



ORIGINAL

EX PARTE OR LATE FILED

N A R U C
National Association of Regulatory Utility Commissioners

RECEIVED

NOV 30 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 30, 2000

Chairman William Kennard
Office of the Chairman
Eighth Floor
445 12th Street, S.W.
Washington, DC

**RE: Ex Parte Comments: Two Copies Filed *In the Matter of*
Numbering Resource Optimization, CC Docket No. 99-200**

Dear Chairman Kennard:

On March 31, 2000, the FCC released its *Report and Order and Further Notice of Proposed Rulemaking* ("FNPRM") in this proceeding. NARUC member commissions from California, Maine, New Hampshire, Pennsylvania, Texas and other states filed initial and reply comments responding to the FNPRM. The FNPRM and related pending State requests raise several issues, e.g., (1) what should the national utilization threshold be, (2) should covered commercial mobile radio service ("CMRS") carriers should be required to participate in pooling immediately upon their implementation of local number portability no later than November 24, 2002, (3) access to the NANPA numbering database, and (4) how audits should be conducted. NARUC filed supporting the State comments on several of these issues. As discussed in previous filings, NARUC passed two resolutions related to this proceeding in March and July of this year. Copies of both resolutions are attached to this letter. The July resolution strongly suggests the following:

- **MORE STATE REPRESENTATION ON NANC NEEDED:** *While NARUC and its members appreciate the FCC's recent additional NARUC and NASUCA appointments to the NANC, we recommend that the FCC adjust the membership of the NANC by adding three additional NARUC members to the council bringing the total NARUC participation to seven. Again the association appreciates your relatively rapid partial response to this request embodied in the recent appointment of New Hampshire Commissioner Nancy Brockway and is optimistic you will favor our subsequent nomination requests.*
- **TECHNOLOGY SPECIFIC OVERLAYS – ACTION NEEDED:** *NARUC urges the FCC on an expedited basis to establish parameters for the implementation of service/technology overlays and act on the States' pending service/technology specific overlay petitions, and also to permit States at their option, to implement area codes for certain services/technologies in order to delay the exhaust of State Number Plan Areas.*

No. of Copies rec'd 01
List A B C D E

- **NON-SERVICE SPECIFIC NPA – ACTION NEEDED:** *NARUC urges the FCC to authorize the establishment of one or more national non-service-specific area codes that would be available on a voluntary basis to service providers that do not require geographically specific NXXs.*
- **ACTION ON EXISTING STATE REQUESTS NEEDED:** *NARUC urges the FCC to act expeditiously on any remaining pending State petitions for additional delegated authority for implementing numbering conservation measures.*
- **ACCESS TO DATA:** *NARUC urges the FCC to ensure carrier data is readily available to the individual States free of charge.*
- **SUPPORT FOR STATE ORDERS:** *NARUC urges the FCC to affirm authorized State commissions' orders regarding telephone numbering decisions and the States' ability to exercise their delegated authority on numbering issues and require carriers to comply with previous State commission decisions and orders; and*
- **NO CHANGE IN LNP DEADLINE:** *NARUC urges the FCC to maintain November 24, 2002, as the deadline for all wireless providers to be LNP-capable.*

Obviously, several of the positions taken in this most recent NARUC resolution are focused on the current proceeding. Before discussing these in more depth, I would like to reiterate NARUC's appreciation for the FCC's recognition of the need for additional State representation on the NANC implicit in the recent appointment of Commissioner Nancy Brockaway. I also would like to thank Yog Varma and the Common Carrier Bureau staff for its efforts to respond to State conservation requests expeditiously.

I. NUMBER UTILIZATION RATES

AT A MINIMUM, THE FCC SHOULD ASSURE EXISTING STATE RATES REMAIN INTACT.

NARUC's March 2000 resolution clearly indicates that the FCC needs to expeditiously establish a utilization rate for non-pooling carriers that: (1) compels efficient numbering practices; (2) provides carriers with timely access to numbering resources for which they have demonstrated a proven need; and (3) comports with State experience in the rate of number utilization. Comments filed by several NARUC members that have already implemented fill rates, suggest, *at a minimum*, that immediate adoption of a 75% utilization will met these objectives, minimize the number of stranded resources, and encourage more efficient numbering practices.

Indeed, Maine, California, Massachusetts, New Hampshire, Connecticut, and New York have already adopted a 75% fill rate for all carriers. IT IS SIGNIFICANT THAT THERE HAVE NOT BEEN ANY PROBLEMS IDENTIFIED OR DISCUSSED IN ANY DEPTH IN THIS PROCEEDING WITH RESPECT TO THE USE OF THAT LEVEL RATE BY THOSE STATES. It is critical that States are allowed to continue to use their existing rates.

