

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**REPLY TO OPPOSITIONS TO  
PETITION FOR RECONSIDERATION**

The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit this Reply to Oppositions to the CPUC's Petition for Reconsideration of the *Numbering Resources Optimization Order* (*NRO Order* or the *Order*), FCC 99-200, adopted March 17, 2000 and released March 31, 2000. California here responds to parties' positions on a few issues. Silence on other issues should not be interpreted as support for those proposals or the parties advocating them.

**I. UTILIZATION THRESHOLD**

Many carriers oppose the CPUC's request that the FCC reconsider its decision not to impose a utilization threshold on pooling carriers.<sup>1</sup> Carriers offer different reasons for their opposition. SBC, for example, complains that it is having trouble maintaining

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<sup>1</sup> See AT&T Comms., pp. 14-15; SBC Opp., p. 5; WorldCom Opp., pp. 3-4; and BellSouth Opp., pp. 3-4.

sufficient inventory in the Illinois pooling trial, where there is no utilization threshold.<sup>2</sup> SBC does not explain precisely why it is experiencing this difficulty, and how a utilization threshold would exacerbate that situation is unclear. Further, if carriers in California believe the 75% threshold is unworkable, we invite them to explain why and propose a threshold they would consider more workable.

WorldCom asserts that the CPUC cannot justify use of a 75% threshold, based on our experience in the 310 pooling trial, because of experience WorldCom offers from the 312 pooling trial in Illinois.<sup>3</sup> WorldCom cites data from two quarters in 2000 from the 312 trial, which shows that carriers there are actually drawing only about one-third of the number of blocks carriers had forecast they would need in that NPA. But, in California, carriers are consistently drawing blocks at between twenty and twenty-five percent of the forecasted amount. WorldCom cannot assert that the 75% utilization threshold applied to pooling carriers does not account for the difference, as WorldCom only cited two quarters' worth of data from the 312 pooling trial, which has been underway for three years.

Further, WorldCom asserts, as have carrier representatives at the NANC, that the gross disparity we see between carriers' forecasts and their actual subsequent draws from number pools "fails to consider the possibility that carriers still inexperienced in forecasting block demand may in fact overestimate their needs".<sup>4</sup> This conceivably could

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<sup>2</sup> SBC Opp., p. 5.

<sup>3</sup> WorldCom Opp., pp. 3-4.

<sup>4</sup> Id., at p. 3.

be true in a new pooling trial in California, where pooling has been in progress for only six months, although the pattern has remained steady since the 310 trial began. It is difficult to reach the same conclusion in Illinois; carriers there have been pooling for at least three years, yet, by WorldCom's own cited data, carriers continue to over-forecast by two-thirds. And assuming carriers are over-forecasting, whether because of inexperience or greed, how is the public interest served by allowing carriers to obtain 1,000-blocks based on grossly inaccurate forecasts? The CPUC continues to urge the FCC to apply a utilization threshold to pooling carriers.

## **II. PUBLIC REVIEW OF INC GUIDELINES**

In its PFR, the Maine Public Utilities Commission (Maine or MPUC) urged the FCC to establish a mechanism for state review of industry-developed technical and policy guidelines. Numerous carriers filed vigorous and sometimes vehement oppositions to Maine's proposal. The CPUC supported Maine's recommendation.<sup>5</sup> And, though the MPUC has filed a forceful reply to the carriers' objections, California offers the following observations in support of Maine.

The carriers assert first and foremost that states "have the right to participate in the development of the INC guidelines; in fact, meeting fees are waived to encourage their

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<sup>5</sup> See CPUC PFR, p. 12, Fn. 15.

attendance”.<sup>6</sup> AT&T argues that “[s]tate commissions are free to participate in the INC if they choose to do so”, and Qwest Corporation goes so far as to haughtily insist that “[t]he fact that some voices (e.g., individual members of the public or state regulatory personnel) choose not to participate does not render the process a closed one”.<sup>7</sup> Qwest goes on to argue that what is really bothering Maine is that its legislature has not allocated appropriate resources for Maine to participate.<sup>8</sup>

It is true that state commissions could focus their attention on wrangling with their respective state legislatures over adequate funding for monthly trips to Washington, D.C., where but a few states have assigned seats on the NANC. The states’ requests for legislative funding would have to include the costs for participating in monthly meetings of the INC, and its relevant working groups, which rotate meetings to different locations around the nation on a regular basis. In addition, the state commissions also would need their legislatures to create at least one or two positions per agency to perform this work, as the employees would be traveling around the country routinely, covering INC and NANC meetings. They would have little time to attend to other work for their commissions.

