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

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| In the Matter of | ) | |
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| 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 |

# SPRINT CORPORATION REPLY COMMENTS


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## Summary of Sprint Reply Comments

Sprint replies on the following issues:

1. "Safety Valve" procedures are critically important. There is broad consensus in favor of such a process; indeed, the Commission has already acknowledged the critical need for a "safety valve" so consumers are not deprived of obtaining desired services. Sprint recommends a specific procedure for the Commission's consideration, a workable proposal that entails objective criteria. Sprint further demonstrates that national procedures are necessary and that if the Commission delegates to the states the authority to entertain "safety valve" applications, it must adjust the timelines to account for the additional time involved with such state review.

2. Technology-Specific Overlays are unlawful and would exacerbate the number crisis, not solve it. The Commission has twice ruled that TSOs are unlawful and recent market developments confirm that they remain unlawfully discriminatory. TSOs do not improve number efficiency in any way, and they would actually exacerbate the number crisis (by accelerating the date of NANP exhaust). TSOs are also not sustainable even if there was some justification for them. Once wireless carriers deploy LNP, regulators will lose all ability to segregate wireless customers into different area codes.

3. The Users Committee proposed solution to the rate center problem is not workable or lawful. The User Committee never explains why a state reluctant to adopt both area code relief and rate center consolidation will suddenly be amenable to implementing both through the imposition of additional federal mandates; its proposal would simply provide a further excuse to delay timely adoption of area code relief. Besides,

depriving a carrier from obtaining the numbers it needs because other carriers may be using their numbers inefficiently would constitute an unlawful entry barrier.

4. States have provided no reason to support delegation of authority to conduct state-only number utilization audits. Only 10 weeks ago, the Commission determined that the public interest would not be served by permitting states to conduct their own audits. The Commission's decision was sound (*e.g.*, national carriers should be not subjected to duplicative audits or audits using different standards), and nothing has changed that would warrant the Commission to reconsider this decision. States will play an extensive role in the comprehensive federal audit framework that the Commission has established, and this new audit procedure should be given time to work before the Commission considers abandoning or supplementing the program.

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**SPRINT CORPORATION REPLY COMMENTS**

Sprint Corporation, on behalf of its local, long distance and wireless divisions (collectively, "Sprint"), hereby replies to the comments submitted in response to the Commission's *Second Further Notice of Proposed Rulemaking* ("*Second FNPRM*").[1]

## I. NATIONAL "SAFETY VALVE" PROCEDURES ARE CRITICALLY IMPORTANT AND MUST BE IMPLEMENTED PROMPTLY

There is broad consensus in the comments concerning the need of a "safety valve" procedure given the Commission's decision to use utilization thresholds for growth numbering resources.[2] Indeed, the Commission has already recognized the critical need for a "safety valve" procedure, noting that utilization thresholds applied inflexibly could "deprive customers of their choice of carriers from whom to purchase service":

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[1] *See Numbering Resource Optimization*, CC Docket No. 99-200, *Second Further Notice of Proposed Rulemaking*, FCC 00-429 (Dec. 29, 2000), 66 Fed. Reg. 9535 (Feb. 8, 2001)("*Second FNPRM*").

[2] While the states "do not oppose the creation of a safety valve," they express "concern about a safety valve becoming the exception that swallows the rule." State Outline at 9. However, the

> [W]e remain very concerned about the potential competitive impact of imposing a fill-rate regime on carriers' ability to serve customers. . . . [T]hresholds may interfere with a carrier's ability to meet customers' demands for new services. This is largely due to the time it takes to activate an NXX code in nationwide databases. If a carrier has a relatively high rate of customer demand for service, it may reach the requisite fill rate, but be unable to get more numbering resources in time to meet customer demand.[3]

Thus, the issue is not whether safety valve procedures are needed, but rather who should adopt the applicable criteria and who should review safety valve applications. Sprint demonstrates below that national procedures are necessary, and it recommends adoption of criteria that are both objective and workable.

### A. National "Safety Valve" Procedures Are Necessary

The Commission has determined that national number assignment rules serve the public interest. The addition of a "safety valve" procedure to the current assignment rules would constitute an integral part of the national number assignment rules. No purpose would be served by permitting each state to establish its own safety valve criteria and procedures, and inconsistent state rules would undermine the very objectives that the Commission sought to achieve through adoption of national assignment rules. Besides, it would appear that the Commission cannot delegate to the states the authority to develop safety valve criteria applicable to wireless carriers.[4]

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states further acknowledge that there are "very few instances which would require the use of a safety valve." *Id.*

[3] *California Delegation Order*, 14 FCC Rcd 17486, 17498 ¶ 26 (1999).

