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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. <u>99-200</u> /
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunication Act)	
of 1996)	
)	
Petitions for Delegated Authority:)	
)	
Indiana)	NSD File No. L-01-273
Minnesota)	NSD File No. L-00-206
Missouri)	NSD File No. L-01-275
Oklahoma)	NSD File No. L-01-276
Tennessee)	NSD File No. L-01-277
Vermont)	NSD File No. L-01-272
West Virginia)	NSD File No. L-01-274
)	

SPRINT COMMENTS

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Attachment A: Proposed National Pooling Roll Out Schedule

Summary of Sprint Comments

Sprint makes four points in these comments:

1. The Commission should promptly establish a national pooling roll out schedule, and Sprint submits a proposal for public comment. The proliferation of state requests to implement “interim” pooling on an *ad hoc* basis is threatening the national pooling plan that the Commission has already determined is necessary to protect the public interest. For example, with finite resources available, it makes no sense to implement pooling in Vermont and West Virginia before Boston and Houston. It is time to establish the national schedule so industry has the time to ensure they have adequate network capacity in the right locations at the right time, and so states can assess whether pooling will offer a realistic alternative to needed area code relief.

2. Sprint does not oppose the Minnesota and Missouri “interim” pooling requests (subject to certain conditions), but does oppose the requests of the other five states. Pooling in most of the NPAs in the five states will not save the NPAs because they do not have a life span of more than one year. In contrast, Minnesota and Missouri have done a good with rate center consolidation and in adopting relief timely, and their petitions should be granted.

3. The Commission should further confirm that the rationing of numbering resources is unlawful. Not only is rationing inconsistent with Commission orders and incompatible with the “needs-based” number assignment rules in place, but the Commission has also recognized that rationing poses “an insidious threat to competition.” Rationing is nothing less than an impermissible barrier to entry.

4. Most of the requests for other, non-pooling conservation authority are moot, as the Commission has already addressed the specific issues raised.

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SPRINT COMMENTS

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, “Sprint”), submits these comments in response to the request of seven public utility commissions (“PUCs”) for delegation of pooling and other number conservation authority.¹

I. The Commission Should Promptly Establish a National Pooling Roll Out Schedule, and Sprint Submits a Proposal for Public Comment

The proliferation of state requests to implement “interim” number pooling is understandable, but the expansion of the *ad hoc* interim process now in place threatens to un-

¹ See *Public Notices*, DA 01-73 (Minnesota); DA 01-75 (Vermont); DA 01-76 (Indiana); DA 01-77 (West Virginia); DA 01-78 (Missouri); DA 01-79 (Oklahoma); and DA 01-80 (Tennessee) (Jan. 11, 2001).

dermine the very national pooling plan that the Commission has already ruled is “necessary” to protect the public interest.² Rather than devoting its near term resources to reviewing the pending state petitions for “interim” pooling authority (and thereby exacerbate the problem), the Commission should instead develop a national pooling implementation schedule. The prompt announcement of a national schedule would give both industry and the states the time they need to begin planning for a smooth transition to pooling and would enable the states to plan for needed area code relief. Sprint submits a proposed schedule for public comment in Attachment A in the hope of expediting this process.

The Commission, with virtually unanimous support from industry and the states, has determined that number exhaust is a “national problem that must be dealt with at the national level”³ and that a “national numbering resource optimization strategy” is therefore necessary to deal effectively with this national problem.⁴ A “national, uniform framework for pooling” is a critical component of this new national conservation strategy. Only a national pooling plan “will permit service providers to avoid having to conform with different requirements for every jurisdiction in which they operate, which would be unwieldy and inefficient for service providers from both a regulatory and financial perspective.”⁵ The Commission has further recognized that implementation of pooling on an *ad hoc*,

² See *First NRO Order*, 15 FCC Rcd 7574, 7654 ¶ 159 (March 31, 2000).

³ *First NRO Order*, 15 FCC Rcd at 7578 ¶ 3. This ruling is also consistent with the congressional determination to grant to the FCC plenary authority over numbering, Congress obviously determining that numbering is a national issue. See 47 U.S.C. § 251(e)(2).

⁴ *Id.* at 7525 ¶ 121 (“[W]e believe that the industry and consumers are best served by national number resource optimization standards implemented consistently and in a competitively neutral manner across the nation.”)

