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

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	CC Docket No. 96-98

COMMENTS OF AT&T CORP.

Howard J. Symons
Sara F. Leibman
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

Mark C. Rosenblum
AT&T Corp.
Room 1146M2
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-3539

James H. Bolin, Jr.
AT&T Broadband
188 Inverness Drive West
6th Floor
Englewood, CO 80112
(303) 858-3510

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

February 14, 2001

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 1

I. TRANSITIONAL OVERLAYS SHOULD BE PERMITTED ONLY SUBJECT TO THE SAFEGUARDS PROPOSED BY THE JOINT WIRELESS COMMENTERS 4

A. The JWC Transitional Overlay Proposal Is Not Unreasonably Discriminatory 5

B. Transitional Overlays Would Help Promote Efficient Number Use 7

II. WITHHOLDING NUMBERING RESOURCES AS A SANCTION SHOULD BE USED ONLY IN CASES OF EGREGIOUS OR REPEATED VIOLATIONS OF THE COMMISSION'S RULES 9

A. Denial of Numbers Can Be a Competitive "Death Sentence" 9

B. Liability for Reporting Violations Should Not Be Imposed on Related Carriers 10

III. STATE COMMISSIONS HAVE SUFFICIENT ACCESS TO REPORTED INFORMATION AND SHOULD NOT HAVE INDEPENDENT AUTHORITY TO AUDIT CARRIERS 12

A. State Commissions Already Have Electronic Access to Carrier Data 12

B. State Commissions Should Not Be Given Independent Authority To Conduct Audits 14

IV. THE COMMISSION SHOULD ESTABLISH A "SAFETY VALVE" FOR CARRIERS TO OBTAIN GROWTH NUMBERING RESOURCES 15

V. CARRIERS SHOULD BEAR THEIR OWN CARRIER-SPECIFIC POOLING COSTS 19

VI. THE COMMISSION SHOULD NOT PURSUE PROPOSALS TO CHARGE FOR NUMBERING RESOURCES 21

CONCLUSION 25

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

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	CC Docket No. 96-98

COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby submits its comments on the Second Further Notice of Proposed Rulemaking issued in the above-captioned proceeding.[1/]

INTRODUCTION AND SUMMARY

AT&T submits these comments to assist the Commission in establishing and implementing policies to help ensure that all carriers use numbering resources efficiently and consistently with the Commission's rules.

First, AT&T supports the proposal submitted by the Joint Wireless Commenters to permit states to use "phased-in" or transitional area code overlays as a temporary means of area code relief. To avoid problems of discrimination and inefficiency, however, such overlays should be implemented only subject to the conditions outlined in the proposal, and should survive only for a limited period before being opened to all code holders. In addition, the Commission should not

---

[1/] In the Matter of Numbering Resource Optimization, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 00-429, CC Docket No. 99-200 (rel. Dec. 29, 2000) ("Second NRO Order" and "Second NRO FNPRM").

permit states to take back numbers in the old NPA from carriers using the new code. While timely area code relief in the form an all-services overlay or geographic split is a far better solution to number exhaust, AT&T recognizes that the phased-in overlay approach may be the only way for non-pooling carriers to obtain sufficient numbering resources in some areas of the country.

Second, carriers must only be denied numbering resources in response to the most serious violations of the Commission's rules. The Commission should continue to rely generally on monetary forfeitures, and withhold numbers only on a case-by-case basis in egregious circumstances or in cases of repeated violations. In addition, imposing liability on carriers for affiliated carriers' non-compliance with reporting requirements is not necessary to encourage parent companies to take an active role in number conservation efforts. Carriers already have a strong incentive to avoid financial or reputational harm to any companies they control. Moreover, in light of the multitude of corporate structures that exist among telecommunications companies, it would be very difficult to implement a fair mechanism to withhold numbers from carriers for the reporting violations of their affiliates.

Third, the Commission should not pursue its proposal to provide state commissions with direct access to the database in which carriers' utilization and forecast information is stored. Under the Commission's newly adopted rules, states have more than adequate access to that data in electronic format (e-mail, diskette, or CD-ROM), and in light of carriers' legitimate confidentiality concerns, adoption of the Commission's proposal is wholly unwarranted. Moreover, if the Commission were to permit direct database access -- even if password-protected -- it would have to develop intricate security safeguards, which would unnecessarily raise

numbering administration compliance costs for both carriers and state commissions. Nor should the Commission delegate to state commissions the authority to conduct audits, as doing so would frustrate the goals of preserving carrier and agency resources and achieving uniform number administration standards.

Fourth, AT&T strongly supports the establishment of a safety valve mechanism for carriers to obtain growth numbering resources even if they are unable to meet the relevant utilization threshold in a given area. As a result of "lumpy" demand due to seasonal fluctuations, marketing efforts, and the launch of new markets where carriers often only hold a small inventory of numbers, there is a very real possibility that under a strict fill rate regime, a carrier would need to activate a new code before it reaches the utilization threshold. Carriers should not be required to seek emergency relief from the Commission, state commissions, or the North American Numbering Plan Administrator ("NANPA") on a case-by-case basis (which rarely could be acted on quickly enough) to be able to continue to serve customers.