[4] Because telephone numbers are needed to provide service, state adoption of safety valve criteria determining when wireless carriers could obtain additional numbers would constitute entry regulation prohibited by the Communications Act. *See* 47 U.S.C. § 332(c)(3)(A)("[N]o State . . . shall have *any* authority to regulate the entry of . . . any commercial mobile service.")(emphasis added). The Commission cannot delegate to states functions that Congress has determined states may not perform.

The Commission had encouraged industry to adopt its own safety valve procedures as circumstances warrant. This process has not worked, despite the efforts of several carriers. Sprint PCS and AT&T Wireless recently asked NANPA to convene industry meetings so that the adoption of imminent exhaust procedure (that would include safety-valve mechanisms) for all jeopardy NPAs could be considered. Eight states subsequently notified NANPA of their intent to develop their own standards and "instructed NANPA to cancel the calls scheduled for their respective states."[5] Industry has thus been thwarted in its attempt to adopt a coherent and uniform set of objective safety valve procedures.

Adoption of a single safety valve procedure applicable throughout the country would be the most efficient approach to the problem (if only to eliminate the need to discuss the same issue each time an NPA is placed in jeopardy). Nevertheless, if the Commission prefers that the industry adopt safety valve procedures, it must then clarify that states may not adopt their own procedures and may not decline to recognize any procedures that industry may adopt.

### B. The Commission Should Adopt the Verified Safety Valve Procedure Already Proven to Work

The states do not oppose establishment of a "safety valve" so long as the criteria are "very narrowly defined and include as many objective criteria as possible."[6] Sprint agrees. Sprint recommends that the Commission adopt as a national safety valve procedure for growth numbering resources the process that has been used successfully in Illi-

[5] Memorandum from Jim Deak, NANPA Regional Director, NPA Relief Planning, "URGENT NOTIFICATION – Reopen Jeopardy Meetings" (Jan. 12, 2001).

[6] State Outline at 10.

nois and other states. The criteria are objective and most applications would not require the exercise of any discretion:

1. The applicant demonstrates that it will exhaust its current resources in a given rate center within 90 days (as opposed to the six months ordinarily required) even though it does not currently meet the 60% utilization rate;[7]
2. Additional numbers will be assigned automatically if the applicant demonstrates that forecasted demand is within 15% of average historical utilization over the past six months; and,
3. If forecasted demand exceeds 15% of recent assignment rates, the applicant must explain the deviation before a growth code is assigned.[8]

It is not feasible to shorten the projected exhaust date requirement to a period of less than 90 days since it takes a *minimum* of 66 days to activate a code following application.[9]

The states suggest that applicants should be required to provide "updated utilization data for the NPA (and perhaps a neighboring NPA if in a metropolitan area)."[10] This proposal is inappropriate (and would also be needlessly burdensome). Our current number assignment system is based on rate centers, not NPAs,[11] and the Commission's assignment rules entitle a carrier to receive numbers *in a particular rate center* when it

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[7] The following example illustrates the type of situation where this procedure might be used. Assume a carrier is growing at a rate of 700 customers per week at a given rate center. Under current assignment rules, the carrier could not apply for an additional NXX until its utilization was 60% — meaning that it would have to wait until its available number supply was less than six weeks. The problem is that the application/activation process takes over nine weeks (66 days).

[8] Such a demonstration may include historic assignment rates over the most recent busy holiday season (data that would not ordinarily be considered if not within the most recent six-month period) or the addition of a new large account.

[9] *See First NRO Order*, 15 FCC Rcd at 7679 n.552; INC, *CO Code Assignment Guidelines*, INC-95-0407-008, at § 6.1.2 (Sept. 18, 1998).

[10] State Outline at 10. In fact, the Commission specifically rejected the argument that carriers should meet NPA thresholds as a condition to receiving numbers in a particular rate center. *See, e.g., Second NRO Order* at ¶ 188.

