

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEB 14 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)
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. 99-200
CC Docket No. 96-98

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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SUMMARY

Throughout the Numbering Optimization proceeding, CTIA has consistently supported the Commission's efforts to reduce the inefficient use of numbering resources. In its comments, CTIA again supports the Commission's efforts, where those efforts will lead to tangible benefits in numbering administration in a non-discriminatory fashion.

In the Further Notice of Proposed Rulemaking, the Commission proposes to take additional steps to develop strategies that ensure that numbering resources are used efficiently, that all carriers have access to necessary numbering resources to compete in today's competitive telecommunications market, and that ultimately lead to the preservation of the North American Numbering Plan. In these comments, CTIA:

- supports the establishment of a "safety valve" to ensure that carriers can obtain, in a timely fashion, additional numbering resources as a result of unforeseen circumstances;
- supports transitional, technology-specific area code overlays that are implemented in a non-discriminatory manner;
- opposes a market-based numbering allocation system due to the Commission's lack of authority to implement such a system and the anti-competitive effects that such a scheme could have on CMRS;
- opposes permitting states to conduct independent carrier audits that would create unnecessary burdens on carriers and state commissions with no appreciable benefits; and
- demonstrates that there is no basis to hold parent and affiliate companies liable for the actions of related companies, and that imposing such vicarious liability would create administrative burdens without producing any benefits.

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**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its
Comments in response to the above captioned proceeding.²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Numbering Resource Optimization, 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. 99-200 and CC Docket No. 96-98, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, FCC 00-429 (rel. Dec. 29, 2000) ("Second Report and Order" or "FNPRM").

I. INTRODUCTION

CTIA continues to support the Commission's efforts to implement efficient, competitively neutral numbering conservation measures. In the Second Report and Order, the Commission took further steps to prolong the life of the North American Numbering Plan in a manner that ensures "that all carriers have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace."³ In the FNPRM, the Commission proposes continued examination of additional conservation measures, and accordingly has sought further comment on several important proposals, including implementation of a "safety valve," the use of technology or service-specific area code overlays, state commissions' audit authority, the use of a market-based numbering allocation system, and whether affiliates should be held liable for actions of related companies.

As the Commission has recognized on several occasions, consumers should never be "foreclosed from exercising their choice of carrier because that carrier does not have access to numbering resources."⁴ Implementation of a workable safety valve measure is an important step in ensuring that additional numbering resources are readily available to carriers that may need numbers due to unique, unforeseen, or emergency circumstances. Although all carriers should be required to meet the utilization threshold before obtaining additional blocks of numbers, the Commission should establish a mechanism that addresses those situations where a carrier has not yet met the threshold, but requires additional numbers to meet consumer demand. A safety valve provides a sensible, efficient means of addressing such situations.

³ Id. ¶ 1.

⁴ Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, ¶ 171 (2000).

In the FNPRM, the Commission also seeks to re-examine its current prohibition on service-specific and technology-specific area code overlays. CTIA has consistently opposed these types of overlays due to the discriminatory effect of previous proposals. The transitional technology or service-specific overlays proposed in the FNPRM, however, may produce beneficial results for number conservation, states, and carriers. Thus, to the extent that such overlays would be implemented on a transitional basis, and would be subject to certain other conditions, their discriminatory effects may be offset by the gains realized through efficient numbering administration. CTIA continues to insist, however, on a measure that would provide a reliable source of numbering resources on a competitively neutral basis.

Furthermore, some of the Commission's proposals in the FNPRM will not further the goals of both promoting more efficient use of numbers and ensuring that carriers have an adequate supply of numbers available to compete in the telecommunications marketplace. Permitting state commissions to conduct independent carrier audits, for example, would not only be duplicative of the newly established federal audit program, but would put an unnecessary strain on state and carrier resources, and possibly require carriers to meet varying standards. Likewise, establishing a market-based number allocation system would have a disproportionately detrimental effect on consumption of CMRS services. More to the point, the Commission does not possess the requisite authority to implement such a system, absent an explicit grant of authority from Congress. Finally, the Commission should not hold parent or affiliate companies liable for the actions of related carriers, as proposed in the FNPRM. There is no evidence that carriers will create new corporate structures or abuse existing ones for the purpose of avoiding compliance with the Commission's numbering rules, and no public policy reason for the

Commission to pierce the corporate veil and impose such vicarious liability on affiliated companies.