⁵ *Second NRO Order*, CC Docket No. 99-200, FCC 00-429, ¶ 46 (Dec. 29, 2000). See also *First NRO Order*, 15 FCC Rcd at 7624 ¶ 120 (“[D]is-parate standards in the implementation of thousands]block pooling” would create “confusion and unnecessary burden on carriers.”).

state-by-state basis “would harm consumers, who would likely incur the costs imposed on service providers operating under disparate pooling regimes.”⁶

A national pooling plan is also necessary to preserve network reliability and to allocate finite resources intelligently. Neither pooling administrators nor industry has the resources to “flash cut” to pooling nationwide. A phased implementation is also essential to preserve network reliability:

[A] staggered rollout schedule is necessary primarily because an overload of the telecommunications network may cause network disruptions when carriers’ Service Control Points (SCPs) capacity has been depleted. . . . [A] staggered roll-out will provide carriers time to upgrade or replace their SCPs and other components of their network, as necessary, if the increased volume of ported numbers as a result of pooling requires them to do so.⁷

Given the severity of the numbering problem, the Commission has appropriately decided that pooling should be implemented first in those areas where it can be most effective — namely, the most populous areas where NPAs are now in jeopardy.⁸ Record evidence convinced the Commission that the roll out of pooling should encompass “a maximum of three NPAs in each NPAC region per quarter” — resulting in the conversion of 84 NPAs annually.⁹

Implementation of the national pooling plan is scheduled to commence nine months after the national pooling administrator (“PA”) is selected. The Commission therefore gave states the opportunity to seek “interim” pooling authority, so long as they could demonstrate certain criteria (*e.g.*, populous MSAs with NPAs in jeopardy). However, the number of states seeking “interim” pooling authority has far exceeded what anyone origi-

⁶ *Second NRO Order* at ¶ 46.

⁷ *First NRO Order*, 15 FCC Rcd at 7645 ¶ 159.

⁸ *First NRO Order*, 15 FCC Rcd at 7646 ¶ 159.

⁹ *Id.* at n.386.

nally anticipated. Moreover, some states are now want to implement “interim” pooling even though their NPAs meet few or none of the criteria that the Commission has established. In short, industry now finds itself facing the very predicament that the Commission has ruled must be avoided — the roll out of pooling on an *ad hoc*, uncoordinated basis.¹⁰ Besides, it makes no sense to implement pooling in rural areas before such large metropolitan areas as Boston and Houston.

Sprint hopes and expects that a national PA will be selected shortly, so that the national plan can finally commence. But there is no reason to delay further the establishment of the national pooling schedule, and there are numerous reasons to announce the national schedule promptly.¹¹

First, developing a schedule expeditiously will give carriers more time to prepare for pooling and thus help ensure that they have adequate network capacity in the right locations at the right time. Under the current plan, carriers may receive only two or three months notice before they must commence pooling in some of the most populous areas of the country.¹² By accelerating the announcement of the schedule, carriers should receive much more advance notice — six months or more. The more notice that industry receives,

¹⁰ The FCC has directed states wanting to deploy “interim” pooling in multiple NPAs to stagger the implementation (one NPA at a time). *See First NRO Order*, 15 FCC Rcd at 7652 ¶ 170. This certainly is helpful, but without a national schedule no one is monitoring the deployment of pooling among the states — namely, staggering NPA conversions *between* the states.

¹¹ Sprint is not necessarily suggesting that the start date of the national pooling plan be changed, only that the first year schedule be announced as soon as possible.

¹² Under the current plan, the PA is to submit its recommendation two months following its selection. Assuming two months for release of the public notice, comments and reply comments, and another two months for the FCC to prepare an order, industry would have only three-months’ notice before the commencement of the national plan. If this regulatory process takes longer, carriers will correspondingly receive less notice.

the better it can plan for the conversion and thereby, minimize the risk to network reliability.

States would also benefit by the prompt announcement of the national schedule. The development of a state “interim” pooling plan is no easy task because it requires, *inter alia*, the selection of a state pooling administrator and the development of a state cost recovery plan. As the Missouri Commission noted recently in deciding not to exercise its delegated authority, “[b]oth of these tasks involve investment of money, time and energy that should be weighed in the context of the national rollout of number pooling by the FCC.”¹³ It is certainly not a productive use of PUC resources to begin developing a state-specific pooling plan, only to learn (*e.g.*, later this year) that their efforts have been in vain because the national plan is different from their schedule.

In addition, it has become apparent that some states are using the potential for “interim” pooling as an excuse to avoid making area code relief decisions. Take, for example, the situation in Indiana. The 219 NPA (northern Indiana) is expected to exhaust as early as January 2002, 10 months from now. A relief petition has been pending before the Indiana Commission for over 17 months (since August 1999). Yet, rather than announce a relief decision, the Indiana PUC appears to be waiting for a FCC decision on its pooling petition. Given the time needed to implement a relief plan once the PUC adopts a plan, the industry in Indiana could find itself faced with the same situation occurring in Michigan — all available numbering resources are exhausted months before the relief plan can be implemented. The prompt announcement of the national roll out schedule will thus let states

¹³ See Missouri PSC, *Petition for Approval of NPA Relief Plans for the 314 and 816 Area Codes*, Case No. TO-2000-374 (Oct. 24, 2000). The Massachusetts PUC reached a similar conclusion. See Department of Telecommunications and Energy, *Thousand-Block Number Pooling Trials*, 201 P.U.R.4th 423, D.T.E. 99-11 and 99-99 (April 25, 2000).

know not only which NPAs will be converted initially, but also which NPAs will not be converted in the near future and as a result, may require the immediate adoption of a relief plan.