NARUC has not specifically adopted a particular fill factor, however, the fact that carriers have not had difficulty complying with these existing State regimes suggests the FCC's proposed 50% fill factor is too low. Arguments by carriers that a 50% rate reflect carrier self-interest in unfettered access to numbers, rather than the public interest in efficient allocation of a scarce public resource. Moreover, some have suggested phasing in fill rates in excess of 50%. However, it does not appear that the usual reasons for taking a phased-in approach are present, e.g., there is no need to change any technology or procedures to "implement" a higher factor.

In addition, from time to time, a particular State may need to deviate from the Federal Standard. The FCC should treat such State requests with deference.

II. ACCESS TO NANPA DATABASE

AT A MINIMUM, THE FCC SHOULD ASSURE STATE ACCESS TO THE NANPA DATABASE

In the NRO and in subsequent FCC releases, the FCC fails to direct the North American Numbering Plan Administrator ("NANPA") to make CO Code application materials available to the States and suggests that NANPA shall not spend any extra resources in providing such materials to the States. *NARUC respectfully suggests that States require unrestricted access to carrier data to effectively implement and administer number conservation measures.* If we accept the responsibility delegated by the FCC, we need the tools to carry it out. It is troubling that ratepayers – who are already paying for the creation and maintenance of a pool of data about a public resource – could get charged again by the private NANPA contractor for accessing that same data. This data, and the database itself, was developed solely for a public purpose, at public expense, and there is no basis to withhold access or require additional ratepayer expenditures – via additional charges to public officials for access to it.

Moreover, it is clear that access to both historical data and information on current requests/use is critical. Perhaps the easiest way to avoid additional incremental burdens on the NANPA might be to allow direct, password enabled access, for view purposes only, to the NANPA database. That way State commission staff could do their own special studies without placing additional burdens on NANPA staff. Having direct access to the database is crucial to staying on top of what is happening in our respective States. Getting 2 to 3 month-old information every 6 months is simply not sufficient.

Moreover, the FCC order should again make very clear that (1) nothing in the order prevents a State commission from exercising its existing jurisdiction to audit or require numbering information from carriers subject to its jurisdiction, and (2) the NANPA cannot refuse to provide information to a State.

III. AUDITS

THE FCC SHOULD ASSURE STATES' ABILITY TO PARTICIPATE IN AUDITS OF CARRIERS OPERATING IN THEIR JURISDICTION AND SHOULD DO NOTHING THAT UNDERMINES A STATE'S ABILITY TO REQUIRE CARRIERS TO PROVIDE INFORMATION.

In previous comments, NARUC has pointed out that

- A neutral third-party, such as NANPA or a State, should conduct audits. *While States should not be required to conduct the audits*, they should be allowed to do so if resources permit. States should also be allowed to participate in any audits of carriers operating within their jurisdiction (*including wireless carriers*) as auditing will be an important tool for ensuring compliance with the FCC's standards and rules; and
- NANPA needs clear authority to take action against carriers and they will be the front line of enforcement; and
- The FCC needs to assure that the NANPA can work effectively with the States without feeling "disloyal" to industry.

Currently, the majority of States have authority to engage in audits of carriers subject to their jurisdiction by State law. The FCC should not require States to conduct needed audits, but should guarantee their right to participate in *any* audits that are conducted on *any* carriers operating in their jurisdiction.

The FCC also should make it very clear to the NANPA that States are to have access and the right to participate in related audits. Moreover, the FCC should do nothing to undermine State's ability to require carriers to provide information or engage in their own audits. States need to retain the authority to audit directly should they see the need. When a need to audit is identified, acting in a timely manner is crucial for a variety of reasons. Waiting for another party, who is removed from the situation and does not understand local intricacies, can almost defeat the purpose for the audit.

IV. WIRELESS POOLING

NO DELAY IN LNP DEADLINE IS WARRANTED.

Again, NARUC's resolution urges the FCC to continue to require wireless carrier participation in pooling by November 24, 2002. The wireless industry has had more than sufficient notice of the need to make their systems not only LNP-capable but also pooling-capable. There are two years left before the deadline occurs. Wireless carriers must be given every incentive to devote the necessary resources to accomplish this task; they must not be allowed to continue to delay implementation.

Wireless participation could have an enormously positive impact on the effectiveness of pooling. States, such as California and Maine, have found that the number pool could increase by as much as 40% if CMRS carriers were required to pool. Thus, it is critical for CMRS carriers to participate in pooling as early as possible.

We believe the FCC must look very carefully at any arguments made by carriers alleging that they technically will not be able to begin pooling on November 24, 2002. Carriers must be required to provide specific information to support their assertions. The FCC should determine whether any technical limitations: (1) could be overcome with more resources; (2) are the result of willful disregard of earlier orders and deadlines; and/or (3) are actual limitations by specific carriers and not generalized concerns raised by trade associations. Carriers often need external deadlines to justify allocating the resources necessary to meet the deadline.