[11] *See First NRO Order*, 15 FCC Rcd at 7610 ¶ 86.

meets the requirements for that rate center.[12] As the Commission has recognized, the fact that a carrier may have available numbers in a *different* rate center is of no value to consumers in the rate center that is facing exhaust, since numbers from different rate centers often have different local calling areas.[13]

Requiring a carrier to use numbers from different rate centers undermines the very purpose of a safety valve procedure (obtain additional numbers in a particular rate center upon demonstration of the specified criteria so service to consumers is not disrupted). Requiring a carrier to use numbers from different rate centers would also distort competition, since an applicant would be placed at an enormous disadvantage relative to competitors that have numbers in the particular rate center and, therefore, can offer a local calling area (inbound or outbound) that the applicant can no longer offer.[14]

### C. The Commission Must Adjust the "Safety Valve" Timelines If It Delegates to States the Authority to Review Such Applications

The "safety valve" process that Sprint proposes is objective and in most instances will not involve the exercise of any discretion. Sprint questions why any state with finite resources would want to get involved in this time-sensitive process. Especially with the biannual data reporting mechanisms now in place, states will quickly discover any misuse of the process and any carrier misusing the process can be sanctioned appropriately (al-

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[12] *See* 47 C.F.R. § 52.15(g)(3).

[13] *See First NRO Order*, 15 FCC Rcd at 7617 ¶ 105.

[14] It bears remembering that in a competitive environment, a consumer will choose the services of another carrier if it cannot obtain the desired services from the desired carrier. The inability to obtain telephone numbers in a given rate center would constitute an entry barrier prohibited by Sections 253(a) and 332(c)(3) of the Communications Act. Sprint and others have previously demonstrated that the utilization approach the FCC adopted favors incumbent carriers because they generally have more numbers in reserve than new entrants (*e.g.*, 60% fill rate for a carrier with one NXX = 4,000 available numbers; a 60% fill rate for a carrier with 10 NXX codes = 40,000 available numbers).

though with the objective criteria that Sprint proposes, the opportunity for misuse would be remote). Nevertheless, several states apparently want to participate directly in the "safety valve" application process.[15]

As noted, it appears that states cannot review "safety valve" applications submitted by wireless carriers because such action would constitute the regulation of entry prohibited by the Communications Act.[16] Sprint does not oppose state review of the "safety value" applications submitted by landline LECs — so long as (1) the objective criteria remain immutable, (2) states act within a specified period, and (3) the Commission adjusts the applicable criteria to reflect the additional time consumed by any additional state review.[17]

It takes a minimum of 66 days from the date a code application is submitted to NANPA before a carrier can begin using the new numbers,[18] and if NANPA handles safety valve applications, Sprint recommends a showing of exhaust within 90 days (thereby allowing for a three-week cushion for unanticipated contingencies). Any state review of safety valve applications will necessarily add to this processing timeline, meaning that the projected exhaust date must be extended accordingly. Thus, if states want to review safety valve applications and if they are willing to complete their review in 10 days, the projected time to exhaust must be increased from 90 to 100 days to reflect

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[15] *See* State Outline at 9-10.

[16] *See* note 4 *supra.*

[17] The current state-by-state safety valve procedure is not working. For example, California has a three-month (90 day) exhaust standard, but the CPUC then took 49 days to act on Sprint PCS' emergency petition — a period of time that is not tenable when it takes a minimum of 66 days to activate a new code. Sprint PCS' request eventually became moot when it got lucky in the lottery.

[18] *See* note 9 *supra.*

this additional review.[19] If, however, states believe they will need 21 days to compete their review, the projected time to exhaust period must be increased from 90 to 111 days.

### D. The Commission Needs to Establish an Expedited Procedure to Review Appeals of Safety Valve Decisions

The Commission, with its exclusive jurisdiction over numbering, remains the final arbiter of safety valve applications — whether NANPA or the states initially review the application. Given that a carrier would submit a safety valve application only if it is facing imminent exhaust in a rate center and given that the time frames for the process are already very tight, the Commission needs to move with dispatch in processing any applications for review. Any Commission delay in entertaining an appeal would almost certainly result in a carrier exhausting its existing number supply before it can activate a new supply of numbers.

The Commission is currently undertaking a comprehensive review of its procedures and processes to make them more responsive. Sprint supports this effort, but it encourages the Commission to develop an expedited process that recognizes the time-sensitivity of most numbering issues. Numbering is truly a situation where, as Chairman Powell has noted, the Commission "needs to decide matters on *Internet time*."[20]

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[19] It bears noting that no time would be saved by having states review safety valve applications. NANPA must act on a code application within 10 days, and it must consider any safety valve application within these 10 days. If states instead assume control over the safety valve process, NANPA would still require 10 days to assign a code.

[20] Remarks of Chairman Powell before the NARUC Winter Committee Meeting (Feb. 28, 2001).

