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February 06, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

Re: ***Ex Parte Notification***
Numbering Resource Optimization, CC Docket No. 99-200,
Local Competition Provisions of the Act, CC Docket No. 96-98,
State Petitions for Delegated Authority:

Louisiana	*NSD File No. L-00-170*
Maryland	*NSD File No. L-00-171*
Massachusetts	*NSD File No. L-00-169*

Dear Ms. Salas:

Sprint Corporation, pursuant to Section 1.1206 of the Commission's rules, hereby submits an original and ten copies of a notification of a written *ex parte* contact. Please associate this letter with the file in the above-captioned proceedings.

Please contact me should you have any questions concerning the foregoing.

Sincerely yours,

Jeffrey M. Pfaff by

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand Delivery

Mr. L. Charles Keller, Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Ex Parte Presentation***
Numbering Resource Optimization, CC Docket No. 99-200,
Local Competition Provisions of the Act, CC Docket No. 96-98,
State Petitions for Delegated Authority:

Louisiana	*NSD File No. L-00-170*
Maryland	*NSD File No. L-00-171*
Massachusetts	*NSD File No. L-00-169*

Dear Mr. Keller:

The public utility commissions ("PUCs") of Louisiana, Maryland, and Massachusetts seek delegated authority to implement various number conservation measures.[1] Many of these requests have become moot in light of the Commission's subsequent release of its *Second NRO Order.*[2] Sprint Corporation ("Sprint") therefore limits this letter to the request by these PUCs for authority to ration NXX codes and/or thousands-blocks.

Maryland and Massachusetts seek authority "to order rationing as an area code nears jeopardy."[3] All three states (including Louisiana) seek authority to "order the continuation of a rationing plan for six months following the implementation of area code relief."[4] The Commission must deny these requests because rationing is incompatible

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[1] *See Public Notices:* Louisiana, DA 00-2175, 15 FCC Rcd 18109 (Sept. 25, 2000); Maryland, DA 00-2176, 15 FCC Rcd 18112 (Sept. 25, 2000); Massachusetts, DA 00-1982 (Aug. 29, 2000).

[2] *See Numbering Resource Optimization,* CC Docket No. 99-200, *Second Report and Order,* FCC 00-429 (Dec. 29, 2000)("*Second NRO Order*").

[3] Maryland Petition at 4. *See also* Massachusetts Petition at 20-22 (seeking authority to "set and/or revise rationing procedures").

[4] Maryland Petition at 4. *See also* Louisiana Petition at 11-12; Massachusetts Petition at 23.

with its "needs-based" number assignment rules. The PUCs have not demonstrated "good cause" that would justify entry of a waiver, so they should not be permitted to deny numbers to a carrier demonstrating a need for them under the "needs-based" assignment rules.

Last year, the Commission established eligibility requirements for the assignment of both initial and growth codes/thousands-blocks "to ensure that carriers request and receive numbering resource only when and where needed."[5] Specifically, it adopted "a more verifiable needs-based approach for both initial and growth numbering resources that is predicated on proof that carriers need numbering resources when, where, and in the quantity requested."[6] The Commission further determined that available number resources should be assigned on a "first-come, first-served basis":

> [O]nce carriers meet the requirements set forth herein for initial and growth numbering resources, the NANPA *shall* continue to assign numbering resources on a first-come, first-served basis, to those carriers that satisfy the necessary requirements.[7]

Under the new rules, a carrier is entitled to receive an initial code if it "will be capable of providing service within sixty (60) days of the numbering resources activation date."[8] Similarly, a carrier is entitled to a growth code if it has "no more than a six-month inventory of telephone numbers in [the] rate center" and has achieved "a 60% utilization threshold."[9] Indeed, a fast-growing carrier may be entitled to receive additional numbers even if it has not achieved a 60% utilization rate at the time of its application.[10] The purpose of these rules is to ensure that only carriers in need of numbers receive them, but that carriers will *timely* receive the numbers they need upon demonstrating compliance with the national assignment rules. Timely access to numbers is essential to full and fair competition, as the Commission has recognized:

> Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.[11]

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[5] *First NRO Order,* 15 FCC Rcd at 7611 ¶ 88.

[6] *Id.* at 7612 ¶ 91.

[7] *Id.* at ¶ 92 (emphasis added).

[8] 47 C.F.R. § 52.15(g)(2)(ii) and (h).

[9] *Id.* at § 52.15(g)(3)(iii).

[10] *See Second NRO Order* at ¶ 33.

[11] *Second NRO Order* at ¶ 61.

Rationing is completely incompatible with the new "needs-based" number assignment rules.[12] First, with rationing, a carrier meeting the Commission's number assignment rules does not receive the numbers it needs, but rather it receives a lottery ticket that *may* enable it to receive the numbers *at some unspecified time in the future*. Second, rationing is inconsistent the Commission's directive that numbers "shall" be assigned on "a first-come, first-served basis" because with lotteries, numbers are instead assigned based on a carrier's luck of the draw. In the end, rationing does not provide what the new FCC rules guarantee: receipt of additional numbers "when and where needed."[13] Indeed, the Commission has recognized that rationing poses "an insidious threat to competition."[14]

None of the three PUC petitioners has met its "heavy burden" justifying a waiver of these FCC rules.[15] Maryland provides no reason in support of its request for rationing authority prior to the implementation of relief.[16] Massachusetts seeks pre-relief rationing authority because it believes that such rationing "may be a crucial step towards prolonging [the life of] the 413 NPA."[17] But the Commission has "emphasized" repeatedly that "state commissions may not use rationing as a substitute for area code relief."[18] Mary-

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[12] It bears repeating that rationing *cannot* legitimately be considered to constitute number conservation because rationing does not improve in any way "the efficient and effective use of" numbers. *See* NXX Code Assignment Guidelines, INC 95-0407-008 § 13 Glossary: Conservation. Instead, rationing is a procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow). Rationing constitutes an entry barrier that is unlawful under the Communications Act.