II. THE SUGGESTED SAFETY VALVE SHOULD APPLY TO A BROAD SET OF CIRCUMSTANCES.

In the FNPRM, the Commission acknowledges that under certain conditions, carriers may not be able to meet the utilization threshold in a particular rate center, but may actually need additional numbering resources.⁵ This may occur, for example, due to a specific customer request for a large block of numbers, or a sudden increase in new business that the carrier's existing numbering supplies cannot accommodate.⁶ To ensure that carriers can obtain additional numbering resources in these and other circumstances and continue to provide service, the Commission should create a "safety valve" separate from the general waiver process already in use. Such a measure will ensure that carriers that use numbers efficiently will not be penalized when unique circumstances arise, and will reduce incentives for carriers to independently develop strategies to address unforeseen circumstances.

The Commission should institute a safety valve that applies to any "unforeseeable circumstance" in which carriers below the utilization threshold require numbering resources. The Commission should not attempt to narrowly define or specifically name those events that might trigger the safety valve, but rather should broadly define and interpret "unforeseeable circumstances" to include any circumstance or event for which a carrier's existing supply of

⁵ FNPRM ¶ 186.

⁶ For instance, it is well documented that the overwhelming success of nationwide, single-rate calling plans for CMRS has at times strained carrier resources, including the availability of sufficient quantities of numbers to meet consumer demand. Obviously, the Commission does not intend its number conservation measures to hinder the introduction of new services and new technologies.

numbers is insufficient. In addition to times when customers unexpectedly request a large block of numbers, “unforeseeable circumstances” also may include situations in which the state has not implemented area code relief in a timely fashion, thereby making it difficult for carriers to obtain additional numbering resources on an expedited basis. In sum, the Commission should establish a mechanism whereby carriers can obtain additional numbering resources upon a persuasive showing to NANPA of an unforeseen or unique need for numbers.

The Commission should give NANPA the authority to evaluate carriers’ showings of a need for numbers and allocate additional resources if the showing is persuasive. This delegation of authority to NANPA would eliminate the need for carriers to employ the lengthy process of applying to the Commission for a waiver and will shorten the steps needed to complete the distribution of numbers on an expedited basis. By delegating this authority to NANPA, rather than state commissions, the Commission will ensure that the safety valve measure is implemented on a consistent and nationwide basis, without the bureaucratic delays inherent in the state processes.

Moreover, a safety valve measure would further the Commission’s goals of conserving numbering resources, and allocating numbering resources in an efficient and neutral manner that continues to promote competition. Since the safety valve measure would only be triggered in unique situations, carriers would still be required to routinely meet the utilization threshold to obtain additional numbering resources. Thus, as a practical matter, carriers would need to conserve numbers and use existing numbering resources more efficiently in order to produce adequate utilization rates -- carriers should not be permitted to consistently use the safety valve measure as a means of avoiding their obligation to meet the utilization rate. Implementation of the safety valve would ensure, however, that carriers who are utilizing numbers efficiently do not

have to pay the ultimate price for their efforts -- loss of customers because of the Commission's regulations. Stated differently, carriers will be more likely to conserve if they can be sure that resources will be rapidly available when needed in the future. Ultimately, the safety valve measure will ensure that carriers are able to continue to provide service in the competitive market while efficiently using all numbering resources.

III. THE COMMISSION SHOULD NOT PERMIT TECHNOLOGY-SPECIFIC OVERLAYS THAT ARE IMPLEMENTED IN A DISCRIMINATORY MANNER.

The wireless industry has long recognized that technology-specific overlays can be implemented in a discriminatory manner and adversely affect competition. CTIA, therefore, has consistently opposed state requests and Commission proposals to implement technology or service-specific overlays as a numbering conservation measure because of the discriminatory effects of such overlays and their questionable benefits to numbering conservation.⁷ Thus, to the extent that the Commission would permit states to implement discriminatory technology-specific overlays, CTIA continues to object to such a proposal. The Commission has proposed to revisit the issue of technology-specific overlays, however, because of their possible benefits to number resource conservation efforts. To that end, if the implementation of technology-specific area code overlays can be achieved in a nondiscriminatory manner that maximizes the life of existing codes and delays NANP exhaust, such a course of action warrants further investigation and development.