Fifth, as AT&T has previously shown, carriers should bear their own carrier-specific pooling costs. The information provided by incumbent local exchange carriers ("ILECs") in response to the Commission's repeated requests in this docket for detailed cost information has been woefully inadequate to support the Commission's efforts to adopt a recovery mechanism. The ILECs' submissions, however, do make clear that they intend to attempt to recover substantial costs not properly attributable to pooling implementation. If the Commission nonetheless decides to create a cost recovery mechanism, it should not permit ILECs to shift their pooling costs to their competitors by adding them to access charges.

Sixth, AT&T opposes the adoption of any proposal that would impose a charge for numbering resources. Not only is the Commission's legal authority to do so dubious at best (as the vast majority of commenters in this docket agree), charging for numbers would frustrate the goals of the Telecommunications Act of 1996 ("Act") by raising prices and deterring competition.

AT&T commends the Commission for its continuing efforts to address the remaining issues in the NRO proceeding and urges the Commission to act quickly in resolving those issues. As the final steps of a national framework for the administration, enforcement, and pooling of numbering resources are put in place, the Commission will begin to see significant benefits in terms of optimization, and carriers will find it easier to obtain the numbers they need to provide service. Ultimately, consumers stand to gain the most through these measures because they will face fewer area code changes and enjoy broader choices in providers and services.

I. TRANSITIONAL OVERLAYS SHOULD BE PERMITTED ONLY SUBJECT TO THE SAFEGUARDS PROPOSED BY THE JOINT WIRELESS COMMENTERS

AT&T continues to believe, as the Commission has long recognized, that permanent service-specific and technology-specific overlays are anticompetitive and would be an inefficient use of numbering resources.[2/] Nevertheless, AT&T supports the transitional, or phased-in, overlay approach proposed by the Joint Wireless Commenters ("JWC")[3/] because it adequately addresses many of the competitive equity and efficiency issues associated with specialized overlays, and may prove to be the only way for non-pooling carriers to obtain numbering resources in some areas of the country. If adopted, however, transitional overlays should be

[2/] Second NRO FNPRM at ¶ 129.

implemented only subject to the conditions outlined in the JWC Proposal, including the limitation on the duration of the overlay and the prohibition on number "take backs." Although JWC's approach may help provide crucial resources to non-pooling carriers, if used incorrectly, it could seriously impair the ability of such carriers to compete.[4/]

A. The JWC Transitional Overlay Proposal Is Not Unreasonably Discriminatory

A transitional overlay such as that proposed by JWC does not raise the same discrimination concerns that are associated with permanent technology-specific overlays because non-pooling carriers would only be segregated from other carriers for a limited time and under certain delineated circumstances. Pursuant to the proposal, the NANPA would not be permitted to release codes from the new NPA until pooling has been implemented or is about to be implemented and the original code has a small number of full codes remaining.[5/] Furthermore, the transitional overlay would be open to all carriers once there were no NXX codes remaining in the original NPA or on November 24, 2002, whichever is sooner.[6/] By linking the overlay to pooling, the JWC Proposal would help ensure that non-pooling carriers would not be unnecessarily affected in areas where all carriers are seeking full NXX blocks. Similarly, by implementing transitional overlays only in NPAs that are at or near exhaust, the proposal would make numbers available to non-pooling providers where they need them most urgently, but would minimize the

---

[3/] See Letter from Judith St. Ledger-Roty and Todd D. Daubert, Kelley Drye & Warren, to Magalie Roman Salas, Secretary, FCC (November 15, 2000) ("JWC Proposal"); Second NRO FNPRM at ¶¶ 127-40 (discussing the JWC Proposal).

[4/] Second NRO FNPRM at ¶ 130.

[5/] Id. at ¶ 136.

[6/] Id.

length of their exclusion from an all-carrier NPA. As such, the potential for transitional overlays to have a negative effect on competition would be mitigated.

Most significantly, under the JWC Proposal, there would be no "take back" of numbers in the old NPA from carriers using the new code.[7/] The discriminatory and burdensome consequences of take backs are one of the key reasons the Commission has repeatedly rejected service-specific overlays.[8/] While any carrier would be affected adversely if its customers were forced to return their numbers, the wireless industry (which makes up the bulk of non-pooling carriers) would be especially hard hit by such a requirement. As the Commission has acknowledged, take backs require that wireless handsets be reprogrammed, a process that sometimes requires users to bring their phones to a particular location that possesses specialized equipment. The inconveniences caused by such a requirement, as well as the other necessary network and switch changes, would translate into huge costs for wireless carriers.[9/] Ultimately, the adverse impact of take backs on competition far outweighs any benefits to be gained.

AT&T does have some concerns that the JWC's proposal to grant a temporary waiver of the Commission's mandatory ten-digit dialing rule for NPA overlays could have anticompetitive consequences. Nevertheless, without such a waiver, many state commissions likely would choose not to implement transitional overlays. Although AT&T continues to support the Commission's longstanding finding that ten-digit dialing for areas subject to NPA overlays is essential to full and

---

[7/] Id. at ¶ 134.