It is also correct that the expenses state commissions would incur to participate in INC and NANC on a regular basis exclude the meeting fees industry representatives are required to pay, as noted by both SBC and USTA. Unfortunately, airlines and hotels do not also waive their fees and charges for state commission representatives attending

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<sup>6</sup> SBC Opp., p. 6; see also USTA Opp., noting that “ATIS, the association that serves as secretariat to the INC, has waived all fees to federal and state regulatory participants” which industry representatives pay to attend INC meetings.

<sup>7</sup> AT&T Comms., p. 16; Qwest Opp., p. 11.

<sup>8</sup> Qwest Opp., p. 12.

monthly NANC or INC meetings. Nor are conference calls a solution, though industry understanding of the use of conference calls is confused. Sprint asserts that many INC meetings are held by conference call, while Qwest notes that use of conference calls “in the past . . . has been discouraged” because they present technical obstacles to effective communication.<sup>2</sup>

The bottom line, with which industry representatives are so familiar, is that participation in INC and NANC is an extraordinarily expensive proposition for most states.<sup>10</sup> Industry representatives attend INC and NANC meetings because these bodies make technical and policy decisions which affect their ability to use a public resource – telephone numbers. Public representatives want to participate for similar reasons, but are not able to do so. Carriers make money with this public resource, so the investment in participation is well worth it. State commission representatives are not similarly situated.

Further, requiring state commissions to attempt to participate in national advisory board meetings held across the nation by seeking funds from fifty different legislatures is hardly efficient, either for the states or for industry participants. Even Qwest concedes that “[f]undamental numbering decisions need to be controlled through a national process, but one that is open to all speakers and all voices”.<sup>11</sup> The national process is not, in fact, “open to all speakers and all voices” if the speakers representing the public do not have the means to participate on the same regular basis as industry participants. Many

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<sup>2</sup> Sprint Opp., p. 3; Qwest Opp., p. 12, Fn. 35.

<sup>10</sup> The expense for the CPUC is, on average, \$2,000 per employee to attend the NANC alone.

<sup>11</sup> Qwest Opp., p. 12.

companies assign one or more employees to attend NANC and INC meetings; the work of those employees is participation in the national process of which Qwest speaks.

Financially-restricted state commissions do not have the luxury of allocating personnel resources in that same manner.

Maine has suggested an approach which is infinitely more sensible than sending fifty state commissions off to lobby their respective legislatures for additional funding to participate in national bodies that, in theory, are open to all but in practice are available only to industry participants. Let us suppose that public lands were similarly administered. The parallel would be a national advisory board which the Department of Agriculture establishes for developing recommendations on how best to use national forest land. This board could be open to all participants, including real estate developers, oil companies, ranching interests, and representatives of the states. The advisory board could develop guidelines for national forest usage, and states could attend regular meetings if they could afford to participate. If they could not afford to participate, then their input would simply be absent, while those with a pecuniary interest in the use of public forest land would be amply represented. NANC and INC are the models for this approach to development of public numbering policy.

Carriers also insist that the process is “open” or “not secretive”, which is true only if a state can afford to be there. If not, then that state has no opportunity to influence the development of industry guidelines which the industry, NANC, and NANPA treat as binding on the states. Even if some states could afford to attend all INC and all NANC

meetings, the industry representatives would vastly outnumber the state representatives. Further, state representatives cannot vote at INC meetings, while only a few states are voting members of NANC.<sup>12</sup> At the same time, industry representatives often agree on numbering policies, creating a substantial industry block which is able to approve policies over the objections of state representatives. As USTA notes, “it is remarkable how many times competing carriers have numbering issues in common”.<sup>13</sup> The states, on the other hand, have very little in common with an industry that seeks to use a public resource on its terms. Without balanced representation on NANC, the FCC must provide for state input in the development of guidelines via some other means.

