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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY



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November 30, 2000

EX PARTE FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Room TWB2047
Washington, DC 20554

Re: Numbering Resource Optimization, CC Docket 99-200

Dear Ms. Salas:

On behalf of AT&T Wireless Services, Inc. ("AT&T"), this is written to urge the Commission to ensure that any utilization requirement it adopts that carriers must meet before requesting growth codes contains a "safety valve" for circumstances in which carriers can demonstrate a need for numbers despite their failure to satisfy the fill rate. In particular, as AT&T has proposed previously in this proceeding, the Commission should allow a carrier that has not met the utilization threshold to obtain a code if it can show that: (1) it will exhaust its inventory in less than six months; or (2) the additional code is needed to meet a documented customer request. AT&T further requests that, as the entity that allocates numbering resources, the NANPA should administer this process.

As the excerpts below from Commission orders, state regulatory decisions, and comments filed in the NRO proceeding demonstrate, there is ample evidence in the record to support adoption of this simple mechanism. A number of carriers made proposals similar to that set forth by AT&T in response to both the NRO Notice and the NRO Further Notice. Moreover, in delegating authority to state commissions to establish utilization thresholds, the Commission recognized on numerous occasions that a *fill rate regime administered without regard to individual circumstances* can easily deprive carriers of the numbers they need to serve customers. The Commission also acknowledged this problem when it created a needs-based exception to its sequential numbering requirement. Similarly, in establishing fill rate regimes, Illinois, Massachusetts, and Maine explicitly adopted waiver provisions for situations in which carries cannot obtain the numbers they need.

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Comments of AT&T Corp. on NRO Further Notice (proposing safety valve):

Regardless of the actual utilization rate chosen, a carrier that does not meet the threshold should be permitted to obtain a growth code if, based on historical utilization, the carrier can demonstrate that it will run out of numbers in less than six months or that an additional code is needed to meet a documented customer request. In the absence of such an exception, a carrier's ability to meet customers' demands for new services would be severely hampered without any corresponding number conservation benefits. Illinois, the first state to adopt a utilization threshold, recognized the inherent limitation of such a mechanism, and created an exception based on forecasted demand. Maine and Massachusetts have either proposed or adopted similar exceptions. And, notably, the Commission has created a similar need-based exception for specific customer requests in its sequential numbering requirements. To ensure that the exception process is administered in a consistent manner nationwide, AT&T urges the Commission to grant the NANPA authority to approve or deny exemption requests.^{1/}

FCC Delegation Order to New York (urging flexibility in fill rate administration):

Notwithstanding this grant of authority to the New York Commission, we remain very concerned about the potential competitive impact of imposing a fill-rate regime on carriers' ability to serve customers. For example, commenters point out that mandatory fill rates or utilization thresholds may interfere with a carrier's ability to meet customers' demands for new services. This is largely due to the time it takes to activate an NXX code in nationwide databases. If a carrier has a relatively high rate of customer demand for service, it may reach the requisite fill rate, but be unable to get more numbering resources in time to meet customer demand. Furthermore, a strict fill-rate regime may not accommodate customers' requests for specific numbers or specific ranges of numbers. These concerns and others about the use of fill rates as opposed to the industry's current "months-to-exhaust" model are set forth in the *Numbering Resource Optimization Notice*. In this light, although we do not wish to dictate the parameters of the fill-rate regime, we urge the New York Commission to allow for some flexibility in establishing fill rates and applying them to carriers. Our primary concern, therefore, is that fill rates not be applied in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.^{2/}

^{1/} Numbering Resource Optimization, CC Docket No. 99-200, Comments of AT&T Corp. at 5-6 (filed May 19, 2000) (internal citations omitted).

^{2/} New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, 14 FCC Rcd 17467, ¶ 26 (1999); See also Florida Public Service Commission Petition for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, 14 FCC Rcd 17506 (1999); Massachusetts Department of Telecommunications and Energy Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, 14 FCC Rcd 17447(1999).

Illinois Commerce Commission (adopting exception to fill rate):

The Commission . . . is concerned about the ninety day lag between the time that a new NXX code is requested and the time that it can be activated. It is possible that there will be circumstances in which a carrier needs to request a new NXX code to meet expected growth in customer demand within a ninety day period, even though one or more of the carrier's existing NXX codes has a utilization rate of less than 75 percent at the time the carrier makes its request to the Code Administrator.^{3/}

Massachusetts Letter (adopting exception to fill rate):

In accordance with Paragraph 32 of the FCC Order, the Department adopts a waiver provision for a carrier asserting that it would not be able to meet both the 75% fill-rate ratio and six months to exhaust requirement and acquire sufficient new resources to meet projected demand. In this instance, a carrier may request a waiver of the fill-rate ratio and/or months-to-exhaust requirement. Any such request must include back-up information and data supporting the reasons the carrier may give for its claim that demand will exceed its numbering resources.^{4/}

Maine Order (adopting exception to fill rate):

We acknowledge the concerns raised in some of the exceptions regarding the need for flexibility and thus, in accordance with the FCC's directives in Paragraph 12 of the Order, we adopt a waiver provision under which any carrier that believes that it would not be able to meet both the 75% fill ratio and 6 months to exhaust requirement and acquire sufficient new resources to meet projected demand, could request a waiver of the fill ratio and/or months to exhaust requirement. Any such request must include back-up data showing why the carrier expects demand will exceed its resources.^{5/}

NRO Order (adopting exception to sequential number assignment):

Under our requirement, a carrier that opens a clean block prior to utilizing in its entirety a previously-opened thousands block should be prepared to demonstrate to the state commission: (1) a genuine request from a customer detailing the specific need for telephone numbers; (2) the inability on the part of the carrier to meet the specific customer request for telephone numbers from the surplus of numbers within the carrier's

^{3/} Illinois Citizen Utility Board, Petition to Implement a Form of Number Conservation known as Number Pooling within the 312, 773, 847, 630, and 708 Area Codes; Illinois Bell Telephone Company, Petition for Approval of an NPA Relief Plan for the 847 NPA, Nos. 97-0192, 97-0211, Order of the Illinois Commerce Commission, at 26-27 (rel. May 6, 1998).

^{4/} Letter from Massachusetts Department of Telecommunications and Energy to Massachusetts LNP and Wireless Carriers, DTE 99-99 (Jan. 27, 2000).

^{5/} Investigation into Area Code Relief, State of Maine Public Utilities Commission, Docket No. 98-634, Order (Nov. 4, 1999).

currently activated thousands-block. We believe that this requirement will improve carrier's efficiency in utilizing numbering resources, while maintaining carrier flexibility in meeting customer demand. We also acknowledge that this requirement has the potential to forestall other thousands blocks from becoming contaminated - and thus ineligible for possible donation to a pool. We also find that sequential number assignment may improve carrier efficiency in utilizing numbering resources, regardless of whether pooling is implemented.^{6/}

For these reasons, AT&T respectfully requests that the Commission provide the NANPA with the means to grant carriers' code requests even if they have not satisfied the applicable utilization threshold. This safety valve is absolutely necessary to ensure that all carriers have the ability to serve customers, and it would not waste numbering resources.

Should you have any questions regarding this matter, please contact Suzanne Toller at 415-442-5587 or Sara Leibman at 202-434-7327.

Respectfully submitted,

Douglas I. Brandon / by SFL

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^{6/} Numbering Resource Optimization, CC Docket 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 , 7684 ¶ 245 (2000).