The implications of continuing the wireless exemption on number conservation appear quite significant. Another postponement of the deadline for this growing sector of the industry will extend the inefficient allocation of number resources that this Commission has recognized as inefficient.

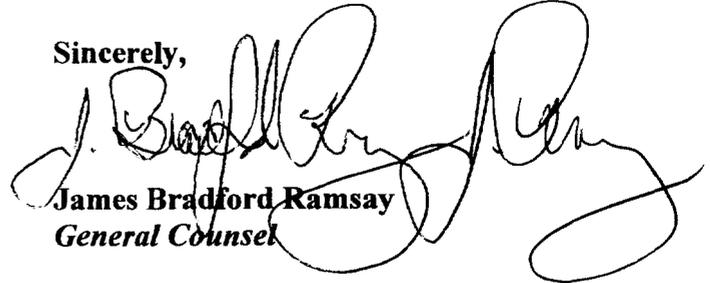
V. OTHER ISSUES

In previous comments, NARUC has taken other positions relevant to this proceeding, e.g., strongly suggested that rate center consolidation issues are best left to States. One of those positions is worth re-emphasizing here. The statute gives the FCC authority as the final arbiter of code assignment questions. For that reason, in examining and responding to any questions or requests concerning State authority, *the FCC should lean heavily towards giving the affected State commission*, whose members are, like their FCC counterparts, charged by statute with protecting the public interest, *more flexibility rather than shifting more authority to a third party contractor.*

VI. CONCLUSION

On November 29, 2000, I met with the FCC's Jordan Goldstein to discuss the positions outlined above. I also spoke briefly with Paul Jackson and left extensive voice mail on these issues with the remaining FCC Commissioner common carrier assistants. I also have forwarded this letter by e-mail to each of those assistants. I appreciate your consideration of NARUC's positions. Please do not hesitate to contact me if you have any questions about the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "James Bradford Ramsay". The signature is fluid and cursive, with a large loop at the end.

James Bradford Ramsay
General Counsel

**NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
1101 VERMONT AVENUE, SUITE 200
WASHINGTON, DC 20005**

(202) 898-2207

November 30, 2000

Appendix A - NARUC's March 2000 Resolution on the FCC's Number Conservation Rulemaking Proceeding and Pending Delegation Orders

WHEREAS, The current numbering administration process for the North American Numbering Plan has proven to be inadequate and has led to the inefficient use of numbering resources and the premature assignment of new area codes; and

WHEREAS, The FCC has worked closely with the States and acted expeditiously on 10 state requests for additional authority to conserve numbering resources; and

WHEREAS, The FCC is expected to issue an order soon based on comments received in response to its June 2, 1999 Notice of Proposed Rulemaking in the Number Resource Optimization Docket, CC Docket No. 99-200, FCC 99-122 (June 2, 1999); and

WHEREAS, In July, 1999, NARUC passed a resolution outlining critical principles that are essential to the creation of an effective, competitively-neutral, administratively feasible numbering administration system which were filed in this proceeding within two weeks of the resolution's passage; and

WHEREAS, On January 20, 2000, a group of States met with the FCC to discuss numbering issues and subsequently filed proposed revisions to the "*Industry Numbering Committee (INC) Thousand Block (NXX-X) Pooling Administration Guidelines*" which were consistent with, but more specific than NARUC's previous resolution, suggesting, among other things, (1) changing permissive language to mandatory language to reduce carrier options to comply, (2) requiring the Pooling Administrator to include states in a decision-making process with the industry, instead of allowing decisions just by industry consensus, (3) changing the 9 month inventory to 6 months and the 6 month jeopardy inventory to a 3 months, (4) requiring quarterly forecasts instead of annual (and clarifying that States can require them less frequently under appropriate circumstances), and (5) requiring the pooling administrator to review carrier forecasts for reasonableness before sizing the individual pools.

WHEREAS, The group of States also made specific presentations on related issues, an outline of that presentation is appended to this resolution, that again were generally consistent with NARUC's original resolution, but added additional detail and reached some issues not addressed in NARUC's July comments; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2000 Winter Meetings in Washington, D.C., that NARUC extends its appreciation to the FCC and its staff for working closely with the States on the first set of State delegation orders and the critical issues raised by the NPRM; *and be it further*

RESOLVED, That NARUC supports the specific revisions to the INC Guidelines described above and the additional proposals described in the attached addendum which were presented during the January 20, 2000 meetings between State staffs and the FCC, and urges the FCC to adopt these proposals; *and be it further*

RESOLVED, That NARUC urges the FCC to act this month on the NPRM, and failing that to respond as quickly as possible to outstanding State requests for additional authority to impose numbering conservation measures; *and be it further*