In the FNPRM, the Commission requested comment on the proposal to allow states to implement transitional technology-specific overlays rather than permanent technology-specific

⁷ See, e.g., Numbering Resource Optimization, CC Docket No. 99-200, CTIA Comments at 33 (filed July 30, 1999).

area codes.⁸ If used as a transitional measure, technology-specific overlays could produce a “win-win” situation for number conservation efforts and for carriers -- the overlays will help states prolong the life of existing NPAs and provide carriers with readily available numbering resources while limiting the anti-competitive effects that result from permanent technology-specific overlays. Accordingly, states should be permitted to implement transitional technology-specific overlays that are distinguished by pooling capable and non-pooling capable carriers, subject to certain conditions.

First, a transitional technology-specific overlay should be implemented only over NPAs in jeopardy of exhaust, and permitted only if pooling is either currently available in the existing area code, or will be available when the overlay code would be activated. Under the proposal, non-pooling carriers would move first to a new NPA followed by pooling carriers once the existing code exhausts. This would reduce the number of carriers requiring resources from a code that is in jeopardy of exhaust. Requiring those carriers who are unable to pool to move to the new code first also will be a more effective means of prolonging the life of the existing NPA. When the original NPA exhausts, however, both codes should be opened to pooling and non-pooling carriers alike. By making the technology-specific overlay a temporary, transitional measure, the Commission can limit the discriminatory effect of the technology-specific area code. To make the transition from a non-pooling overlay to an all services overlay as smooth as possible and ensure that pooling carriers can use NXX codes from the overlay code, the Commission should also require that the geographic boundaries of the transitional technology-specific overlay be the same as the original NPA.

⁸ FNPRM ¶ 132.

Third, consistent with the Commission's proposal, transitional technology-specific overlays must be established only on a prospective basis with no mandatory "take-backs" of numbers from customers of carriers assigned to legacy codes.⁹ Allowing states to require current customers to change their telephone numbers to conform with the new technology-specific area code would seriously harm consumers of those carriers using the new area code and undermine the implementation of competitively neutral numbering conservation measures. The Commission has previously rejected this proposal and should do so again now.¹⁰

The Commission has proposed to permit states to temporarily waive mandatory ten-digit dialing requirements in the existing overlay when implementing transitional non-pooling overlays to encourage states to take advantage of the benefits that area code overlays may provide. Because the waiver will be temporary (though it should be unnecessary), the anti-competitive impact on carriers using the overlay will be mitigated to some extent. Ten-digit dialing, however, must become mandatory when the first pooling capable carrier receives an NXX code from the later adopted technology-specific code.

Finally, if the Commission permits states to use transitional technology-specific overlays as an additional number conservation measure, the Commission also should require states to provide a reliable source of numbers for all carriers. States should be required to end rationing in the existing or technology-specific area code upon the release of codes in the technology-specific

⁹ Id. ¶ 134.

¹⁰ See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596, ¶¶ 20, 37 (1995). The Commission reiterates the problems with a "take-back" in the FNPRM, agreeing with many parties who have demonstrated that take-backs "impose a disparate impact on customers of the services affected by the 'take-back' and ... thus adversely affect[s] competition." FNPRM ¶ 134.

overlay. As the Commission has recognized, certain carriers, such as CMRS carriers, “are often hardest hit by restrictive numbering rationing measures.”¹¹ Implementing technology-specific overlays should lessen the need for states to continue to use rationing measures and allow CMRS carriers, which have experienced a higher demand for numbers because of the growth of the mobile wireless industry, to obtain numbers needed to provide service to the public.

IV. THE COMMISSION DOES NOT HAVE THE AUTHORITY TO ESTABLISH A MARKET-BASED NUMBER ALLOCATION SYSTEM, NOR SHOULD IT.

The Commission requested additional comment on its proposal to establish a market-based allocation number system, and on its statutory authority to establish such a system. The overwhelming majority of carriers agree that the Commission lacks the authority either to auction numbers or to charge carriers market-based fees for numbering resources. Even if the Commission could establish such a system, however, doing so could suppress demand for certain services, and prove particularly detrimental to services with relatively elastic demand, such as CMRS.