The only reasonable solution is for the FCC to create a mechanism, as Maine has proposed, for state review of industry guidelines. California does not dispute that industry technical input is vital to developing workable guidelines. But INC and NANC do not simply develop technical standards; they also draft guidelines which create public policies pertaining to how numbers are allocated and used. The CPUC urges the FCC to formalize state participation in the development of these guidelines.

### **III. ACCESS TO CONFIDENTIAL CARRIER DATA**

Some carriers object to the CPUC’s argument that state commissions should have full access to carrier-specific data provided to the NANPA as confidential. California did not argue, as some parties may have assumed, that the CPUC should be able to make

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<sup>12</sup> USTA, for example, notes that Maine representatives “have attended NANC meetings”. But Maine does not have a NARUC seat on NANC, and attendance alone does not guarantee a voice. Further, as the carriers themselves admit, attending NANC is not enough, as the development of guidelines begins with INC.

<sup>13</sup> USTA Opp., p. 4.

additional regularly-scheduled reporting requirements.<sup>14</sup> Rather, the CPUC believes that it should be able to have access to the same data that carriers provide to the NANPA.

Verizon asserted in its Opposition that “[s]tates have no need for broader access to confidential, disaggregated, carrier-specific data to carry out the responsibilities delegated to them by the Commission”.<sup>15</sup> Similarly, the Personal Communications Industry Association (PCIA) asserts that “state commissions should be able to perform all of their duties under the FCC’s numbering rules with aggregated utilization data”.<sup>16</sup> This is, in fact, not true. In our PFR, we identified several instances in which we needed access to data in NANPA’s possession, in order to carry out the very authority delegated to California, but we were unable to do so because NANPA refused to provide the relevant carrier-specific data. Since we filed our PFR, we have encountered other situations in which we needed carrier-specific data to perform our delegated duties. In none of these situations would the semi-annual forecast or utilization data have provided the information necessary.

The CPUC is not making an idle claim – we have outlined the basis for our need of the data. We also pointed out that NANPA’s refusal to provide such data is based on industry guidelines, which do not have the force of law. We repeat – this issue demands the attention of the FCC. We refer the Commission to the lengthy discussion of this issue in our PFR, at pages 8 through 14.

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<sup>14</sup> The Public Utilities Commission of Ohio did make such a request, which California does not oppose. But the CPUC did not put forth the same position in its PFR.

<sup>15</sup> Verizon Opp., p. 2;

Further, carriers assert that state commissions should pay for access to data the NANPA collects.<sup>17</sup> This is consistent with the Letter Agreement recently executed between the FCC and NANPA, which suggests that state commissions should pay for reports beyond the semi-annual utilization and forecast reports NANPA will be preparing pursuant to the *NRO Order*. In its PFR, the CPUC expressed concern about the FCC's construct expressed in the Letter Agreement, and what it portends for state commissions. Consider what that construct seems to be promoting.

The FCC already has concluded that telephone numbers are a public resource.<sup>18</sup> Thus, the data at issue pertains to how carriers are using a public resource. The carriers will be generating this data, and submitting it to NANPA, which operates under contract to the FCC, a federal agency. State agencies, acting pursuant to both delegated authority from the FCC and to independent state authority, represent the interests of the very public that owns the telephone numbers which the data concerns. Yet, the representatives of the public interest are being required to obtain the data at issue, which concerns a public resource, on a pay-per-view basis. The CPUC asks again – what is the model for this construct? What other body of data pertaining to a public resource is turned over to a consultant to a federal agency, which then is allowed to charge public agencies for access to that data? The FCC must address this question in resolving the issue California raises,

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<sup>16</sup> PCIA Opp., p. 7.

<sup>17</sup> See VoiceStream Opp., pp. 11-12.

<sup>18</sup> CITES.

i.e., the scope of state commission access to disaggregated numbering data.<sup>19</sup>

#### **IV. LOCAL NUMBER PORTABILITY**

In its opposition, the United States Telephone Association takes issue with the CPUC's request that state commissions be authorized to order non-complaint wireline carriers to deploy LNP.<sup>20</sup> "California asks the Commission for authority to order a carrier to implement LNP and instruct the North American Numbering Plan Administrator (NANPA) to not provide the non-compliant carrier with additional numbering resources."<sup>21</sup> Unfortunately, USTA's characterization of the CPUC's request is inaccurate, as it seems to assume that we are interested in ordering any carrier, including wireless carriers, that have not deployed LNP to promptly do so. That is not the case.

