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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 THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York State Department of Public Service ("NYDPS") submits these comments in response to the Federal Communications Commission's ("Commission") Second Further Notice of Proposed Rulemaking ("NPRM") dated December 29, 2000 in the above-captioned proceeding. In conjunction with the actions taken to ensure carriers' efficient use of numbering resources and to extend the life of the North American Numbering Plan ("NANP")[1], the Commission now seeks comments on additional optimization strategies.

The NYDPS supports the Commission's continued refinement of existing number optimization strategies. We recommend: that the Commission adopt service-specific and technology-specific overlays, but not require 10-digit dialing; that it withhold numbering resources from carriers and their affiliates that fail to report to NANPA, number utilization and forecast ("NRUF") data; that it grant state commissions access to NRUF data; that it deny numbering resources to carriers that violate numbering requirements; that it authorize states to conduct "for cause" and random audits in addition to federal audits; and that it extend thousand block number pooling to non-LNP-capable carriers.

[1] *Numbering Resource Optimization*, 15 FCC Rcd 7574, Report and Order and Further Notice of Proposed Rulemaking (rel. March 31, 2000)("First Report and Order").

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List A B C D E

The Commission's commitment to partnering with the state commissions to enhance the efficient use of numbering resources across the nation is welcome.

I. Service-Specific And Technology-Specific Overlays Should Be Permitted But Mandatory 10-Digit Dialing Should Not Be Required

The Commission seeks comment on the wireless industry's proposal to allow "phased-in" technology-specific overlays and the potential competitive implications. The Commission also asks how the mandatory ten-digit dialing rule should apply and whether a "phased-in" technology-specific overlay could go beyond the boundaries of a pre-existing area code. Finally, the Commission seeks comment on whether it would be appropriate to permit states to establish long-term overlays for certain services like eFax and Onstar.

The NYDPS supports the decision to revisit the prohibition against technology-specific overlays. We agree that by temporarily diverting a portion of the demand for numbering resources in existing area codes, implementation of technology-specific overlays will help ease the transition to needed area code relief without harming competition.

There is no evidence that competitive inequities would result from a technology-specific overlay. The 917 wireless overlay in New York City certainly has not impeded the wireless industry from growing by leaps and bounds over the last 10 years.

While we do not object to a "phased-in" overlay, we do oppose any requirement that phases-out 7-digit dialing by mandating 10-digit dialing.[2] As the Commission has recently noted, 10-digit dialing is not needed to preserve a level playing field.

The NYDPS supports the concept of regional overlays for wireless (e.g., a wireless-only overlay code for all of New York State), as long as this does not trigger mandatory 10-digit dialing. This type of overlay would allow us to address area code relief on a regional basis and meet the wireless carriers' desire to obtain more quickly additional numbering resources. Most importantly, a regional code will result in more efficient number utilization.

The Commission should exercise caution in establishing special area codes for services such as eFax and Onstar, which are not geographically based. An alternative numbering scheme should be explored for these types of automated services before committing valuable and scarce NANP resources.

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[2] People of the State of New York and the Public Service Commission of the State of New York v. FCC of the United States and the United States of America, Second Circuit, Index No. 94-4205 (Order granting stay of mandatory 10-digit dialing), argued January 4, 2000.

II. Rate Center Consolidation Is Not A Viable Solution; Technical Solutions Must Be Found

The Commission seeks comment on what policies it should implement to reduce the extent to which the rate center system contributes to or accelerates numbering exhaustion. The Commission also seeks comment on approaches to severing the connection between number assignment and call rating and routing. Finally, the Commission seeks comment on past and present rate center consolidation efforts and their results.

The existing rate center system reflects the historical approach to routing and billing of telephone calls. As the NPRM points out, carriers typically need numbering resources in multiple rate centers to establish a footprint in a particular geographic area. The NYDPS staff's analysis of comments received in a numbering proceeding[3] indicated that enlarging rate centers would result in basic rate increases. This is not a viable solution to solving the numbering crisis. Consumers should not bear the cost of the numbering problem that could be fixed by the industry via technological solutions. For example, technology that severs the reliance on central office codes (i.e., NXXs) for billing purposes should be explored.