[8/] Id.

[9/] The Commission has already recognized the inconveniences and costs associated with "take backs." See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596, 4608 ¶ 27 (1995).

fair competition, it believes that if all the safeguards set forth in the JWC Proposal are adopted, a temporary waiver of ten-digit dialing would be appropriate. The Commission should emphasize, however, that ten-digit dialing must commence promptly upon conversion to an all-services overlay and that requests for extensions of the waiver would not be regarded favorably.

B. Transitional Overlays Would Help Promote Efficient Number Use

Apart from discrimination, one of the major arguments against technology or service-specific overlays is that they can lead to inefficient use of numbering resources. In New York, for example, the only place where a technology-specific overlay has been implemented, the Public Service Commission determined that there were too many unassigned codes in the wireless-only NPA and not enough in the underlying area codes. Accordingly, eight years after the overlay was adopted, the New York Commission decided to open the wireless code to all carriers.[10/]

Because a transitional overlay is, by definition, limited in duration, it would not suffer from the inefficiencies that occurred in New York. In this regard, the JWC Proposal automatically allows all carriers to obtain numbers from the overlay code when the Pooling Administrator requires additional NXXs to meet the needs of the initial NPA's pool.[11/] Therefore, the proposal

---

[10/] NYPSC Case 98-C-1331, Joint Petition of Nextel Communications of Mid-Atlantic, Inc., Cellco Partnership d/b/a Bell Atlantic Mobile, Omnipoint Communications, Inc., Cellular Systems, Inc. d/b/a AT&T Wireless Services and AT&T Communications of New York, Inc. To Amend the Commission's Orders Issued July 1, 1991 in Case 90-C-0347 and December 10, 1997 in Case 96-C-1158, Order Granting Petition (Feb. 3, 1999).

[11/] Although AT&T has opposed in industry forums the use of separate NPAs on a long-term basis for certain types of services, it believes that the concept could have merit in particular circumstances. See Second NRO FNPRM at ¶ 142. Such an NPA might be feasible for some wireless devices that do not need to have phone numbers associated with a particular geographic location for rating purposes -- either because they receive few, if any, incoming calls, or because the incoming calls all originate from a single source. AT&T would support an industry effort to study the issues raised by such overlays, including ways to resolve potential rating and routing

would help equalize the supply and demand flow in both NPAs and ensure that pooling carriers have someplace to turn if and when their supply of numbers runs short.

Moreover, by limiting the implementation of transitional overlays to NPAs facing exhaust, the JWC Proposal would help extend the life of the North American Numbering Plan ("NANP"). In particular, the proposal would not permit states to establish new area codes except in circumstances in which the code is actually needed to serve the needs of non-pooling carriers' customers. Accordingly, concerns that overlays would be put in place prematurely -- possibly leading to sooner than anticipated NANP expansion -- would be reduced.

Transitional or phased-in overlays are not the optimal way to provide carriers with numbers. Despite all of the safeguards and limitations that the JWC has included in the proposal, there are still elements of transitional overlays that are discriminatory and could have an adverse effect on non-pooling carriers' ability to serve customers. Thus, AT&T hopes that when NPAs are near exhaust, most states will implement prompt area code relief in the form of an all-services overlay or a geographic split. Recently, however, AT&T has noted a growing reluctance on the part of states to adopt such relief, particularly in areas where the state believes that pooling might extend the life of the NPA. In such a case, the JWC Proposal would provide an adequate supply of numbers for non-pooling carriers (as states are required to do under the Commission's rules) while still giving pooling a chance to work for other carriers.[12/]

II. WITHHOLDING NUMBERING RESOURCES AS A SANCTION SHOULD BE USED ONLY IN CASES OF EGREGIOUS OR REPEATED VIOLATIONS OF THE COMMISSION'S RULES

problems, consumer acceptance of non-geographic numbers, and assessment of whether there is sufficient demand among such services to utilize a full NPA.

[12/] Second NRO Order at ¶¶ 61, 52.

A. Denial of Numbers Can Be a Competitive "Death Sentence"

The Commission should not underestimate the consequences of withholding numbers from carriers. Denying access to numbers is analogous to revoking a carrier's spectrum licenses, and would be unreasonable except in extreme cases or to punish repeat offenders. Moreover, preventing a carrier from offering service in a particular market by withholding numbering resources reduces competition, thereby undermining the main objective of the Telecommunications Act of 1996.

For these reasons, the Commission should continue to rely on monetary forfeitures as a general enforcement mechanism, and only deny access to numbers based on the individual facts of particular cases. In both the First NRO Order and the Second NRO Order, the Commission established strong auditing and reporting requirements, which will have strong deterrent effects and permit more certain detection of violations.[13/] Monetary sanctions provide powerful disincentives to "cheating," and carriers that do not respond to such penalties can be subjected to more drastic remedies in the case of egregious or repeated violations. The Commission should not limit its ability to consider mitigating factors or unique circumstances in particular cases by promulgating blanket rules that require it to punish a carrier by withholding numbering resources whenever an infraction is uncovered.