A. Absent An Express Act Of Congress, The Commission Lacks The Statutory Authority To Auction Or Charge Fees For Telephone Numbers.

Federal law makes clear that presently the Commission lacks the authority to charge market-based fees for numbering resources. Similar to the statutory authority given to the Commission to charge regulatory and application fees, the Commission would require an act of Congress granting it express authority to establish a market-based system for number allocation. Without such congressional authorization, the Commission cannot charge fees based upon the market value of numbering resources.

¹¹ Id. ¶ 130 n.335.

Absent a statutory provision explicitly granting the Commission authority to charge a particular fee, the Commission's ability to impose fees on regulated entities is governed by the Independent Offices Appropriations Act ("IOAA").¹² Under the IOAA, the Commission may charge fees "for a service or thing of value provided by the agency."¹³ However, the Act expressly limits the Commission's authority to set such charges by requiring each charge to be based upon the Commission's administrative costs. Courts have interpreted the IOAA as permitting the Commission to assess fees based upon expenses the Commission incurs and the value conferred upon the licensee, but "[e]xpenses incurred to serve some *independent* public interest cannot ... be included in the cost basis for a fee" charged by the Commission.¹⁴ For instance, the Commission may only charge licensees "for those expenses which are necessary to [provide the] service" to the licensee.¹⁵ Thus, absent express statutory authority expanding the Commission's powers, the Commission does not have the authority to charge a fee based upon the market value of numbers for the independent policy purpose of encouraging more efficient use of numbers. Any such scheme to auction or charge fees for numbers would violate the IOAA.

Moreover, although Section 251(e) gives the Commission plenary authority over the administration of numbers, it does not provide an independent source of authority to auction or

¹² 31 U.S.C. § 9701(b).

¹³ Id.

¹⁴ Elec. Indus. Ass'n v. FCC, 554 F.2d 1109, 1115 (D.C. Cir., 1976); see also NCTA v. United States, 415 U.S. 336 (1974); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976); NAB v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); NCTA v. FCC, 554 F.2d 1094 (D.C. Cir. 1976).

¹⁵ Elec. Indus. Ass'n, 554 F.2d at 1115.

otherwise charge market-based fees for numbering resources. Section 251(e) addresses only the Commission's authority to charge carriers, on a competitively neutral basis, for the costs "of establishing telecommunications numbering administration arrangements and number portability."¹⁶ Thus, the Act permits the Commission to impose an administrative fee upon carriers to recover the Commission's costs of administering numbers, if such a fee were necessary.¹⁷ The Commission should recognize, however, as it has recognized in other proceedings, that Congress did not grant or intend to grant the Commission the express authority to charge fees for numbers based on the market value of the resource.¹⁸

The Commission has previously recognized this statutory limitation. For example, prior to the passage of the Balanced Budget Act of 1997, the Commission sought comment on the introduction of user fees or auctions for Private Land Mobile Radio ("PLMR") spectrum. After Congress amended the Act and mandated spectrum auctions for mutually exclusive initial applications, the proposal to introduce user fees or auctions for PLMR spectrum became moot. When terminating the inquiry, however, the Commission noted that the proposal to introduce user fees "was premised on Congress giving the Commission statutory authority to impose such

¹⁶ 47 U.S.C. § 251(e) (emphasis added).

¹⁷ The cost of numbering administration is now being recovered through the NBANC process.

¹⁸ The Commission could not auction public spectrum until it was given explicit permission to do so in 1993, under section 309(j). Throughout the proceeding initiated to implement section 309(j), the Commission acknowledged that its auction authority in the context of spectrum management comes expressly from an act of Congress. See, e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, ¶ 1 (1994); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, ¶ 4 (1994).

fees. . . [T]hat anticipated authority was not forthcoming, . . . [but] could, of course, be authorized in the future.”¹⁹ Thus, even if the Commission determined that user fees or auctions would have aided its spectrum policies, the Commission recognized that it would have required an express grant of authority from Congress *before* implementing any such market-based system.