The NYDPS staff examined alternative rate center structures.[4] Our examination into wide area rate centers (single NXX code for entire area within a LATA) produced rating and routing issues that could not be overcome. Specifically, wide area rate centers would result in increased costs and difficulty in routing traffic.

III. Numbering Resources Should Be Withheld from Companies Whose Affiliates Fail To Report Number Utilization And Forecast Data

In the First Report and Order, the Commission directed carriers to report number utilization and forecast ("NRUF") data and identify their parent companies. The Commission now seeks comment on whether additional data regarding corporate relationships should be reported and whether reporting carriers should be held accountable if affiliate carriers fail to comply with the reporting requirements. The Commission also seeks comment on whether all

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[3] Case 96-C-1158, Proceeding on Motion of the Commission, Pursuant to Section 97(2) of the Public Service Law, to Evaluate the Options for Making Additional Central Office and/or area Codes Available in the 212 and 917 Area Codes of New York City, Opinion No. 97-18 (issued December 10, 1997).

[4] Case 98-C-0689, Order Instituting State-Wide Number Pooling and Number Assignment and Reclamation Procedures, (issued. March 17, 2000).

affiliate carriers should be liable for violations of these reporting rules or only affiliates doing business within the same state.

A requirement that carriers disclose the names of all affiliates would prevent carriers from hiding behind complex corporate structures to elude the Commission's numbering policy requirements. Withholding numbering resources from all related companies that are not in compliance would provide an incentive for all members of the corporate family to comply with the Commission's mandatory reporting requirements. In addition, the NYDPS does not support limiting this liability only to affiliates doing business in the same state. Such a distinction would be not only artificial, but also unnecessary. Further, it would permit related carriers in different states to a hoard or waste numbers.

IV. State Commissions Should Have Access To Number Utilization And Forecast Data

The Commission seeks comment on whether states should have password-protected access to NRUF data received by NANPA. NeuStar has proposed to provide the states with password access to obtain information from NANPA. However, NeuStar has not clarified how states would obtain direct access to this information.

The NYDPS supports the Commission's tentative conclusion that access to this information would assist in better implementing area code relief. We are concerned that NeuStar's proposal may not provide states with direct access to data in a format that can be manipulated. If the data is made available via password protected access to NANPA's database, the data must be in a form that can be extracted and imported in order for states to manipulate and analyze the information. As an alternative to extracting the data, NANPA's database access could make it possible for states to manipulate the data and perform critical analysis within the system, but independent of NANPA. Such access would require necessary safeguards (e.g., firewalls) to ensure that the data could not be altered. Regardless of the specific system, state access and the ability to perform meaningful analysis is imperative.

V. A Fee Structure For Number Reservations Does Not Address The Limited Nature Of The Resource

In the Second Report and Order, the Commission concluded that the maximum period for holding numbers by carriers for specific end use customers be increased from 45 days to 180

days with no extensions.[5] The Commission now seeks comment on NANC's proposal to allow monthly extensions or no limit on the utilization time frame. The Commission also seeks comment on whether charging a fee to carriers or end-users would provide appropriate incentives for efficient numbering use.

The Commission's existing 180 day policy, with no extensions, should not be altered. This 6-month limit on reserving unused numbers provides enough time for an end-user to implement its business plan. The Commission's policy to limit hoarding of scarce resources would be undermined if NANC's proposals are adopted because carriers could declare that customer-reserved numbers are in use, when in fact they are not. This could result in those carriers requesting additional numbers when some of their unused numbers are available. The NYDPS suggests that carriers that permit reservations up to 180 days, should be required to confirm with the end-user a continued need for the reservation at a specific time prior to the end of 180 days, perhaps at 120 days.

Finally, charging a fee for reserving numbers will not protect against hoarding numbers. For example, an entity with a need for 3000 numbers and a desire to have a "vanity" NXX may be willing to pay a fee to "lock up" the remaining 7000 numbers even though it has no intention of placing these remaining numbers into service. Moreover, the fee paid to "lock up" these numbers cannot be used by NANPA to purchase replacement numbers. Therefore, setting a fee would be a complex exercise, which we doubt would have little benefit.

