to pooling carriers, "has ensured that only those blocks that are actually needed are assigned and therefore conserves numbers in the 310 area code."[4] The MPUC makes exactly the same assertion with respect to its pooling trial,[5] and criticizes the Commission's sequential assignment rule as a "very subjective standard [that] provides little specific guidance to carriers and provides them with ample room to avoid strict compliance."[6] The CPUC and the MPUC basically argue that the Commission has adopted inferior rules, not that the rules should be waived because of special circumstances in their states. While these claims, if correct, might support a petition for reconsideration, they

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[2] 47 C.F.R. § 1.3.

[3] *See, e.g., 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).

[4] California Petition at 5.

[5] Maine Petition at 6.

[6] *Id.* at 5.

provide no support for granting a waiver based on conditions specific to California or Maine.[7] For this reason alone, the Commission should deny these petitions. Moreover, the CPUC and the MPUC have failed to show that their rules are superior to those adopted by this Commission.

II. Petitioners have not shown that their utilization thresholds have promoted the success of their pooling trials.

Neither the CPUC nor the MPUC has shown that conformity with the national rules would in any way harm their pooling trials. They suggest that application of the 75% utilization threshold has deterred needless block requests, but there is no valid evidence for this claim.[8] The evidence which is relied upon shows only that carrier forecasts tend to overestimate carrier needs. Thus, actual block requests are significantly less than forecasted demand. This same effect has occurred wherever pooling is implemented, irrespective of whether a utilization threshold is enforced.

According to the CPUC, in the first quarter of this year, carriers projected that they would need 225 blocks in the 310 NPA, but drew only 73 blocks. In the second quarter, carriers projected that they would need 199 blocks, but drew only 29 blocks.[9] This shows only that forecasted demand exceeded actual demand. It does not show that the utilization threshold in any way prevented needless applications. Indeed, in the Illinois 312 pooling trial, which does not include a utilization threshold, the forecasted demand for the first two quarters of this year

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[7] The CPUC and the MPUC raised these issues in Petitions for Reconsideration of the *Report and Order in the Matter of Numbering Resource Optimization*, CC Docket No. 99-200 (*"NRO Order"*)(rel., March 31, 2000).

[8] *See, e.g.,* Maine Petition at 6.

[9] California Petition at 5.

was 86 blocks. Only 28 blocks were actually assigned.[10] The inescapable conclusion is that the disparity between forecasted and actual demand is unrelated to the application of a utilization threshold.

III. Petitioners have not justified the application of a utilization threshold to pooling carriers.

Petitioners make three assertions in support of their argument for applying a 75% utilization threshold to pooling carriers: (1) the INC Pooling Guidelines do not require carriers to donate blocks to a number pool after the initial donation is completed; (2) without a threshold, a carrier could obtain growth resources based on a subjective projection of future needs; (3) application of a 75% utilization threshold will not harm service providers since numbers from pooled blocks can be made available for assignment to customers on relatively short notice.[11] Each of these claims is either inaccurate or irrelevant. Neither the CPUC nor the MPUC has shown that its pooling trial is more effective than trials in states that do not impose a utilization threshold.

The fact that the INC Pooling Guidelines do not require continuing block donations after initial donations, is completely irrelevant. During the initial block donation period, service providers will donate all uncontaminated and lightly contaminated blocks to the pools. Thus, service providers will enter pooling with no blocks that qualify for donation. Once pooling begins, service providers will obtain growth blocks only upon a showing that current utilization and recent growth demonstrate a need for additional resources. The only reason carriers have

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[10] Information gathered from http://www.numberpool.com.

[11] California Petition at 4,6; Maine Petition at 4,6.

blocks available for donation initially is because they were assigned full NXX codes. Once initial donations are made, and all future resource needs are met with blocks, there is no reason to expect that continuing donations would provide a significant source of resources for the pools.

It is simply false that without a utilization threshold pooling carriers will be able to obtain growth blocks based on subjective projections of future needs. As the CPUC and the MPUC should know, under the *NRO Order*, all applicants for growth resources, including pooling carriers, must provide evidence that, given current utilization and recent historical growth, they need additional resources.[12] Thus, applicants for growth blocks must show their utilization by rate center for the preceding 6 months. Moreover, carriers are prohibited from maintaining a greater than 6 month inventory of telephone numbers for any rate center.[13] These rules are very different from the "subjective" projections to which the CPUC and the MPUC refer. Under the national rules, service providers will not obtain growth blocks absent objective evidence of need.

Finally, the claim that carriers will not be harmed by a 75% utilization threshold is absurd. In a mature pooling environment, a carrier that is forced to meet a 75% utilization threshold before applying for growth resources, would be at a significant competitive disadvantage. Such a carrier might have as few as 300 numbers available, but still be unable to obtain additional resources. In this circumstance, that carrier would be unable to respond to the request of a large customer that needed more than 300 numbers. Instead, the carrier would have to put the customer request on hold until the carrier could assign its next 50 numbers. It is

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[12] *NRO Order* at ¶ 103.

[13] 47 C.F.R. § 52.15(g)(3)(iii).

irrelevant that once the threshold is met, numbers can be available for assignment relatively quickly. Service providers must be able to maintain enough of an inventory to meet the needs of customers. Application of a 75% utilization threshold to pooling carriers would not allow maintenance of that inventory.

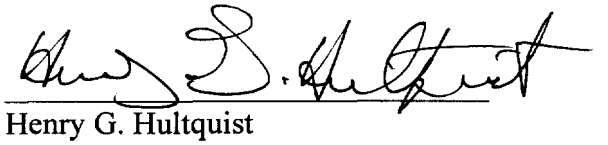
IV. The Commission must not countenance inconsistent sequential assignment regimes.

Maine's approach to sequential assignment practices is somewhat different from the Commission's. The issues surrounding sequential assignment rules were fully aired in petitions for reconsideration of the *NRO Order*. WorldCom will not revisit those arguments here. However, it is critical that there be consistent, national rules to govern sequential assignment. A carrier that operates in dozens of states must be able to apply consistent number assignment and inventory control practices. This issue should not be dealt with on a piecemeal basis in response to waiver requests. The Commission should determine the sequential assignment rule that it believes best promotes the public interest.

V. Conclusion

For the reasons set out above, the Commission should deny the Petitions for Waiver filed by the CPUC and the MPUC.

Respectfully submitted,
WorldCom, Inc.



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September 12, 2000

CERTIFICATION OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Comments of WorldCom, Inc. In the Matter of Petition of the California Public Utilities Commission and the People of the State of California for Waiver, Petition of the Maine Public Utilities Commission for Waiver, Numbering Resource Optimization were sent via first class mail, postage paid, to the following on this 12th day of September 2000.

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