Further, most of the Commission's numbering requirements have only recently been adopted, and carriers are still modifying their systems and processes to accommodate the new

---

[13/] In the Matter of Numbering Resource Optimization, First Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104, CC Docket No. 99-200, ¶¶ 37-84 (rel. March 31, 2000) ("First NRO Order" and "NRO FNPRM"); Second NRO Order at ¶¶ 81-99.

regulations. During this transition period, there likely will be some inadvertent infractions of the Commission's rules. At a bare minimum, until carriers and the Commission become more familiar with the new numbering regime, withholding numbers should be a penalty reserved for serious violations.

B. Liability for Reporting Violations Should Not Be Imposed on Related Carriers

Contrary to the Commission's tentative conclusion that numbers should be withheld from carriers when "related carriers" commit violations of the Commission's reporting requirements, such action is not necessary to encourage parent companies to take an active role in number conservation efforts.[14/] The Commission's existing enforcement mechanisms already provide adequate incentives in this regard. It is plain that, even without an explicit mechanism to punish affiliates, parent companies would use their best efforts to avoid financial penalties or reputational harms to each and all of the companies they control.

Moreover, the Commission clearly lacks the resources to administer an affiliate liability rule in a fair and consistent manner. Different companies evolve different corporate structures, whether as a result of a conscious business strategy or of mergers and acquisitions. To take into account the myriad of operational models and reporting hierarchies that exist among the sophisticated, diversified companies that compete in the telecommunications marketplace, liability would have to be imposed on a case-by-case basis rather than in blanket fashion. It is not apparent, however, why it is necessary for the Commission to get involved in trying to untangle the web of companies that make up these corporations.

[14/] See Second NRO FNPRM at ¶¶ 149-50.

If the Commission nevertheless decides that it is appropriate to hold carriers responsible for the infractions of affiliates, it should assess in each case the extent to which a related carrier may be involved with an entity charged with the violation. If the violating entity's numbering activities were independent of the related carrier's operations, it would be fundamentally inequitable to hold that related carrier liable. Affiliated companies often have separate staff, systems, and operations. For example, AT&T's local exchange and wireless divisions administer numbering resources and prepare utilization and forecast reports independently of each other. In addition, other companies, while technically affiliates of AT&T under certain Commission rules, are not for any practical purposes controlled by AT&T.[15/] Punishing one for any violations committed by the other would do little to improve reporting accuracy or provide correct incentives in terms of adherence to the rules.

As a matter of legal principle, a corporation, absent strong evidence of concerted or egregious behavior, generally cannot be held liable for misconduct by its subsidiaries or other affiliated entities.[16/] Moreover, in determining the liability of a parent corporation for the acts of a subsidiary, courts look at many factors and make decisions on a case-by-case basis. Such factors include common management, common ownership, common financial control, interrelation of operations, and centralized control of operations.[17/] The Commission should likewise examine the

---

[15/] For instance, although AT&T Wireless holds up to a 20 percent interest in various entities and may have a seat on their boards of directors, those companies are operated -- for numbering administration and other purposes -- completely independently of AT&T Wireless.

[16/] See, e.g., Green v. William Mason & Co., 996 F. Supp. 394 (D.N.J. 1998); New York State Teamsters Conference Pension and Retirement Fund v. Hoh, 554 F. Supp. 519 (N.D.N.Y. 1982).

[17/] See, e.g., E.E.O.C. v. MCI Telecommunications Corp., 820 F. Supp. 300 (S.D. Tex. 1993); Lansford-Coaldale Joint Water Authority v. Tonolli Corp., 4 F.3d 1209 (3rd Cir. 1993); Frank v. U.S. West, Inc., 3 F.3d 1357 (10th Cir. 1993).

facts and circumstances of each case before imposing sanctions on entities related to a code holder that has violated reporting requirements.

III. STATE COMMISSIONS HAVE SUFFICIENT ACCESS TO REPORTED INFORMATION AND SHOULD NOT HAVE INDEPENDENT AUTHORITY TO AUDIT CARRIERS

A. State Commissions Already Have Electronic Access to Carrier Data

While it is important that state commissions be able to obtain reported utilization and forecast data easily, the Commission should weigh the legitimate confidentiality interests of carriers in considering the forms of access to those data that will be provided.[18/] The Commission has already adopted a requirement that the NANPA provide states, upon request, utilization and forecasting data electronically, including via secured e-mail or diskette.[19/] In the Second NRO FNPRM, the Commission seeks comment on whether it should require the NANPA to permit state commissions full password-protected access to the database where this information is stored.[20/] In AT&T's view, adoption of this new proposal would be neither necessary nor wise.

Supplying forecasting and utilization data electronically on diskette, CD-ROM, or secured e-mail, as the Commission's rules currently require, should be sufficient to meet the state commissions' requirements. These mechanisms permit data to be provided to state commissions virtually instantaneously (e-mail) or – at worst – via overnight mail (magnetic media). Permitting

---

[18/] The Commission has already recognized the importance of safeguarding the confidentiality of carriers' utilization and forecast data by protecting such information from public disclosure. See First NRO Order at ¶ 78.