Sprint also recommends that the Commission adopt a national pooling schedule on an annual basis (encompassing 84 NPAs), rather than adopting a schedule each quarter (only 21 NPAs).¹⁴ Service quality can be maintained only if carriers can ensure that they have adequate network capacity in the right locations. Adopting an annual schedule (84 NPAs) will give carriers more time to plan and ensure they have adequate network capacity in the right locations at the right time. An annual conversion schedule should also be beneficial to states because they can better plan their relief activities.

II. Other Than in Minnesota and Missouri, the Subject NPAs Are Not Appropriate Candidates for Early Pooling

Seven states seek authority to implement “interim” pooling. Sprint does not oppose the Minnesota and Missouri petitions (subject to certain condition discussed below). Sprint does oppose the other five petitions. In addition, the Commission should enter an order directing the Tennessee PUC to withdraw its recent pooling order involving the 615 NPA.

A. Pooling Will Not Save Many of the NPAs in Question Because the NPAs Do Not Have a Life Span Greater Than One Year

It is understandable that so many states want to commence pooling immediately. Nevertheless, the Commission has recognized that “a staggered rollout schedule is neces-

¹⁴ Sprint recommends that the FCC adopt a firm one-year/84 NPA schedule, but that it concurrently propose a tentative schedule for a second and third year. Adoption of this longer-term forecasting approach will give much more planning time to both states and industry.

sary” because of finite resources and the need to protect network reliability. While the Commission has decided that states may seek permission to deploy “interim” pooling in advance of the national plan, it has imposed several conditions that states must meet before the Commission will consider approving the proposal. One of the critical conditions is that “the NPA in question has a remaining life span of at least a year.”¹⁵ The Commission imposed this requirement because record evidence confirmed that the cost of implementing pooling in limited life NPAs would exceed any possible benefits, and finite pooling implementation resources would be better devoted to NPAs where pooling can make a difference.¹⁶

The petitioning PUCs allege that their NPAs have a life span of at least one year, but they base their assertion on the assumption that an NPA’s life span should be measured from the date that they filed their FCC petition. This assumption is erroneous. The Commission made clear that the life span of an NPA should be measured from the date that an NPA is *scheduled* for pooling:

[W]e conclude that NPAs that will exhaust in less than a year, based on the most current quarterly forecast issued by the NANP *at the time the quarterly schedule is established*, will not be treated as priority NPAs for pooling purposes.¹⁷

Thus, an NPA’s life span is not measured from the date that a state submits its pooling petition, nor is it measured from the date that the Commission enters an order on the delegation petition. Rather, the life span of the NPA must be measured from the date that a PUC

¹⁵ *First NRO Order*, 15 FCC Rcd at 7652 ¶ 170.

¹⁶ *See id.* at 7647-48 ¶ 162.

¹⁷ *Id.* (emphasis added). The FCC’s approving citation to AT&T’s comments confirms this interpretation. *See id.* at n.389. AT&T had recommended that pooling not be implemented in NPAs that “are expected to exhaust *within 12 months of the initial pooling roll-out date.*” AT&T Comments, Docket 99-200, at 43 (July 30, 1999)(emphasis added).

is prepared to schedule a pooling start date. Any other interpretation would be counterproductive and contrary to the Commission's explicit directives.¹⁸

Five of the NPAs included within the pending petitions do not meet the one-year life span requirement. For purposes of this analysis, Sprint has assumed that the Commission will enter its order on April 1, 2001 and that states will require six months (until October 1, 2001) to select a pooling administrator, adopt a state cost recovery plan, and to enter a final pooling order.

<u>NPA</u>	<u>State</u>	<u>Projected Scheduling Date</u>	<u>Current Exhaust Date</u> ¹⁹	<u>Likely Life Span</u>
219	Indiana	10-1-01	1Q03	14 months
304	West Virginia	10-1-01	1Q02	2 months
405	Oklahoma	10-1-01	3Q02	8 months
615	Tennessee	10-1-01	2Q02	5 months
918	Oklahoma	10-1-01	3Q02	8 months

The 14-month life span of the 219/Indiana NPA is misleading, as the life of this NPA has been propped up by draconian rationing (three codes monthly). Sprint demonstrates in Part III below that that rationing is unlawful.

Even the immediate implementation of pooling in these five NPAs will not avoid the need to adopt area code relief in the near future (because non-pooling carriers will still

¹⁸ For example, West Virginia wants to implement pooling in its 304 NPA, even though NANPA anticipates this NPA exhausting as early as January 2002. It will take the West Virginia PUC a period of months to select a pooling administrator, develop a cost recovery plan, and decide the other issues needed for a pooling plan. Industry will thereafter need a period of months in order to prepare itself to implement the plan (*e.g.*, begin block donation). Given these necessary events, pooling in West Virginia may not begin until December 2001 for an NPA that will exhaust the next month, in January 2002.