B. Charging For Numbers Could Have An Adverse Effect On Certain Telecommunications Services.

Even if the Commission had the necessary statutory authority to charge for numbers, implementing a market-based allocation system for numbering resources could have a detrimental effect on services such as CMRS. A market-based system for numbering distribution would essentially impose additional fees on carriers that will increase carriers’ costs of providing service. Depending upon carriers’ need for additional numbering resources, the cost of obtaining numbers could substantially increase carriers’ costs.²⁰ Ultimately, these costs likely would be passed to consumers as an increased cost of providing service.

For services like CMRS, which have greater elasticity of demand than wireline services, a market-based allocation system would have a detrimental effect on consumers.²¹ If all carriers are charged for numbers, these fees are likely to be passed on to consumers as an increase in the

¹⁹ Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Service, PR Docket No. 92-235, *Third Memorandum Opinion and Order*, 14 FCC Rcd 10922, ¶ 26 (1999) (citations omitted).

²⁰ Such a fee must also take into consideration other recently imposed regulatory costs, including, among others, universal service, number portability and pooling, and wireless E911, not to mention state and federal taxes. See generally, Jerry Hausman, *Efficiency Effects on the U.S. Economy from Wireless Taxation*, at <http://web.mit.edu/jhausman/www/wireless.pdf> (Feb. 2000).

²¹ See id. at 1, 3 (noting that “[u]nlike local wireline access services, demand for wireless service is relatively elastic. . . . The effect of [taxes and fees] on wireless, is to raise costs to consumers, suppress demand, and impose efficiency losses on the economy.”).

price of service. Increasing input costs through regulation of CMRS providers, therefore, could suppress consumer demand for and affordability of a communications service that has significant social benefits. Moreover, charging a fee for numbers would have a disproportionate impact on CMRS carriers compared with wireline carriers. The wireline industry is still a monopoly with relatively inelastic demand for its service. Consumption of wireline service would be much less affected by marginal increases in the cost of providing service. Thus, considering the discriminatory nature of a market-based allocation system and its detrimental impact on consumers, the Commission should not implement such a system.

V. STATES SHOULD NOT BE GIVEN AUTHORITY TO INDEPENDENTLY CONDUCT AUDITS.

In the Second Report and Order, the Commission established an audit program to monitor carriers' compliance with numbering rules and guidelines.²² In the FNPRM, however, the Commission seeks further comment on whether states should also be given authority to conduct carrier audits.²³ The new audit program is sufficient to verify carrier compliance, and thus, the Commission should not grant state commissions independent authority to conduct "for cause" or random audits. Not only is there is no benefit to be gained from giving state commissions authority to conduct independent audits, but individual state audits would be overly burdensome.

Permitting states to conduct independent carrier audits will not produce any benefits in addition to those already realized from federal audits, and will serve only to unnecessarily and unduly burden carriers. Although both "for cause" and random audits may be useful tools to monitor and help ensure carrier compliance with Commission rules and guidelines, giving state

²² Second Report and Order ¶¶ 82-83.

²³ FNPRM ¶ 155.

commissions authority to conduct the same audits will produce a system of duplicative auditing that will strain both carriers' and state commissions' resources. Moreover, allowing both federal and state audits could produce a double auditing process with possibly widely varying federal and state results based on differing standards. For example, each state and the Commission have varying definitions for "assigned" numbers, which will affect audit reports. Forcing carriers to comply with such differing standards would be confusing and unnecessarily burdensome.

Therefore, both "for cause" and random audits should be performed based on a single, uniform federal standard. This will allow the Commission to monitor carriers' compliance while providing a consistent, reliable standard for carriers to follow. The Commission could allow state commissions to access audit data provided that state commissions keep such information confidential, similar to the Commission's decision to permit states access to the forecast and utilization data carriers report to NANPA.²⁴ The same policy reasons that the Commission recognized when granting state commissions access to the NANPA report data are applicable to the decision to allow state commissions access to audit data instead of permitting states to conduct independent audits. Specifically, the Commission believed that granting state commissions access to NANPA report data would "eliminate the need for [states] to require carriers to report separately and duplicatively, utilization and forecast data that they are already reporting to the NANPA..."²⁵ The Commission also recognized that allowing state commissions to impose additional reporting requirements on carriers "would undermine the purpose of

²⁴ Second Report and Order ¶¶ 117-18.