[13] *NRO Order,* 15 FCC Rcd 7574 at ¶ 88.

[14] *Second NRO Order* at ¶ 59.

[15] *Riverphone,* 3 FCC Rcd 4690, 4692 ¶ 13 (1988). A waiver applicant "faces a high hurdle even at the starting gate." *U S WEST,* 7 FCC Rcd 4043, 4044 ¶ 6 (1992), *quoting WAIT Radio* v. *FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969). A waiver <u>may</u> be appropriate <u>*if*</u> "[1] special circumstances warrant a deviation from the general rule <u>*and*</u> [2] such deviation will serve the public interest." *Texas NPA Order,* 13 FCC Rcd 21798, 21800 ¶ 6 (1998), *citing Northeast Cellular* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the applicant "must clearly demonstrate that the general rule is not in the public interest when applied to its particular case and that granting the waiver will not undermine the public policy served by the rule." *U S WEST,* 12 FCC Rcd 8343, 8346 ¶ 10 (1997); *Bell Atlantic,* 12 FCC Rcd 10196, 10198 ¶ 5 (1996). Of course, "[t]he very essence of a waiver is the assumed validity of the general rule." *WAIT Radio,* 418 F.2d at 1158. *See also Southwestern Bell,* 12 FCC Rcd 10231, 10239 ¶ 13 (1997).

[16] *See* Maryland Petition at 4.

[17] Massachusetts Petition at 20.

[18] *Second NRO Order* at ¶¶ 62 and 78. *See also Pennsylvania Numbering Order,* 13 FCC Rcd 19009, 19027 ¶ 25 1998)("[A] state commission may not impose a rationing plan on its own to avoid making a decision on area code relief.").

land and Massachusetts thus seek a rule waiver to do precisely what is expressly prohibited: use rationing to delay adoption or implementation of needed area code relief.

Equally lacking in merit is the request for rationing authority after area code relief has been implemented. Louisiana and Massachusetts state they need this authority to give themselves "breathing room."[19] Maryland seeks such authority to prevent "a 'run' on the existing area code . . . if an overlay is ordered as the method of relief."[20] These unsupported arguments are not credible. There will be no "run" on NXX codes (whether in the existing NPA or relief NPA), because with the "needs-based" assignment rules now in place, numbers will be assigned only "when and where needed." The only reason to permit rationing after area code relief has been implemented is to preclude a carrier demonstrating a need for additional numbers from obtaining them — that is, to prohibit entry as forbidden by Section 253(a) of the Communications Act.

Sprint recognizes that the Common Carrier Bureau in its *15 State Delegation Order* permitted certain states to engage in rationing after implementation of relief.[21] But as Sprint has previously explained, the Bureau's rationale is legally insufficient.[22] The only reason the Bureau cited in support of its decision was "FCC precedent" decided *before* adoption of national needs based rules and *before* the Commission ruled that numbers should be assigned on a "first-come, first-served basis."[23] The Commission has an obligation to "articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made."[24] Obviously, reliance on precedent that has been subsequently modified is legally inadequate under the Administrative Procedures Act.

In summary, the Commission has adopted rules to ensure that carriers receive additional numbers "only when and where needed."[25] Given competitive markets, the Commission has further ruled, correctly, that numbers "shall" be assigned on "a first-

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[19] *See* Louisiana Petition at 12; Massachusetts Petition at 23.

[20] Maryland Petition at 4.

[21] *See Numbering Resource Optimization Order,* CC Docket No. 99-200, DA 00-1616 (July 20, 2000)("*15 State Delegation Order*").

[22] *See* Sprint Petition for Limited Reconsideration, CC Docket No. 99-200, at 2-6 (Aug. 7, 2000).

[23] *See 15-State Delegation Order* at ¶ 62.

[24] *See, e.g., Motor Vehicle Manufacturer Ass'n* v. *State Farm,* 463 U.S. 29. 43 (1983). *See also AT&T* v. *FCC,* No. 99-1535 (D.C. Cir., Jan. 23, 2001)(FCC order vacated because agency failed to adequately explain its decision); *Qwest* v. *FCC,* 229 F.3d 1172 (D.C. Cir. 2000)(same); *USTA* v. *FCC,* 227 F.3d 450 (D.C. Cir. 2000)(same); *Trinity Broadcasting* v. *FCC,* 211 F.3d 618 (D.C. Cir. 2000)(same); *Bell Atlantic* v. *FCC,* 206 F.3d 1 (D.C. Cir. 2000)(same).

[25] *First NRO Order,* 15 FCC Rcd at 7611 ¶ 66.

come, first-served basis."[26] Rationing is completely antithetical to these rules because a carrier demonstrating compliance with the national assignment rules does not receive the numbers it needs when it needs them, but rather receives only a lottery ticket, which may allow it to obtain its needed numbers at some point in the future — namely, when it gets lucky. The Commission was thus entirely justified in noted that rationing poses "an insidious threat to competition."[27]

Respectfully submitted,

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[26] *Id.* at 7612 ¶ 92.

[27] *Second NRO Order* at ¶ 59.