[19/] Second NRO Order at ¶ 118.

[20/] Second NRO FNPRM at ¶151.

[21/] In addition, reconfiguring the NANPA database to store and release carrier information on a state-specific basis could be difficult and time-consuming.

direct access to a carrier's information would raise significant confidentiality and security issues, and should not be adopted absent a strong showing that it is the only means to satisfy state commissions' legitimate data needs.

If the Commission were to permit state commissions to obtain access the NANPA's database, it would have to establish what would necessarily be extensive and complicated rules to ensure the security and integrity of the information stored there. Such development would require the devotion of scarce agency resources, and would raise numbering administration compliance costs for the telecommunications industry, the states, and the NANPA.[21/] Merely specifying that access is to be password-protected plainly would not be adequate, as it would still be relatively simple for unauthorized users to obtain access. As the regular news reports of hacker attacks on even purportedly secure systems make clear, breaches occur in even the most carefully protected networks. Given the already adequate means for states to receive reporting data, there appears to be little reason for the Commission to use its resources to develop the security protocols required to implement direct database access.

B. State Commissions Should Not Be Given Independent Authority To Conduct Audits

In the Second NRO Order, the Commission established a comprehensive audit program that will verify carriers' compliance with industry numbering guidelines, as well as federal rules and orders.[22/] The Commission declined to give states authority to conduct independent audits, stating that the risks posed by disparate standards and insufficient resources were too great.[23/] As

---

[22/] Second NRO Order at ¶¶ 81-99.

[23/] Id. at ¶ 91.

the Commission notes, "one of [its] goals in adopting a national auditing framework is to prevent carriers from having to comply with differing demands in different states."[24/] There is no reason to revisit the Commission's well-reasoned conclusion.[25/]

Even without the authority to conduct independent audits, state commissions remain an integral component of the audit process. Under the Commission's newly adopted regime, a state commission can ask the Commission to conduct an audit based on the state commission's review of a carrier's utilization and forecasting data or if it has reason to believe a carrier has violated the Commission's rules or applicable industry guidelines.[26/] States also may participate on the Commission's audit teams subject to the federal rules and confidentiality policies.[27/] In addition, states retain the authority to perform their own audits under any pertinent state law provisions.[28/]

The Commission and state commissions have the same objective in conducting audits: to determine if carriers are using numbers properly and if carriers have violated the Commission's rules and industry guidelines. There is accordingly no reason to empower more than one body to launch an audit investigation to reach that uniform goal. It is, moreover, clear that permitting more than fifty different regulatory bodies to interpret the Commission's numbering requirements and apply them in the course of an audit inevitably would lead to widely varying standards and enforcement practices -- an outcome the Commission has expressly sought to avoid by

---

[24/] Id.

[25/] Second NRO FNRPM at ¶ 155.

[26/] Second NRO Order at ¶ 86.

[27/] Id. at ¶ 92, n. 250.

[28/] Second NRO Order at ¶ 91.

promulgating rules and procedures intended to promote Congress's goal of a uniform national numbering system.[29/]

IV. THE COMMISSION SHOULD ESTABLISH A "SAFETY VALVE" FOR CARRIERS TO OBTAIN GROWTH NUMBERING RESOURCES

As the Commission recognized when it implemented a utilization threshold for carriers seeking to obtain "growth" numbering resources, there will be times when a carrier will need numbering resources to continue to serve customers, but will be unable to meet the required threshold.[30/] This is especially the case given the Commission's decision to base utilization solely on "assigned" numbers. As AT&T has explained previously (and no party has refuted), under this formulation, 10 to 15 percent of a carrier's numbers are actually unavailable for assignment to customers at any given time even though they are not "assigned" as that term is defined in the Commission's rules.[31/] AT&T, therefore, strongly supports adoption of a "safety valve" that would allow carriers to obtain a growth code if they can demonstrate that they will run out of numbers in less than six months or that additional resources are needed to meet a documented customer request, regardless of the threshold.

There are many reasons why a carrier may need additional numbers before it satisfies the utilization threshold. Most carriers, especially wireless providers, have seasonal fluctuations, particularly around certain holidays. In addition, a company's marketing, advertising, and promotional efforts can create surges in demand. Moreover, once a carrier reaches the threshold in recently launched markets, where its inventory of numbers is necessarily small, it may not have

---

[29/] See 47 U.S.C. § 251(e).

[30/] Second NRO FNPRM at ¶ 188.