¹⁹ These exhaust dates are dates established by NANPA and are current as of January 30, 2001.

need access to NXX codes). Given that these NPAs are expected to exhaust within the next year or two, the PUCs should be focusing their resources on adopting area code relief — to avoid the situation that will be occurring shortly in Michigan, where two major NPAs will exhaust months before NPA relief will be implemented.

The Commission has previously emphasized that pooling is not a means to save NPAs that are at or near exhaust,²⁰ a point the Massachusetts Commission confirmed recently that pooling, or TNP, “is not a practical solution for prolonging the lives of any of the four Eastern Massachusetts area codes. The supply of exchange codes in Eastern Massachusetts is too far depleted to benefit from TNP.”²¹

The facts are clear that pooling in the five NPAs listed above will not forestall the need to adopt area code relief. While the request for pooling in these NPAs must be denied, the Commission should remind these PUCs of their obligation to adopt *timely* area code relief.

B. There Are Other Reasons to Deny the Pooling Requests of Five of the PUCs

The pooling requests of five of the pending delegation petitions are defective for other reasons. Three of the NPAs — 219 (Indiana); 304 (West Virginia); 802 (Vermont) — are not even in the top 100 most populous MSAs, and as the Commission has already

²⁰ See *Pennsylvania Numbering Order*, 13 FCC Rcd 19009, 19028 ¶ 29 (1998) (“Number pooling is not a substitute for area code relief because, at this time, it does not provide sufficient assurance that all telecommunications carriers will have access to numbering resources. In fact, number pooling would probably be a more effective conservation tool if applied to new area codes with many whole NXX codes, rather than to codes that already have a high usage rate, because there will be more whole NXXs, including blocks of 1,000 or fewer numbers and individual telephone numbers, to pool.”).

²¹ Department of Telecommunications and Energy, *Thousand-Block Number Pooling Trials*, 201 P.U.R.4th 423, D.T.E. 99-11 and 99-99 (April 25, 2000).

determined, early pooling deployment should be focused on largely populated areas where pooling can have far reaching impacts. In addition, Indiana has also not demonstrated that a majority of the LECs in the 219 NPA are LNP-capable.²² Finally, four of the NPAs — 317 (Indiana); 405 (Oklahoma); 802 (Vermont); 918 (Oklahoma) — are not in jeopardy, as the Commission also requires for early pooling.

The 317 NPA (Indianapolis), while not currently in jeopardy, might be a possible candidate for pooling in the near future. The Indianapolis MSA is the nation's 34th most populous MSA, and it is the fifth largest MSA in the Midwest NPAC region (behind Chicago, Detroit, Cleveland, and Cincinnati). The current exhaust date is the third quarter of 2003, a little over two years from now. Nevertheless, the Commission should not grant delegated authority for "interim" pooling in this NPA because of the Indiana PUC's unwillingness to adopt timely area code relief for the 219 NPA.

As noted, the 219 NPA (northern Indiana) has been and remains subject to draconian rationing (three codes monthly). A relief petition was filed with the Indiana Commission on August 20, 1999, over 17 months ago. Although this NPA is expected to exhaust only 10 months from now, the PUC still has not adopted a relief plan. Unless a relief plan is adopted in the immediate future, it becomes increasingly likely that the available supply of numbers will exhaust before any relief plan can be implemented. Because grant of the PUC's 317 pooling petition would only encourage the PUC to focus on pooling for the 317

²² Indiana states only that "three Incumbent Local Exchange Carriers . . . are LTNP capable." Indiana Supplement at 3 n.10 (Oct. 11, 2000). Pooling obviously provides no benefit if only the ILEC is capable of participating in pooling.

NPA rather than relief for the 219 NPA, the Commission should not grant the requested pooling relief.²³

C. The Commission Should Confirm That the Recent Tennessee Pooling Order Is Inconsistent With Its Delegated Authority

Last July, the Commission “delegate[d] to the Tennessee Commission the authority to implement thousands-block number pooling in the 901 NPA,” encompassing Memphis.²⁴ The next month, on August 18, 2000, the Tennessee Commission requested delegated authority to implement pooling in the 615 NPA (Nashville). The FCC requested public comment on this 615 NPA request on January 11, 2001.²⁵

However, one month earlier, on December 12, 2000, the Tennessee PUC entered an “Order Implementing 1000 Number-Block Pooling in the 615 and 901 Area Codes.”²⁶ In this Order, the PUC directed that “interim” pooling “shall be implemented in the 615 area code not later than March 1, 2001, or upon the availability of version 3.0 pooling software, whichever is later.”²⁷

The Tennessee PUC does not have the authority to implement mandatory “interim” pooling in the 615 NPA because this Commission has never delegated such authority to the PUC and its 615 NPA request is currently pending. The Tennessee’s December 12, 2000

²³ The same situation exists in Tennessee. A 615 NPA relief petition was filed with the PUC on August 31, 1999, over 17 months ago. Although the 615 NPA is expected to exhaust within the next year, the PUC has still not adopted a relief plan.