In California, to date, we have implemented two number pooling trials. In conjunction with setting up those trials, we have discovered two wireline carriers that have not deployed LNP, and thus, though they are wireline carriers, they cannot

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<sup>19</sup> The CPUC agrees with AT&T, that no state commission should be able to gain access to data pertaining to a companies numbering activities in another state. (See AT&T's Comments, p. 13.) As AT&T correctly notes, each state commission has jurisdiction over a carrier's activities only within the state's borders. If, under extraordinary circumstances, a state needs carrier numbering data from another state, the state commission can seek access to such data from the FCC.

<sup>20</sup> See CPUC PFR, pp. 14-15.

<sup>21</sup> USTA Opposition, p. 7.

participate in pooling. This creates an awkward situation. Wireless carriers cannot participate in pooling because they have received a specific exemption from the FCC. All other wireline carriers are participating in the pools in the 310 and 415 NPAs. But these two wireline carriers are able to compete with wireless carriers for the full NXX codes available only to non-LNP-capable (i.e., wireless) carriers in the lotteries in those NPAs.<sup>22</sup>

In our PFR, we asked the FCC to allow the CPUC to order “non-compliant wireline carriers to deploy LNP”. This request was based on our belief that all wireline carriers were to have deployed LNP by December 31, 1998, as the FCC required in its *First Report and Order and Further Notice of Proposed Rulemaking* on local number portability.<sup>23</sup> There, the FCC stated that “we require local exchange carriers operating in the 100 largest MSAs to offer long-term service provider portability commencing on October 1, 1997, and concluding by December 31, 1998” according to a deployment schedule set forth in Appendix F to that decision.<sup>24</sup>

Since filing our PFR, however, we have reviewed the FCC’s *First Memorandum Opinion and Order on Reconsideration*, and discussed this issue with FCC staff.<sup>25</sup> On reconsideration, the FCC modified its rule regarding the deployment of LNP, concluding that “LECs need only provide number portability within the 100 largest MSAs in

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<sup>22</sup> One of these two carriers is actively seeking to participate in a lottery, while the other is not.

<sup>23</sup> FCC 96-286, CC Docket No. 95-116, Released July 2, 1996.

<sup>24</sup> *Id.*, ¶ 77.

<sup>25</sup> FCC 97-074, CC Docket 95-116, Released March 11, 1997.

switches for which another carrier has made a specific request for the provision of portability”.<sup>26</sup> This language is reflected in the FCC’s Rule 52.23(b)(1),

All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998, in accordance with the deployment schedule set forth in the Appendix to this part, in switches for which another carrier has made a specific request for the provision of number portability. . . (Emphasis added.)

Thus, it now appears to the CPUC that our request in the PFR was in error. We now do not seek to enforce compliance with the FCC’s LNP order by requiring non-LNP-capable wireline carriers to deploy LNP. We are modifying this request because the FCC’s rules do not require that all wireline carriers, regardless of whether a specific carrier has received a bona fide request for LNP, must have deployed LNP by December 31, 1998. Rather, we seek authority from the FCC to make a bona fide request of a non-LNP-capable wireline carrier “for the provision of number portability”.<sup>27</sup> Were the CPUC to have such authority, it would be able to ensure that wireline carriers in NPAs where a number pool is established will be able to participate in the pool.<sup>28</sup>

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<sup>26</sup> Id., ¶ 60, emphasis added.

<sup>27</sup> Rule 52.23(b)(1).

<sup>28</sup> To be absolutely clear, the CPUC is not seeking authority to compel wireless carriers to deploy LNP prior to November, 2002.

**V. CONCLUSION**

California could not read and respond to each of the twenty other Petitions for Reconsideration filed with the FCC. The CPUC opposes those PFRs which advocate the proposals addressed in this pleading.

Respectfully submitted,

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September 15, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document entitled “**OPPOSITION TO PETITIONS FOR RECONSIDERATION**” upon all known parties of record by mailing, by first-class mail, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 15th day of September, 2000.

/s/ HELEN M. MICKIEWICZ

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HELEN M. MICKIEWICZ