[31/] AT&T Comments on NRO FNPRM at 4, 6.

a sufficient supply of numbers to last the months it takes to acquire and activate a code (especially if rationing is in place).[32/]

The Commission itself has acknowledged that fill rate requirements may interfere with carriers' ability to meet customers' demands for services,[33/] and therefore has admonished the states that their utilization rates should not be applied to "deprive customers of their choice of carriers from whom to purchase service upon request."[34/] This concern is equally relevant to the ability of carriers to obtain resources under the national utilization threshold. An explicit safety valve mechanism would provide needed guidance to carriers and eliminate the need for them to make emergency requests to the Commission, the NANPA, or state commissions. Relying on emergency petitions is an unreliable means to obtain numbers and it unnecessarily drains regulators' and carriers' resources. For this reason, many parties, including state commissions, incumbents, and competitive carriers have recommended that the Commission adopt some sort of exception to the utilization threshold apart from the general waiver process.[35/] The Commission would be able to monitor carriers' use of a safety valve and protect against its abuse through its audit mechanisms and reporting requirements.[36/]

[32/] By way of example, if a carrier launches a new market with 20,000 numbers and is activating customers at a rate of 5000 per month, the carrier will not meet the 60 percent utilization threshold until the middle of month three. At that point, it only has approximately a one-month supply of numbers left (assuming 10-15 percent of the inventory is unavailable for assignment). This is not enough time to obtain and activate a new code in the Local Exchange Routing Guide.

[33/] See New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, 14 FCC Rcd 17467, 17479 ¶ 26 (1999).

[34/] Id.

[35/] Second NRO FNRPM at n. 404.

[36/] Second NRO Order at ¶¶ 81-99.

An exception to utilization or other numbering-related thresholds is not a new idea. States such as Illinois, Maine, and Massachusetts, which have adopted utilization thresholds, have recognized the potential adverse consequences of the mechanism and therefore have established explicit safety valves based on forecasted demand.[37/] In addition, the Commission itself has created a needs-based exception for specific customer requests in its sequential numbering requirements.[38/] Rather than create a patchwork of thresholds and associated safety valves, the Commission should adopt an explicit safety valve procedure that will apply equally to all carriers in all areas of the country.

In crafting the safety valve, AT&T proposes that the Commission apply the utilization threshold in conjunction with a months-to-exhaust calculation. Specifically, a carrier would be permitted to obtain growth numbering resources for a given rate center only when it meets the relevant utilization threshold in a particular rate center or can demonstrate a bona fide need for

---

[37/] See 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) (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.") ("Illinois Order"); Letter from the Massachusetts Department of Telecommunications and Energy to Massachusetts LNP and Wireless Carriers, D.T.E. 99-99 (Jan. 27, 2000); Investigation Into Area Code Relief, Order, Docket 98-634, Maine Public Utilities Commission (Nov. 4, 1999).

[38/] First NRO Order at ¶ 245 (permitting a provider to open clean blocks prior to fully utilizing previously-opened blocks when it can demonstrate "(1) a genuine request from a customer detailing the specific need for telephone numbers; (2) the inability on the part of the carriers to meet the specific customer request for telephone numbers from the surplus of numbers within the carrier's currently activated thousands-block.").

numbering resources. Under this approach, a carrier will be deemed to have demonstrated a bona fide need if its Months-to-Exhaust Worksheet projects that its available numbers in the rate center will exhaust within 90 days or less,[39/] and (1) its average projected monthly activation rate is within 15 percent of its historical activation rate; or (2) it provides other credible evidence to the NANPA to support a higher projected activation rate.[40/]

AT&T's proposal creates an objective test that is easy for the NANPA to administer. Instead of relying on carriers' own forecasts, the safety valve mechanism would require carriers to support their assertions with historical activation rates or other verifiable evidence. In cases in which the carrier's need for numbers is not clear, the NANPA could deny the request and the carrier would have the right to appeal to the state commission or the Commission. Under a utilization threshold regime, establishment of an explicit safety valve is the most reasonable and efficient means to ensure that all carriers have fair access to numbering resources. The Commission should put this process into place as soon as possible.

V. CARRIERS SHOULD BEAR THEIR OWN CARRIER-SPECIFIC POOLING COSTS

In the First NRO Order, the Commission did not establish a cost recovery mechanism for the carrier-specific costs of pooling because, despite a request for "detailed estimates" of the

---

[39/] Illinois provides an exception to the 75 percent fill rate requirement when the applicant certifies to the number administrator that it will have a bona fide need to use numbers from a new NXX code for growth within 90 days, even though its existing NXX codes are not yet 75 percent utilized. See Illinois Order at 24.

[40/] These requirements represent AT&T's attempt to flesh out the Illinois exception, and to create a test that is more objective, and thus easier for the NANPA to administer. The 15 percent requirement is modeled after the procedures in effect in the 516 NPA. See Reconsideration of the 516 NPA Rationing Plan, May 10, 1999, Attachment 2, Industry Consensus for the Distribution of Codes Remaining in NPA 516.

relevant costs, "the record did not contain adequate information regarding the range and magnitude of incremental thousands-block number pooling costs."[41/] Therefore, in the NRO FNPRM, the Commission again asked for additional cost information, "including cost studies that take into account cost savings associated with thousands-block number pooling in comparison to the current numbering practices."[42/]

Notwithstanding these repeated requests, the ILECs have thus far declined to provide the cost studies sought by the Commission. Instead, they have submitted unsupported cost estimates, which are riddled with errors, openly flaunt the standards adopted in the First NRO Order, and demonstrate that they intend to recover costs far in excess of those properly attributable to the implementation of number pooling.[43/]

The Commission agrees that "the amount and detail of the data provided in response to [its] request in the [NRO FNPRM] is insufficient for [it] to determine the amount and/or magnitude of the costs associated with thousands-block number pooling."[44/] Rather than take from this ILEC reticence, however, the obvious message that no defensible studies could possibly support the ILECs' bloated claims, the Commission has, for a third time, asked for information that quantifies the costs of number pooling.[45/] AT&T reiterates that a far better approach would be to require all carriers to bear their own pooling-related costs. Such an approach would be

---

[41/] Second NRO FNPRM at ¶¶ 179-180.