## II. THE PROHIBITION ON TECHNOLOGY-SPECIFIC OVERLAYS MUST CONTINUE

There is no basis in law or policy to remove the prohibition against technology-specific overlays ("TSOs"). TSOs, NANPA has concluded, "will almost certainly lead to a waste of valuable number resources," they would not improve in any way the efficiency with which any carrier utilizes numbers, and they would likely accelerate the date that the North America Numbering Plan (NANP) would need to be expanded. Sprint does not oppose the implementation of transitional overlays that meet the criteria in the recent proposal by the Cellular Telecommunications & Internet Association ("CTIA"), because the criteria proposed would guarantee that the overlays would be truly transitional.

### A. Technology-Specific Overlays Continue to be Unlawful

The Commission ruled, in 1995 and again in 1996, that TSOs were unlawful under the Communications Act.[21] It specifically found that TSOs would be "unreasonably discriminatory and anticompetitive in violation of Sections 201(b) and 202(a)" because TSOs would confer "significant competitive advantages on the wireline companies" and impose a "disproportionate burden upon wireless carriers and their customers."[22]

The Commission now suggests that a reexamination of this prohibition is in order because of "changes in the use of numbering resources that have occurred since the Commission's previous decisions."[23] However, there have been no "changes in the use of numbers" over the past six years. Demand for wireless services certainly has remained

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[21] *See Ameritech Numbering Order,* 10 FCC Rcd 4596 (1995); *Second Local Competition Order,* 11 FCC Rcd 19392 (1996).

[22] *Second Local Competition Order,* 11 FCC Rcd at 19517 ¶ 281, and *Ameritech Numbering Order,* 10 FCC Rcd at 4608 ¶ 27 and 4511 ¶ 35.

[23] *Second FNPRM* at ¶ 128.

strong, but the Commission has already considered and rejected strong consumer demand as a basis for justifying a discriminatory numbering policy.[24]

Mobile wireless services did not compete with fixed landline services in 1995, when the Commission ruled that TSOs were unreasonably discriminatory. At that time, the Commission determined that wireless prices would have to fall by 50% before wireless service would be "fully price-competitive" with landline services.[25] Since then, prices for wireless services have fallen dramatically, and a small but growing percentage of people are now using wireless as a substitute for landline service. If wireless-only overlays were inappropriate when the concept of landline substitution was only speculative, there can be no doubt that they should continue to be inappropriate as wireless begins to compete more directly with landline services.

In the end, however, it is irrelevant whether wireless services are a substitute for landline services. There are now over 100 million wireless customers, compared to 145 million landline residential and small business customers, and the mobile customer base is growing far more rapidly than the base of landline customers. Certainly, if TSOs were deemed to have significant and disparate impacts on wireless customers in 1995, when there were 33 million mobile customers, TSOs would have an even more significant and disparate impact today, as there are now over 100 million mobile customers.

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[24] It bears remembering that one of the TSOs that the Commission rejected was proposed because "the largest proportion of recent demand for NPA 708 numbers has come from wireless carriers" and that by moving wireless customers to a different NPA would "most significantly decrease demand for increasingly scarce NPA 708 numbers." *Ameritech Numbering Order,* 10 FCC Rcd 4606 ¶ 23.

[25] *First CMRS Report,* 10 FCC Rcd 8844, 8869-70 ¶ 75 (1995).

### B. Technology-Specific Overlays Would Exacerbate the Number Crisis, Not Solve It

Technology-specific overlays ("TSOs") are not only unlawful, they would also constitute poor number policy because they would exacerbate the current number crisis. Indeed, NANPA has already advised the Commission that TSOs "will almost certainly lead to waste of valuable numbering resources."[26] The Commission has also twice considered specific TSO proposals, but in each instance it found "no compelling reason for isolating a particular technology in the new NPA."[27]

States assert that TSOs could be a "valuable tool in the effort to conserve numbering resources and to delay expansion of the North American Number Plan (NANP)."[28] These assertions, entirely unsupported, lack merit. TSOs cannot facilitate conservation because *TSOs would not improve number utilization in any way*. TSOs would not improve the efficiency with which wireless carriers use numbers in the new TSO — even if the Commission required the "take-back" of numbers; wireless carriers' existing utilization rates would simply be replicated in the new TSO NPA. TSOs would also not improve in any way the efficiency in which landline carriers use numbers in the existing area codes.

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[26] Letter from Ronald R. Conners, NANPA Director, to Geradine A. Matise, Chief, Network Services Division (March 21, 1996).

[27] *Second Local Competition Order,* 11 FCC Rcd at 19528 ¶ 306. *See also Ameritech Numbering Order,* 10 FCC Rcd 4596 (1995).