²⁴ *15-State Delegation Order* at ¶ 48.

²⁵ *Public Notice*, “Common Carrier bureau Seeks Comment on the Petition of the Tennessee Regulatory Authority for Additional Delegated Authority to Implement Number Conservation Measures,” NDS File No. L-01-277, DA 01-80 (Jan. 11, 2001).

²⁶ See Tennessee Regulatory Authority, *Order Implementing 1000 Number-Block Pooling in the 615 and 901 Area Codes*, Docket No. 00-00851 (Dec. 12, 2000).

²⁷ *Id.* at 13.

Order is accordingly void *ab initio* since the Tennessee PUC obviously cannot exercise authority it does not possess.

The December 12, 2000 Order is also problematic as applied to the 615 NPA. Although the Tennessee PUC has authority to implement pooling in this NPA, this authority is conditioned on the PUC's adoption of a cost recovery plan.²⁸ However, the Tennessee Commission declined to adopt a cost recovery plan in its December 2000 Pooling Order, stating that "addressing pooling costing issues at this time could slow the implementation of pooling, thereby impacting area code relief."²⁹

The Tennessee Commission's action is especially disturbing because while it has found time to adopt a pooling order, it appears unwilling to adopt an area code relief order. A relief petition for the 615 NPA was filed with the Tennessee Commission on August 31, 1999, over 17 months ago.³⁰ Although the 615 NPA is expected to exhaust as early as April 2002, only one year from now, and although industry obviously needs time to implement any relief plan adopted, the Tennessee Commission still has not found time to adopt a relief plan for the 615 NPA. If the Tennessee PUC does not adopt a relief plan by May 1, 2001, this Commission should promptly withdraw all delegated authority from the Tennessee PUC and expeditiously adopt the overlay plan that industry has recommended.

²⁸ See *15-State Delegation Order* at ¶ 21 ("[S]tates conducting their own pooling trials must develop their own cost recovery mechanisms for the joint and carrier-specific costs of implementing and administering pooling within their states."). See also *First NRO Order*, 15 FCC Rcd at 7652 ¶ 171.

²⁹ *615 NPA Pooling Order* at 11.

³⁰ See Tennessee Regulatory Authority, *Press Release*, "Area Code Relief Needed for 615; TRA to Receive Public Comment" (Sept. 15, 1999).

D. Sprint Does Not Oppose the Minnesota Petition — So Long As Pooling Implementation Is Staggered

The Minneapolis MSA was covered by a single NPA (612) as recently as July 1998. By February 2000, four NPAs (612, 651, 763 and 952) cover this MSA. These four NPAs are currently scheduled to exhaust between 2004 and 2008, and the Minnesota Commission understandably seeks authority to implement pooling in these populous NPAs to help prevent the need for yet additional area code relief.

These four NPAs are perfect candidates for early implementation of pooling. The Minneapolis MSA is the nation's 12th largest MSA, and the largest MSA in the Western NPAC region. The MSA would thus be one of the first MSAs to be converted to pooling once the national pooling plan takes effect. The Minnesota Commission has implemented meaningful rate center consolidation and has further adopted timely area code relief. The timely implementation of pooling would forestall the need for additional relief (and may prevent the need for more relief altogether).

Sprint does not oppose the Minnesota pooling petition subject to two conditions: (1) no more than one of the Minneapolis MSA NPAs be converted each quarter; and (2) a cost recovery plan be adopted. By converting the four NPAs over the course of one year, carriers will have a better opportunity to ensure that network reliability in the Minneapolis MSA is not negatively impacted and that industry would have the resources to implement pooling in other areas of the country also in need of pooling relief. Sprint would not be opposed to giving the Minnesota Commission the authority to select the order in which the four NPAs are converted to pooling.

Sprint further recommends that the four Minneapolis MSA NPAs be given priority in the national pooling implementation schedule if the Minnesota Commission determines

that the benefits of proceeding with an “interim” pooling trial do not exceed the benefits and that Minnesota should instead wait for the commencement of the national pooling plan.

E. Sprint Does Not Oppose the Missouri Petition — Subject to Certain Conditions

The Missouri petition also raises unique circumstances. Last July, the Commission delegated to the Missouri PUC the authority to implement pooling in the 314 NPA (St. Louis).³¹ Two months later, in September 2000, the Missouri Commission requested authority to implement pooling in the 816 NPA (Kansas City) “prior to” the 314 NPA.³² The next month, in October 2000, the PUC adopted overlay relief plans for both NPAs.³³ The 314/557 overlay is scheduled to take effect on June 2, 2001, with the 816/975 overlay scheduled to become effective on February 16, 2002.

The St. Louis and Kansas City MSAs are good candidates for early implementation of pooling. These are populous MSAs, and they are the third and fourth most populous MSAs in the Southwest NPAC region (behind only Houston and Dallas). Thus, these two MSAs should be early candidates for pooling under the national pooling plan.