VI. Numbering Resources Should Be Denied to Carriers That Violate The Commission's Numbering Requirements

The Commission seeks comment on whether numbering resources should be denied to a carrier that violates the Commission's numbering requirements or fails to cooperate with Commission auditors. The NPRM also seeks advice on whether enforcement authority should be delegated to the Common Carrier Bureau and/or state commissions.

The NYDPS supports a policy that penalizes carriers that violate the Commission's rules. Inefficient use of finite numbering resources must be eliminated. Mechanisms that encourage compliance with the Commission's rules are beneficial. The Commission's Common Carrier Bureau should be empowered to direct NANPA as well as the Pooling Administrator to withhold

[5] *Numbering Resource Optimization*, CC Docket No. 99-200, Second Report and Order at ¶114 (rel. December 29, 2000)("Second Report and Order").

additional numbers until the carrier has complied or cooperated, since swift action is necessary to ensure compliance.

If the Commission delegates authority to the states to conduct random or "for cause" audits (which we think it should), it should also delegate authority to them to direct NANPA and the Pooling Administrator to withhold number assignments to carriers that fail to comply with numbering requirements or cooperate with auditors. To do otherwise would require the Commission to use its resources to review the results of each audit by a state before any enforcement action could be taken. This duplicative auditing would be wasteful and would delay enforcement.

VII. States Should Be Granted The Authority To Conduct For Cause And Random Audits

The Commission seeks comment on whether state commissions should be given authority to conduct "for cause" and random audits in lieu of, or in addition to, the national audit program.

The NYDPS supports this proposal. State authority to conduct both "for-cause" and random audits will go a long way in discouraging abuse of scarce number resources. The NYDPS' utilization data review, as part of our pooling trials, and our review of central office code requests confirms that company numbering practices must be audited more closely. We found instances where carriers incorrectly reported numbers as assigned, but in fact were not in service. In other cases, we found carriers were not complying with sequential numbering rules. Therefore, it is critical that states retain the ability to audit carriers.

VIII. Exploration Of Market-Based Approaches For Optimizing Numbering Resources Should Not Interfere With The Deployment Of Other Optimization Measures

The Commission seeks comment on how to structure a numbering resources market mechanism in a manner that treats all users of numbering resources in a fair, equitable and non-discriminatory manner. In addition, the Commission seeks comment on the ability of service providers with available, or spare, numbering resources to sell or lease them to other service providers.

While the NYDPS does not object to examining market-based approaches to numbering issues, this effort should not divert attention from the number efficiency mechanisms that are currently underway (e.g., national pooling rollout, audits, reclamations). The recently adopted number resource optimization tools should be given a chance to work before embarking on an

elaborate "pay for numbers" scheme or holding auctions for numbers. Therefore, we believe this exercise is premature.

IX. Non-LNP-Capable CLECs Should Be Required To Become LNP-Capable

The Commissions seeks comments on whether thousand-block pooling requirements should be extended to cover paging companies and carriers outside the 100 largest MSAs, as well as to carriers not otherwise required to be LNP-capable.

As the Commission is aware, LNP capability is a requirement for pooling. The NYDPS supports requiring all wireline CLECs to become LNP-capable and extending the pooling requirements to those carriers. Any extension of thousands-block number pooling will have a positive effect on number resource conservation. Our efforts in New York have shown this to be true (to date, we have saved the equivalent of 178 full codes in the 516, 518 and 716 pools). However, the NYDPS has experienced situations where CLECs are not LNP-capable within these regions. This situation has impeded our ability to make maximum use of numbering resources, since these carriers are neither able to donate or use numbers from the pool. For example, in the newly established 315 area code pool, approximately 220 thousand blocks, or 220,000 numbers are stranded and unable to be used by other carriers due to CLECs not having LNP-capability.

CONCLUSION

In sum, the NYDPS supports the Commission's continued refinement of exiting number optimization strategies and consideration of the foregoing number optimization measures. We welcome the opportunity to continue working with the Commission to safeguard number resources, which are mutually beneficial to consumers and competition.

Respectfully submitted,

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