[28] State Outline at 2.

The Commission reaffirmed in its *Second FNPRM* that "take-backs" in particular would be unreasonably discriminatory and would "adversely affect competition."[29] Many states share this view.[30] However, without "take-backs," TSOs would reduce dramatically the efficiency in which wireless carriers use their numbers. This is because a wireless carrier requiring only one NXX code in a given rate center, would now require two codes in the same rate center (one in each NPA) — to support the same number of customers.

From the perspective of numbering policy, the real problem with TSOs is that they could accelerate the date that the NANP will exhaust and require expansion. The Commission has recognized that the remaining supply of unused area codes "is diminishing."[31] Establishing numerous, inefficient TSOs so state commissions can delay adopting certain relief plans — NPAs that will invariably need relief eventually — is not a prudent way to use the diminishing supply of available area codes that remain.

States support their TSO proposal because TSOs purportedly receive public support.[32] The public interest is paramount, but considering the public interest does not mean that the Commission should abrogate its responsibilities by basing its decisions on these proffered opinion polls. Besides, if the Commission is going to base its decisions

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[29] *Second FNPRM* at ¶ 134.

[30] *See, e.g.,* Connecticut Comments at 7-8 ("Clearly, the public interest is not served if consumers would be required to 'turn back' their existing telephone numbers and undergo the unnecessary expense and inconvenience often associated with changing telephone numbers."); Illinois Comments at 9 (ICC "recognizes that mandatory 'take-backs' may have an adverse impact on competition since the significant costs associated with such mandatory 'take-backs' would create a disparate impact on customers of the services affected by the 'take-back.'"); Ohio Comments at 9 ("'Take-backs' would impose a hardship on consumers and could create a negative, competitive effect on the technology-specific industry such as wireless carriers.").

[31] *See* Stroup and Wynns, FCC Industry Analysis Division, "Numbering Resource Utilization in the United States," at 1 (Dec. 2000).

on public opinion polls, at minimum it should ensure that the public opinion is informed before it relies on such polls (*e.g.*, public understands that TSOs will likely accelerate NANP exhaust which would cost from between $50 and $150 billion).

### C. Technology-Specific Overlays Would Not Achieve Their Stated Objective in Any Event

States find TSOs attractive even though they will not improve number conservation or number efficiency in any way. States find TSOs appealing because by moving demand for wireless services to new TSO area codes, the demand for numbers in existing area codes will slow, thereby delaying the date that they must adopt relief plans for the existing NPAs. Borrowing from Peter to pay Paul is rarely a solution to a problem, and creating new TSO area codes to delay adopting relief for other area codes is not a solution to the numbering crisis. Not surprisingly, the Commission has already found "unpersuasive" the very argument that the states now advance.[33]

The assumption underlying the state TSO proposal — regulators can effectively segregate wireless customers into special area codes — also lacks merit. Wireless carriers are scheduled to deploy local number portability ("LNP") in only 18 months. With LNP, a customer will be able port her landline number into a wireless number. Thus, existing landline numbers in the landline NPA can and will become wireless numbers.

LNP will also enable consumers to side-step the problems the states want to impose on wireless customers with TSOs. The TSOs that the states want to establish would penalize mobile customers with TSO numbers because they would be required to dial ten rather than seven digits for most of their calls (mobile-to-land), and most people calling

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[32] *See, e.g.*, State Outline at 2.

them would also be required to dial ten rather than seven digits (land-to-mobile). Customers could avoid this dialing disparity burden through the simple expedient of obtaining a number in a "landline" area code and then porting that number to her mobile handset. Accordingly, there is no assurance that the state's assumption —TSOs will slow demand in the existing NPA — will, in fact, occur.

## III. THE USERS COMMITTEE PROPOSED SOLUTION TO THE RATE CENTER PROBLEM IS NOT WORKABLE OR LAWFUL

The Ad Hoc Users Committee notes what most already acknowledge: the "enormous number of geographic small rating areas is the single most important factor contributing to the exhaust of NXX codes within most NPAs."[34] Arguing that the Commission does not appear to have the authority to adjust (consolidate) rate centers directly, the Users Committee proposes that the Commission instead exercise its number authority by giving states an incentive to eliminate rate centers. Specifically, it recommends that the Commission establish an industry/NPA-wide utilization threshold as a condition to a state receiving a relief area code — set initially at 44% and increasing over time to 60%.[35] With such NPA relief thresholds, the User Committee asserts, states will have the "necessary incentive" to consolidate their rate centers so as to increase the NPA's overall utilization rate so their state can receive a needed relief code.[36] In essence, the Users Com-

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[33] *See Second Local Competition Order,* 11 FCC Rcd at 19528 ¶ 306.