Sprint does not oppose the Missouri PUC request subject to the following four conditions: (1) the pooling start date should be deferred until after relief is implemented (as implementing pooling and relief simultaneously would inject additional complexity imposing an undue risk to network reliability); (2) the pooling start date in the 816 NPA be deferred until the planned rate center consolidation is completed; (3) the NPAs in the two

³¹ See *15-State Delegation Order* at ¶ 35.

³² Missouri Petition at 1 (Sept. 13, 2000).

MSAs not be converted in the same quarter; and (4) a cost recovery plan is in place. Because the overlay relief NPAs being introduced will be so new, Sprint would not oppose the implementation of pooling in both the existing and relief codes concurrently (*i.e.*, 314/557 in one quarter, 816/975 in another quarter).

It is doubtful that the Missouri Commission will implement interim pooling for the 816 NPA even if delegated the authority to do so. Indeed, the PUC recently declined to take advantage of its 314 NPA authority because of the “money, time and energy” that would be required in implementing a state plan in advance of the national plan:

The primary tasks confronting the Commission regarding implementation of a thousands-block number pooling trial in Missouri consist of performing or contracting for the performance of a pooling administrator and developing a cost recovery plan. Both of these tasks involve investments of money, time and energy that should be weighed in the context of the national rollout of number pooling by the FCC. In other words, the benefits of a decision to proceed with a state pooling trial must be weighed against its costs and the length of time that Missouri would benefit from having its trial in place prior to merging the trial into the national program. It makes less sense to invest in state number pooling if national number pooling quickly succeeds the state effort.³⁴

The Missouri Commission has done a good job exercising its delegated numbering authority and in implementing number conservation. It timely adopted relief plans for the 314 and 816 NPAs, and in the process, rejected arguments that it delay making these important decisions. It has approved rate center consolidation in the 314 NPA (reducing the number of rate centers by half), and has announced plans to implement similar consolidation in the 816 NPA.

³³ See *NANPA Petition for Approval of NPA Relief Plans for the 314 and 816 NPA Area Codes*, Case NO. TO-2000-374 (Oct. 24, 2000) (“314/816 Relief Order”).

³⁴ See *314/816 Relief Order*, note ... *supra*.

The Missouri PUC should be rewarded for its diligence and good stewardship. Accordingly, Sprint recommends that when the new national pooling plan is announced (and assuming the PUC does not adopt “interim” pooling), the 314/557 and 816/975 NPAs be converted during the first two quarters of the national plan. Early implementation of pooling in these populous MSAs will help ensure that the need for still more relief in these areas can be deferred as long as possible.

III. The Commission Should Confirm That the Rationing of NXX Codes Is Unlawful

West Virginia seeks authority “to order rationing as an area code nears jeopardy” and “to order the continuation of a rationing plan for six following the implementation of area code relief.”³⁵ The Commission must deny these requests because rationing is incompatible with its “needs-based” number assignment rules, and West Virginia has not demonstrated “good cause” that would justify entry of a waiver that would allow it to deny numbers to a carrier demonstrating a need for them under the “needs-based” assignment rules.

The Commission established last year 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.”³⁶ Specifically, it adopted a “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.”³⁷ The Commission further determined that available number resources should be assigned on a “first-come, first-served basis”:

³⁵ West Virginia Petition at 6-7.

³⁶ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88.

³⁷ *Id.* at 7612 ¶ 91.

[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.³⁸

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.”³⁹ 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.”⁴⁰ 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.⁴¹

The purpose of these “needs-based” rules is to ensure both that only carriers in need of numbers receive them and 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.⁴²

Rationing is completely antithetical with the new “needs-based” number assignment regime.⁴³ First, with rationing, a carrier meeting the Commission’s number assign-

³⁸ *Id.* at ¶ 92 (emphasis added).

³⁹ 47 C.F.R. § 52.15(g)(2)(ii) and (h).

⁴⁰ *Id.* at § 52.15(g)(3)(iii).

⁴¹ *See Second NRO Order* at ¶ 33.

⁴² *Second NRO Order* at ¶ 61.

⁴³ 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,

ment rules does not receive the numbers it needs, but rather a lottery ticket that *may* enable it to receive additional 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."⁴⁴ Indeed, the Commission recognized recently that rationing poses "an insidious threat to competition."⁴⁵

Nor has West Virginia met its "heavy burden" justifying a waiver of these FCC rules.⁴⁶ West Virginia provides no reason in support of its request for rationing authority prior to the implementation of relief, other than its unsupported assertion that it could implement rationing "more rapidly" than industry.⁴⁷ The Commission, however, has "emphasized" repeatedly that "state commissions may not use rationing as a substitute for area

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.

⁴⁴ *First NRO Order*, 15 FCC Rcd 7574 at ¶ 88.

⁴⁵ *Second NRO Order* at ¶ 59. Rationing poses a threat to competition and fair play whether it is implemented in the short term or long term. In either circumstance, a carrier does not receive numbers "when and where needed," and the FCC's "first-come, first-serve" directive is violated.