²⁵ Id. ¶ 117.

establishing regularly scheduled, uniform federal reporting requirements.”²⁶ Similarly, the Commission should not allow states to independently audit and impose unnecessary and duplicative burdens on carriers. The monitoring and compliance objectives will be sufficiently met by the Commission’s current federal auditing program.

VI. THE COMMISSION SHOULD NOT HOLD PARENT OR AFFILIATE COMPANIES LIABLE FOR ACTIONS OF RELATED COMPANIES.

In the FNPRM, the Commission proposes to withhold numbering resources from parent or affiliated carriers when related carriers are subject to withholding of numbering resources due to their failure to comply with the Commission’s mandatory reporting requirements.²⁷ With this proposal, the Commission attempts to provide an incentive for parents and affiliates to take an active role in related companies’ compliance with numbering rules and guidelines.²⁸ While the Commission’s intentions are clear, there is no basis for asserting this type of vicarious liability, and the administrative burdens of such a policy outweigh any unascertained benefits that may be derived from it. The Commission should not hold parent and affiliate companies liable for related carriers’ failure to report, and should continue to treat affiliated companies as separate regulatory entities.

The Commission has identified as one of the underlying reasons for this proposal an effort “to ensure that [the Commission’s] numbering resource optimization goals are not undermined by the complexities of corporate structures.”²⁹ This suggests, without any basis in

²⁶ Id. ¶ 116.

²⁷ FNPRM ¶ 150.

²⁸ Id.

²⁹ Id.

fact, that carriers will use or modify their corporate structures in order to avoid compliance with the Commission's numbering optimization regulations. There is simply no evidence that carriers would willfully abuse corporate structures in an effort to circumvent the Commission's rules. Furthermore, considering matters such as the tax consequences and governance issues that may arise from creating separate subsidiaries, it is highly unlikely that carriers would want to go through this process simply to avoid compliance with the Commission's numbering orders. In fact, this proposal is a solution in search of a problem.³⁰ In this case, the Commission has already established reporting requirements and auditing and monitoring programs that will sufficiently encourage carriers to use numbers more efficiently.

Not only is it unnecessary to hold affiliated companies liable for violations of related companies, but there exist legitimate public policy reasons for the Commission to treat separate but affiliated companies as separate regulatory entities. The courts have recognized that only under a very narrow set of circumstances is it appropriate for the Commission to pierce the corporate veil to hold parent companies liable for actions of affiliated or subsidiary companies. In GTE Service Corp. v. FCC, the court observed that the separate corporate entities created by carriers to provide data processing services were authorized by the Commission, and were not "device[s] utilized by the carrier to avoid regulation. ... While courts have long since engaged in the pursuit of piercing corporate veils where they have been utilized to evade or circumvent legislative enactments," in this case, the court found it unnecessary to do so.³¹ The Commission

³⁰ See Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977), (noting that the Commission must establish a reason for promulgating a new rule "since a 'regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist.'") (citations omitted).

³¹ GTE Service Corp. v. FCC, 474 F.2d 724, 733 (2nd Cir. 1973) (emphasis added).

may also pierce the corporate veil “to prevent frustration of its regulatory tasks” -- such as where carriers seek to prevent the Commission “from regulating within its proper domain by the creation of paper entities.”³² As discussed above, however, the Commission has no evidence that affiliates have been created or will be used for the purpose of frustrating Commission numbering optimization regulations. Absent such a finding, none of the reasons for piercing the corporate veil exist in these circumstances.

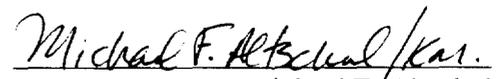
³² North American Telecommunications Ass’n v. FCC, 772 F.2d 1282, 1293 (7th Cir. 1985).

VII. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission adopt numbering optimization measures consistent with the proposals set forth herein.

Respectfully submitted,

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February 14, 2001

CERTIFICATE OF SERVICE

I, Dennette Manson, do hereby certify that on this 14th day of February, 2001, copies of the attached document were served by hand delivery on the following parties:

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