[34] Ad Hoc Users Committee Attachment A at 18.

[35] *See id.* at 27-28.

[36] *Id*. at 28.

mittee is proposing a variation of the carrier-specific NPA-based thresholds that the Commission has already rejected.[37]

The assumption on which the User Committee's proposal rests suffers from a very basic and fatal flaw: the Committee presents no evidence that its proposed incentive — withholding NPA relief codes — will, in fact, entice states to adopt rate center consolidations. The Users Committee correctly notes that many states are reluctant to consolidate their rate centers. But what the Users Committee neglects to mention is that many of these same states are also reluctant to grant timely area code relief. The Users Committee never explains why a state reluctant to adopt both area code relief and rate center consolidation will suddenly be amenable to doing both through the imposition of additional federal mandates. As a practical matter, adoption of the User Committee proposal will not only prove ineffectual, but will also provide for some states a further excuse to delay timely adoption of area code relief.

The User Committee's proposal is also unlawful. The Communications Act bans any regulation that prohibits "any entity" from providing "any . . . telecommunications service."[38] Precluding a carrier from obtaining the numbers it needs because *other carriers* may be using their numbers inefficiently would constitute a prohibited entry barrier. Preventing one carrier from obtaining the numbers it needs at a given rate center, when its competitors have available numbers at the same rate center, would also be inequitable, unreasonably discriminatory, as well as seriously distort competition.[39]

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[37] *See First NRO Order*, 15 FCC Rcd at 7617 ¶ 105; *Second NRO Order* at ¶ 31.

[38] 47 U.S.C. § 253(a).

[39] *See* 47 U.S.C. §§ 202(a), 251(e)(1).

The Users Committee did not address any revenue impacts to Interexchange Carriers nor LECs which occur with rate center consolidations beyond the equivalent rate and calling scope consolidations. The Users Committee did not mention the Operation Support System costs that impacts many of the carriers in different ways with consolidations nor the costs to change all interconnection agreements and arrangements for multiple carriers. It will ultimately be the consumer that picks up the costs for these items but any rate center consolidation needs to be "fair" to all competing carriers.

The Users Committee characterizes its proposal as "fair" that would impose "minimal burden" on carriers.[40] It is understandable that the Committee never explains these representations. A carrier's inability to provide its services because it cannot obtain the numbers it needs as a result of the inefficiency of *others* is hardly "fair," nor can the burden be appropriately classified as "minimal."

## IV. STATES HAVE PROVIDED NO REASON TO SUPPORT DELEGATION OF AUTHORITY TO CONDUCT STATE-ONLY AUDITS

The Commission has adopted a comprehensive audit program consisting of both "for cause" and random audits. It specifically declined to permit states to conduct their own audits because states would likely employ "different standards" and the Commission determined that a national audit framework is needed "to prevent carriers from having to comply with differing demands in different states."[41] Nevertheless, the Commission gave the states an extensive and important role in the new audit program. States may request

[40] *See* Users Committee Attachment a at 28 and Summary at iv.

[41] *Second NRO Order* at ¶ 91. The FCC specifically asked parties not to address state authority to perform audits under state law. *See id.* at ¶ 155. Sprint will honor this request, but the FCC should realize that given the express and complete preemption set forth in Section 251(e)(1) of the Communications Act, state law authorizing state number audits is null and void.

that an audit be initiated against a carrier.[42] They may participate on the audit teams.[43] The Common Carrier Bureau will undoubtedly consider state input in finalizing the new audit guidelines.[44] States will also have access to the audit reports even if they choose not to participate on the audit team.[45] With this extensive state participation, it would be misleading to characterize the new audit program as a federal program; a federal-state cooperative audit effort would be far more accurate.

The Commission, having established this federal-state cooperative program, curiously asks whether states should be delegated independent authority to conduct their own "state only" audits — that is, permit what it decided only 10 weeks ago was incompatible with the public interest. There would be only two possible reasons to delegate such authority to states: so they can (1) conduct audits when they have been unable to demonstrate any reason for the audit, or (2) acquire information that is different than required in a federal-state cooperative audit. Neither ground is a valid reason to give states independent authority to conduct their own audits, and permitting state audits in these situations would undermine the very reason the Commission adopted a national audit framework in the first place.