⁴⁶ *Riverphone*, 3 FCC Rcd 4690, 4692 ¶ 13 (1988). A waiver applicant "faces a high hurdle even at the starting gate." *US WEST*, 7 FCC Rcd 4043, 4044 ¶ 6 (1992), quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). A waiver *may* be appropriate *if* "[1] special circumstances warrant a deviation from the general rule *and* [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." *US 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).

⁴⁷ West Virginia Petition at 6. This argument is not credible. Industry ordinary agrees to extraordinary conservation measures at its first meeting. The PUC, as a regulatory body, must comply with notice and comment procedures that invariably involve delay.

code relief.”⁴⁸ West Virginia thus seeks 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. West Virginia seeks such authority to prevent “a ‘run’ on the existing area code . . . if an overlay is ordered as the method of relief.”⁴⁹ This unsupported argument has no basis in fact. 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 explicitly 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.⁵⁰ But the Bureau’s rationale is legally insufficient as Sprint has previously explained.⁵¹ 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.”⁵² The Commission has an obligation to “articulate a satisfactory explanation for its action, including a rational connection between

⁴⁸ *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.”).

⁴⁹ West Virginia Petition at 7.

⁵⁰ See *Numbering Resource Optimization Order*, CC Docket No. 99-200, DA 00-1616 (July 20, 2000) (“*15 State Delegation Order*”).

⁵¹ See Sprint Petition for Limited Reconsideration, CC Docket No. 99-200, at 2-6 (Aug. 7, 2000).

⁵² See *15-State Delegation Order* at ¶ 62.

the facts found and the choice made.”⁵³ 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.”⁵⁴ Given competitive markets, the Commission has further ruled, correctly, that numbers “shall” be assigned on “a first-come, first-served basis.”⁵⁵ 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 get lucky. The Commission was thus entirely justified in noting that rationing poses “an insidious threat to competition.”⁵⁶

IV. The Requests for Other Conservation Authority Are Moot

Oklahoma and West Virginia seek certain delegated authority in addition to pooling and rationing authority. As demonstrated below, all of these requests are moot.

A. Audits. Oklahoma and West Virginia seek authority to audit carrier use of numbering resources.⁵⁷ This request is moot, and the Commission must deny it. In its recent *Second NRO Order*, the Commission specifically “decline[d] to delegate authority to

⁵³ 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).

⁵⁴ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 66.

⁵⁵ *Id.* at 7612 ¶ 92.

⁵⁶ *Second NRO Order* at ¶ 59.

⁵⁷ See Oklahoma Petition at 8; West Virginia at 7.

the states to conduct the audits prescribed herein” because carriers operating in multiple states would be required to comply with “differing demands in different states.”⁵⁸ Of course, if Oklahoma and West Virginia believe that any carrier is not complying with the national numbering rules, they can always ask the Commission to conduct a “for cause” audit.⁵⁹

B. Establish Utilization Rates. West Virginia seeks authority to “establish fill rates that must be met . . . before a carrier may acquire a growth code.”⁶⁰ This request must be denied as well. The Commission recently established utilization rates, and it further specifically “decline[d] to delegate additional authority to state commissions to set different utilization thresholds.”⁶¹

C. Utilization and Forecast Reporting. West Virginia seeks “authority to order mandatory number utilization reporting by all carriers.”⁶² This request must be denied. The Commission has explained in considerable detail the type of utilization and forecast data states may receive and the circumstances under which they can receive this data.⁶³

D. Reclamation. West Virginia’s request for reclamation authority is moot.⁶⁴ In its *First NRO Order*, the Commission specifically “grant[ed] authority to the state commis-

⁵⁸ *Second NRO Order* at ¶ 91.

⁵⁹ *See id.* at ¶ 87 and ¶ 92.

⁶⁰ West Virginia Petition at 6.

⁶¹ *Second NRO Order* at ¶ 23. The FCC did grandfather states that had already established such thresholds (*id.*), but this grandfathering provision obviously does not apply to West Virginia.

⁶² West Virginia Petition at 7.

⁶³ *See First NRO Order*, 15 FCC Rcd at 7605-09 ¶¶ 74-82; *Second NRO Order* at ¶¶ 116-23.

⁶⁴ *See* West Virginia Petition at 7-8.

sions to investigate and determine whether code holders have "activated" NXXs assigned to them within the time frames specified in this proceeding."⁶⁵

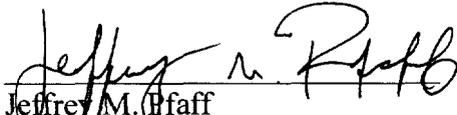
E. Sequential Numbering. West Virginia's request to assign numbers sequentially must be denied.⁶⁶ The Commission has already adopted sequential number assignment rules and as part of this order, withdrew the authority that certain states had been delegated prior to the release of the *First NRO Order*.⁶⁷

V. Conclusion

For all the foregoing reasons, the Commission should grant the Minnesota and Missouri petitions (with conditions), but deny the petitions filed by the other five state commissions. The Commission should further confirm that all rationing of numbering resources is unlawful.