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors March 8, 2000*

Appendix B – NARUC's July Resolution on Telephone Numbering

WHEREAS, New telecommunications services and competition between those services has provided consumers with new opportunities and lower priced alternatives to traditional telephone services; and

WHEREAS, The growth in new telecommunications services has also raised issues pertaining to telephone number exhaust that are currently being responded to by state commissions, the Federal Communications Commission ("FCC") and the telecommunications industry; and

WHEREAS, Unless telephone numbers are assigned in a more efficient manner, growth in new services could accelerate telephone number exhaust in the North American Numbering Plan; and

WHEREAS, The states, the FCC, the telecommunications industry and the North American Numbering Council ("NANC") have been working together to implement various telephone numbering conservation and optimization measures to establish a more efficient method of assigning telephone numbers; and

WHEREAS, Many states have recognized the need for action on numbering issues and have petitioned the FCC for additional delegated authority to better conserve numbering resources within their individual state; and

WHEREAS, The FCC has recognized the significant role states have in numbering issues and have granted in some part 25 of the state petitions while additional state petitions remain pending; and

WHEREAS, State commissions with additional numbering authority have issued a number of decisions and orders addressing numbering issues, including, but not limited to number exhaustion and pooling issues; and

WHEREAS, The composition of the NANC consists of 30 members with 20 members representing the industry, 4 members representing the National Association of Regulatory Utility Commissioners ("NARUC") states and 3 members representing the National Association of State Utility Consumer Advocates ("NASUCA") states; and

WHEREAS, Even though the FCC has increased the state representation to the NANC, additional state representation would provide a better balance between industry and public interests and ensure that the states have greater input in the NANC decision making process when advising the FCC; and

WHEREAS, As a result of competition and the advent of new technologies assignment of large blocks of telephone numbers has caused area codes to exhaust more rapidly than they would otherwise forcing citizens to undergo area code relief through the introduction of new area codes; and

WHEREAS, One solution offered to delay area code exhaust is to assign new area codes by service type, and

WHEREAS, The wireless industry is one of the most prolific growth industries in the country today, experiencing nearly 40% growth rates, making it highly unlikely that service type number assignment would deter its continued growth; and

WHEREAS, Various states have petitioned the FCC to permit the assignment of telephone numbers by service/technology overlays refuting the idea that such assignment would be anti-competitive; and

WHEREAS, The FCC has recently imposed certain appropriate reporting requirements and technological upgrades that attempts to lead to improved utilization of numbering resources; and

WHEREAS, The FCC in CC Docket No. 99-200, In the Matter of Numbering Resource Optimization, released March 31, 2000, Report and Order and Further Notice of Proposed Rulemaking ("NRO") does not direct the North American Numbering Plan Administrator ("NANPA") to make CO Code application materials available to the states. NANPA shall not spend any extra resources in providing such materials to the states; and

WHEREAS, States require unrestricted access to carrier data to effectively implement and administer number conservation measures; and

WHEREAS, Number pooling, a key measure to improving the optimization of numbering resources, requires implementation of local number portability; and

WHEREAS, The FCC has extended the date to November 24, 2002, by which all wireless providers must be LNP-capable; and

WHEREAS, State commissions have been informed by some carriers that they will be unable to comply with reporting requirements as ordered by the states in response to the numbering conservation authority previously delegated to them by the FCC; *now therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners ("NARUC"), convened in its 2000 Summer Meetings in Los Angeles California, states that the association appreciates the FCC's recent additional NARUC and NASUCA appointments to the NANC; *and be it further*

RESOLVED, NARUC recommends that the FCC adjust the membership of the NANC by adding three additional NARUC members to the council bringing the total NARUC participation to seven; *and be it further*

RESOLVED, NARUC urges the FCC on an expedited basis to establish parameters for the implementation of service/technology overlays and act on the states' pending service/technology specific overlay petitions; *and be it further*

RESOLVED, That NARUC urges the FCC to authorize the establishment of one or more national non-service-specific area codes that would be available on a voluntary basis to service providers that do not require geographically specific NXXs; *and be it further*

RESOLVED, NARUC urges the FCC to act expeditiously on the pending state petitions for additional delegated authority for implementing numbering conservation measures; *and be it further*

RESOLVED, NARUC urges the FCC to permit states at their option, to implement area codes for certain services/technologies in order to delay the exhaust of state Number Plan Areas; *and be it further*

RESOLVED, The NARUC urges the FCC to ensure carrier data is readily available to the individual states free of charge; *and be it further*;

RESOLVED, The NARUC urges the FCC to affirm authorized state commissions' orders regarding telephone numbering decisions and the states' ability to exercise their delegated authority on numbering

issues and require carriers to comply with previous state commission decisions and orders; *and be it further*

RESOLVED, The NARUC urges the FCC to maintain November 24, 2002, as the date by which all wireless providers must become LNP-capable.

Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors July 26, 2000