The states are also unable to articulate any reason they should be permitted to conduct audits outside the federal-state cooperative program. New York asserts that state audits would "discourag[e] abuse of scarce number resources."[46] But as Pennsylvania

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[42] *See id.* at ¶ 87.

[43] *See id.* at ¶ 91.

[44] *See id.* at ¶ 95.

[45] *See id.* at ¶ 96.

[46] New York Comments at 6.

points out, this concern is adequately addressed by the joint federal-state audits.[47] Florida acknowledges that "uniform auditing standards" must be established to prevent carriers from being subjected to inconsistent requirements.[48] But what possible purpose would a state-only audit achieve if states will be reviewing the same data using the identical criteria? As Ohio candidly acknowledges, there is "no value in proceeding with state initiated audits in the absence of state-specific reporting and forecast requirements."[49]

California takes just the opposite position, asserting that the Commission "cannot dictate what standards states must use when conducting an audit."[50] This position not only ignores the Commission's plenary authority over numbers, but further confirms precisely why audits must be limited to the federal-state cooperative audits that the Commission just established. Given that the number categories and number assignment criteria are set by federal law, there is no reason whatever for states to examine different data or examine the same data using different criteria.

Connecticut asserts that state audit requirements "will be minimal."[51] As one of six carriers that participated in the California 310 NPA audit, Sprint PCS can attest that the burdens imposed by state audits are not minimal. Sprint PCS was required to devote extensive resources to this audit. The state auditor had only a basic understanding of numbering issues (much less use of numbers by wireless carriers), and Sprint PCS had to spend a significant amount of time explaining these issues as well as its numbering sys-

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[47] *See* Pennsylvania Comments at 7 (The joint federal-state "audits will ensure that the utilization and forecast data supplied by carriers to the NANP is accurate and timely.").

[48] Florida Comments at 8.

[49] Ohio Comments at 20.

[50] California Comments at 11.

[51] Connecticut Comments at 13.

tems — activity that would be repeated in every state conducting an audit but activity that is unnecessary with federal auditors. While the 310 NPA audit involved one NPA in one state, national carriers could quickly be overwhelmed by state audit requests involving multiple NPAs in fifty states. Furthermore, there is no record to support a need for additional audits since no evidence has been presented that carriers are not reporting utilization accurately. In fact, the recent report of the California PUC authenticated the previously reported utilization data.[52]

The state interest in enforcement is certainly understandable. But the Commission has just established a new program — a federal framework implemented by the Commission and states jointly — and time should be given for this new program to work. These new audits may reveal special circumstances (*e.g.*, a specific carrier unable or unwilling to comply with the core requirements) that may justify delegation of limited authority to address particular problem cases that may arise.

## V. RECOVERY OF POOLING SHARED INDUSTRY AND DIRECT CARRIER-SPECIFIC COSTS IS NECESSARY

Number pooling provides a national benefit to all carriers and consumers. The Commission has recognized that number pooling costs should be recovered in a competitively neutral manner. The Commission has requested cost studies that quantify shared industry and direct carrier-specific number pooling costs.[53]

Concurrent with this filing and under separate cover, Sprint's local telephone companies (collectively, "LTC") are filing a confidential number pooling cost study as

[52] *Audit Report on the 310 Area Code*, R95-04-043/I.95-04-044 (February 16, 2001), p.5.

[53] *Second FNPRM* at ¶¶ 179-182.

requested by the Commission.[54] It is anticipated that interested parties will be able to obtain copies of the cost study via the standard protective order process.

In summary, the cost study indicates that LTC will expend approximately $65.9 million in order to implement thousands block number pooling, including credit for cost savings due to delayed NPA relief projects. This amount does not include capital and expenses incurred by other Sprint affiliates. It also does not include any costs connected with a national Pooling Administrator or the download charges from the Number Portability Administration Center ("NPAC").

Sprint opposes the Commission's tentative conclusion that incumbent LECs not be able to assess an end user charge to recover number pooling costs. Sprint supports an end user surcharge like that used for local number portability (LNP), because number pooling reflects the same characteristics as LNP and the end user surcharge would most easily and fairly accomplish cost recovery. In fact, an end user surcharge is the only competitively neutral recovery mechanism. The alternative, recovery through access charges, would disadvantages purchasers of access services (mainly IXCs) and simply cause more implicit subsidies. The cost study indicates that LTC end users would be assessed $.23 per month over a three year period. As stated above, this rate does not include the costs of the Pooling Administrator nor the download charges from the NPAC, although these costs are not likely to be significant.