[42/] Id. at ¶ 180.

[43/] See AT&T Reply Comments on NRO FNPRM at 3-4 (filed June 9, 2000).

[44/] Second NRO FNPRM at ¶ 182.

[45/] Id.

competitively neutral, preserve agency resources, and encourage carriers to spend efficiently. Consumers would benefit from a policy that promotes cost control because, in the end, they are the parties that will bear the costs of pooling through increased end user rates or surcharges.

If the Commission nonetheless decides to create a pooling cost recovery mechanism, it should not permit those costs to be added to access charges. The Commission squarely rejected the use of access charges to recover local number portability costs, and suggested that doing so would not be competitively neutral.[46/] Placing pooling costs in access charges would force long distance carriers to "pay twice;" first, by covering their own pooling expenses and, second, by absorbing a substantial portion of ILECs' costs. The unfairness of such a regime is readily apparent, as it would put both traditional long distance carriers and competitive local exchange carriers ("CLECs") at a wholly unwarranted competitive disadvantage.

VI. THE COMMISSION SHOULD NOT PURSUE PROPOSALS TO CHARGE FOR NUMBERING RESOURCES

On two prior occasions in this docket the Commission sought comment on a proposal to charge for numbering resources. On both occasions, virtually all commenters, including ILECs, CLECs, wireless providers, long distance providers, and state commissions,[47/] opposed the

---

[46/] Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11701, 11773 ¶ 135 (1998) ("Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so.").

[47/] See, e.g., Ameritech Comments at 54 (filed July 30, 1999); Bell Atlantic Comments at 37 (filed July 30, 1999); USTA Comments at 12-13 (filed July 30, 1999); SBC Comments at 109-116 (filed July 30, 1999); MCI WorldCom Comments at 48 (filed July 30, 1999); ALTS Comments at 27 (filed July 30, 1999); NEXTLINK Comments at 21 (filed July 30, 1999); Airtouch Comments at 24-25 (filed July 30, 1999); California Commission Comments at 37(filed July 30, 1999); North Carolina Utility Commission Comments at 17 (filed July 30, 1999); Maine

Commission's plan.[48/] In light of the overwhelming and continued objection on the record to the sale of numbers, it is unclear why the Commission feels it should again seek comments on this subject.

As a threshold matter, AT&T and other parties have previously shown that the Commission's authority to require carriers to pay for numbering resources is dubious at best.[49/] In contrast to Congress's clear grant of jurisdiction to the Commission to auction spectrum licenses, Section 251(e)(1) of the Act only gives the Commission the power to administer numbering resources. The Act contains no grant of power to sell numbers.[50/] Absent statutory authority, the Commission cannot legally implement the various proposals in the Second NRO FNPRM for the sale of numbering resources.

If despite the stark lack of support for its proposal in the record, as well as its questionable legality, the Commission believes it should seriously consider charging for numbers, it should

---

Commission Comments at 27 (filed July 30, 1999); see also Above Parties Reply Comments (filed August 30, 1999), Above Parties Comments on NRO FNPRM (filed May 19, 2000); Above Parties Reply Comments on NRO FNPRM (filed June 9, 2000).

[48/] Of the four commenters cited in the Second NRO FNPRM (¶ 168) as supporting charging for numbers, three question the Commission's ability or authority to take such steps, or the necessity of doing so. See California Commission Comments at 37 (filed July 30, 1999) (stating that the Commission's authority is "questionable"); New Hampshire Commission Comments at 13 (filed Aug. 30, 1999) (finding that the Commission's premise is not accurate); Texas Commission Comments at 30 (filed Aug. 6, 1999) (urging the Commission to focus on other conservation measures).

[49/] See AT&T Comments at 61-62 (filed July 30, 1999); AT&T Comments on NRO FNPRM at 10-11 (filed May 19, 2000); AT&T Reply Comments on NRO FNPRM at 21 (filed June 9, 2000). See also e.g., California Commission Comments at 37 (filed July 30, 1999); Airtouch Comments at 24-25 (filed July 30, 1999); NEXTLINK Comments at 21 (filed July 30, 1999); Ameritech Comments at 54 (filed July 30, 1999); Bell Atlantic Comments at 34 (filed July 30, 1999).