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February 12, 2001

⁶⁵ *First NRO Order*, 15 FCC Rcd 7680 ¶ 237.

⁶⁶ See West Virginia Petition at 8.

⁶⁷ See *First NRO Order*, 15 FCC Rcd 7684-85 ¶¶ 244-46.

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 12th day of February 2001, I served a copy of the foregoing Sprint Comments by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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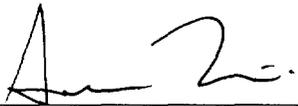
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Attachment A:

Sprint Strawman Proposal for the Roll Out of National Pooling

NPAC Region	Pre-2000	1Q00	2Q00	3Q00	4Q00	1Q01
Northeast	NY-212-NYC (2) NY-718-NYC (2)		NH-603 NY-716-Buffalo (44) ME-207-Portland	NY-516-Nassau (13) NY-518-Albany (64)	CT-860-Hartford (46)	<i>CT-203-New Haven (91)</i> <i>NY-315-Syracuse (69)</i>
Mid-Atlantic						
Southeast						<i>FL-904-Daytona Beach</i> <i>FL-561-West Palm Beach (62)</i>
Midwest	IL-847-Chicago (3) IL-312-Chicago (3) IL-630-Chicago (3) IL-773-Chicago (3)		IL-708-Chicago (3)			
Southwest			TX-512-Austin (74)			
Western						<i>NE-402-Omaha (75)</i> <i>UT-801-Salt Lake City (45)</i> <i>CO-303/720-Denver (26)</i>
West Coast		CA-310-Los Angeles (1)		CA-415-San Francisco (29) CA-714-Orange Co. (15)	CA-909-Riverside (10)	<i>CA-818-San Fernando</i>

Note: Sprint assumes the national plan will commence 1Q02, and its proposal begins with this quarter. If national plan begins 2Q02, entries would be postponed one quarter. Entries prior to 1Q01 or entries after this date and in italics are "interim" pooling trials commenced or scheduled. Entries are set forth with state, NPA and MSA (rank)

2Q01

NY-914-NYC (2)
NY-845-NYC (2)
NY-646-NYC (2)
NY-347-NYC (2)

PA-610/484-Philadelphia (4)

FL-904-Jacksonville (58)
FL-561-Fort Pierce
FL-954-Fort Lauderdale (39)

3Q01

CT-475-New Haven (91)

4Q01**1Q02**

MA-617/new overlay-Boston (9)
RI-401-Providence (47)

NJ-973-
PA-215/267-
MD-410-443-Baltimore (18)

LA-504-New Orleans (41)
NC-980/704 Raleigh (59)
KY-502-Louisville (57)

WI-414-Milwaukee (35)
OH-216-Cleveland (20)
MI-248-Detroit (6)

TX-713/281/832-Houston (7)
MO-314/new overlay-St. Louis (16)
KS-913-Kansas City (28)

MN-612-Minneapolis (12)
AZ-602-Phoenix (17)
OR-503/971-Portland (27)

NV-702-Las Vegas

2Q02

MA-781/new overlay-Boston (9)
VT-802-Burlington

NJ-732-
PA-412-Pittsburg (19)
VA-757-

AL-404-Atlanta (8)
FL-407/321-Orlando (40)
NC-919-Charlotte (43)

IN-317-Indianapolis (34)
OH-614-Columbus (38)
MI-810-Flint

TX-214/972/469-Dallas (11)
MO-816/new overlay-Kansas City (28)
KS-316-Wichita (97)

MN-651-Minneapolis (12)
AZ-480-Phoenix (17)
IA-515-Des Moines

NV-775-Reno

3Q02

MA-978/new overlay-Boston (9)
MA-413-Springfield (86)

NJ-201
PA-717-
MD-301/240-

AL-770-Atlanta (8)
FL-813-Tampa (23)
KY-565-Knoxville (70)

IL-815-Rockford
OH-513-Cincinnati (30)
MI-313-Detroit (6)

TX-210 San Antonio (37)
MO-636-St. Louis (16)
OK-405-Oklahoma City (55)

MN-763-Minneapolis (12)
AZ-623-Phoenix (17)
IA-319-Cedar Rapids

HI-808-Honolulu (65)

4Q02

MA-508/new overlay-Boston (9)

NJ-908-
PA-570-
VA-804-Richmond (63)

AL-678-Atlanta (8)
FL-727-St. Petersburg)
SC-803-Charleston (92)

IN-219-Fort Wayne
OH-330/235-Akron (80)
MI-734-Detroit (6)

TX-817/682-Fort Worth (33)
OK-918-Tulsa (70)
AR-501-Little Rock (90)

MN-952-Minneapolis (12)
AZ-520-Tucson (71)
CO-719-Colorado Springs

AK-907-Anchorage