[54] *Id.* at ¶ 182.

## VI. A MARKET-BASED APPROACH TO NUMBER ASSIGNMENT SHOULD NOT BE ADOPTED

Free markets generally work better than government regulation, and the use of market approaches (e.g., auctions) in the assignment of telephone numbers has some appeal, at least at first blush. Closer examination, however, reveals that market-based approaches would not work and may, in fact, undermine the continued development of the very competition that the federal government is seeking to foster in the telecommunications sector.

There are two fundamental flaws with market-based approaches as applied to the assignment of telephone numbers. First, the Commission does not have the legal authority to sell numbers. Indeed, even California, one of the few commenters supporting further inquiry into this subject, recognizes that "the FCC would need to obtain explicit statutory authority to establish a mechanism requiring payment by carriers for use of public numbering resources."[55]

Second, even if the Commission had the authority to sell numbers, market-based approaches would not solve the number crisis. The crisis was caused by the government's decision to open all markets to competition without first reforming the manner in which telephone numbers are assigned. It is not at all surprising that a number distribution system designed for a monopoly environment breaks down when the quantity of carriers requiring numbers increases exponentially.

Carriers may be using numbers inefficiently, but this inefficiency is not caused because carriers want to use numbers inefficiently. The inefficiency is rather caused be-

[55] California Comments at 12.

cause of structural inefficiencies built into our number distribution system: (1) numbers have historically been allocated in blocks of 10,000 (NXX code), and (2) separate NXXs are needed for very small areas (rate centers). The Commission's new pooling rules – assigning numbers in increments of 1,000 – will do much to improve number efficiency, particularly among CLECs.[56] Indeed, the Commission recently determined that 70% of the NXXs assigned to CLECs are less than 3% utilized."[57]

Unfortunately, with the exception of a handful of states, little has been done to address the second, and real, cause of the crisis: small rate centers.[58]

The theory underlying the imposition of market fees for numbers is that market prices might cause carriers to acquire additional numbers more judiciously. However, there is no evidence that charging for numbers would change demand for numbers in any appreciable way. A carrier wanting to provide service in a particular rate center will likely pay any price to obtain the numbers it needs because (a) it cannot provide its services without numbers, and (b) any costs can be passed on to end user customers. It bears emphasis that *charging for numbers does not improve in any way the efficiency in which a carrier uses its numbers*. What improves number efficiency is assigning numbers in smaller increments (1,000s-block pooling) and permitting use of numbers over a larger area (rate center consolidation).

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[56] Average number utilization for ILECs and CMRS carriers currently ranges from 53% to 62%, while average utilization by CLECs is 16%. *See* Industry Analysis Division, "Numbering Resource Utilization in the United States," Table 1 (Dec. 2000).

[57] *Id.* At 6. According to the Users Committee, CLECs are using only 12.7 million of the 300 million numbers assigned to them. *See* Ad Hoc Users Committee Comments, Attachment A at 9.

[58] If rate centers were sized appropriately, there would have never been a need for industry to have incurred the substantial expense of implementing thousands-block pooling, because most carriers can easily use 10,000 numbers in an area code. For example, even without pooling, the

Imposing fees for numbers could actually increase warehousing and adversely effect the development of competition and consumer choice. If numbers could be purchased at will, the largest carriers with the largest resources would acquire not only the numbers they need but also numbers they do not need — to keep their competitors from acquiring numbers. Facing reduced competition, large carriers could then recover the opportunity costs of warehousing through increased prices to consumers, who would face less competition (and higher prices) as a result of the number fee program.

Our stated national policy is "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."59 This goal will be realized by assigning essential public resources (telephone numbers) based on need. This goal will not be realized if numbers are instead assigned based on one's ability to pay.

Our numbering crisis is caused by the very structure of our number distribution system. While number pooling will improve number efficiency, the crisis will not be solved until government (federal or state) addresses the rate center problem. Sprint submits that finite resources are better focused on addressing the core, structural rate center problem than by pursuing new concepts that will not improve number efficiency and may undermine the continued development of competition itself.

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need for area code relief in Manhattan has been small despite the enormous population and the extensive use of telecommunications. The reason: the 212 NPA consists of only one rate center.

[59] H.R. Conf. Rep. No. 104-458m 104th Cong., 2d Sess. 1 (1996).

## VII. CONCLUSION

For all the foregoing reasons, Sprint respectfully requests that the Commission adopt rules and policies consistent with the positions discussed above.

Respectfully submitted,

**SPRINT CORPORATION**

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