[50/] 47 U.S.C. § 251(e)(1).

recognize that doing so would almost certainly lead to higher costs for telecommunications end users. Carriers would have the right to pass through any "numbering charges" to their customers via a line-item on customer bills.[51/] And, as telecommunications markets become increasingly competitive, carriers would have little choice but to recover their costs from consumers, rather than seeking to offset increased costs for one service with higher charges for other, less competitive offerings.[52/] Even absent an explicit line-item, end users' bills would increase if the Commission pursued its sale proposal because carriers must somehow accommodate the added costs such a measure would impose. Given recent history, it is not hard to predict how end users would react to rising telecommunications costs resulting from government action.

Moreover, it is not clear how the Commission could design a system to charge for numbers that is competitively neutral. Charging only new entrants, or even charging solely for "new" numbers, would be fundamentally inequitable and unreasonable. Such a practice would force those consumers who get new lines or move to a new home to subsidize the numbering-related cost of those with previously existing service. That result would be patently arbitrary, as new lines do not contribute any more to numbering exhaust than existing ones.[53/]

Additionally, charging only for the acquisition of new numbering resources would advantage ILECs, which benefit both from their ability to obtain significant quantities of numbers

---

[51/] The Commission previously found that carriers may recover their universal service contributions through end-user surcharges. See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9211-12 ¶ 855 (1997).

[52/] In permitting carriers to recoup their universal service costs, the Commission noted that it was giving carriers flexibility to recover their costs so that carriers could offer bundled services and new pricing options. See id. at ¶ 853.

[53/] See Petroleum Communications, Inc. v. FCC, 22 F.3d 1164, 1173 (D.C. Cir. 1994) ("[A]n agency must provide adequate explanation before it treats similarly situated parties differently.").

due to customer "churn," and from their stores of "warehoused" numbers.[54/] ILECs currently control the vast majority of assigned numbers, and in order to ensure competitive neutrality -- or even that a policy of charging for numbers was rationally related to its goals -- the Commission would have to ensure that ILECs pay for their existing number inventories.[55/]

Finally, it would be unreasonable and potentially anticompetitive to penalize carriers for using "extra" numbers if the competitive bidding system obligated them to buy in larger blocks than necessary to serve their needs. Under such a system, for example, carriers who might need only a portion of a thousands block, would pay more on a per-number basis than those who can make use of a full block. A block-based competitive bidding system, therefore, might impose an artificial unit cost disadvantage on certain carriers, to the detriment of competition.

[54/] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392, 19519 ¶ 289 (1996) ("Incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA. Incumbents also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers.").

[55/] The Commission has repeatedly made clear that numbers are a public resource and that no carrier or user has a proprietary interest in them. "[C]arriers do not 'own' codes or numbers but rather administer their distribution for the efficient operation of the public switched telephone network." See The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5572, 5612 ¶ 71 (1997).

CONCLUSION

AT&T urges the Commission to act on the issues raised in the Second NRO FNPRM consistently with the above comments.

Respectfully submitted,

AT&T CORP.

/s/ James H. Bolin, Jr.

Mark C. Rosenblum
AT&T Corp.
Room 1146M2
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-3539

James H. Bolin, Jr.
AT&T Broadband
188 Inverness Drive West
6th Floor
Englewood, CO 80112
(303) 858-3510

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 223-9222

Howard J. Symons
Sara F. Leibman
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

February 14, 2001

CERTIFICATE OF SERVICE

I, Angela Collins, hereby certify that on this 14th day of February, 2001, copies of the foregoing Comments of AT&T Corp. were sent via hand delivery to the following:

ITS
445 12th Street, S.W.
Washington, D.C. 20554

Public Reference Room
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Diane Cornell, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C220
Washington, D.C. 20554

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C252
Washington, D.C. 20554

Kelly Quinn, Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C224
Washington, D.C. 20554

Peter A. Tenhula
Office of Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Kathleen O'Brien Ham, Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C255
Washington, D.C. 20554

Bryan Tramont
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Jim Schlichting, Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C254
Washington, D.C. 20554

Adam Krinsky
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Mark Schneider
Office of Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Jordan Goldstein
Office of Commissioner Susan Ness
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Sarah Whitesell
Office of Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Yog Varma, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals - 5-C352
445 12th Street, S.W.
Washington, D.C. 20554

Robert C. Atkinson, Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals - 5-C356
445 12th Street, S.W.
Washington, D.C. 20554

Kyle Dixon
Office of Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rebecca Beynon
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dorothy Atwood, Chief
Common Carrier Bureau
Federal Communications Commission
The Portals - 5-C450
445 12th Street, S.W.
Washington, D.C. 20554

Al McCloud
Network Services Division
Common Carrier Bureau
The Portals - 6-A423
445 12th Street, S.W.
Washington, D.C. 20554

Patrick Forster
Network Services Division
Common Carrier Bureau
The Portals - 6-A461
445 12th Street, S.W.
Washington, D.C. 20554

Jeannie Grimes
Network Services Division
Common Carrier Bureau
Federal Communications Commission
The Portals - 6-A401
445 12th Street, S.W.
Washington, D.C. 20554

Tejal Mehta, Legal Advisor
Common Carrier Bureau
Federal Communications Commission
The Portals - 6-A431
445 12th Street, S.W.
Washington, D.C. 20554

/s/ Angela Collins
Angela Collins