

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

PETITION FOR RECONSIDERATION OF QWEST CORPORATION¹

I. INTRODUCTION

Qwest Corporation (“Qwest”),² through counsel herein petitions the Federal Communications Commission’s (“Commission” or “FCC”) for reconsideration of certain aspects of its Second Report and Order, Order on Reconsideration (“NRO Second Report and Order” or “Order”).³ Specifically Qwest asks for reconsideration of the Commission’s decision not to

¹ Qwest Corporation files this Petition for Reconsideration on behalf of not only itself but of its parent company Qwest Communications International Inc. as aspects of the reconsideration requested affects not only Qwest Corporation but also its parent company Qwest Communications International Inc.

² On June 30, 2000, Qwest merged with U S WEST to become a multi-faceted telecommunications provider with a major presence as an incumbent local exchange carrier (“ILEC”), an interexchange carrier (“IXC”) and a competitive local exchange carrier (“CLEC”). As such, the “new” Qwest is forced to balance many of the same competing interests in developing internal policy positions that the Commission grapples with on a regular basis in developing industry-wide rules.

³ 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 Nos. 99-200 and 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; Errata, rel. Jan. 24, 2001.

allow a transition period for wireless carriers between the deployment of local number portability (“LNP”) and thousands-block number pooling. The Commission’s decision fails to appreciate the differences between LNP and pooling, both as a matter of policy and deployment. If the Commission does not modify its position, it is certain that it will be bombarded by Petitions for Waiver and Extensions of Time as the “simultaneous” LNP/pooling deployment dates become pressing.

Secondly, Qwest asks for reconsideration of aspects of the Commission’s decision pertaining to audits. First, we ask the Commission to reconsider the entire notion of burdening the enforcement process with “random audits.” Such audits are incompatible with a highly-detailed regulatory environment. Carriers are expected to comply with Commission-promulgated rules and regulations, and the more detailed the higher the costs of compliance. Random audits only increase carrier costs with no commensurate benefit to the industry or the consumer. “For cause” audits are the appropriate audit vehicle, to be triggered by some “reason to believe” that a carrier is not in compliance with the rules.

Additionally, in those cases where a “for cause” audit is triggered by the request (or application) of an appropriate party, carriers should be afforded the opportunity to rebut the case prior to proceeding to a full-blown audit. No decision to proceed should be made by a reviewing federal Auditor without a carrier’s prior participation in the “triggering process.”

II. THE COMMISSION SHOULD RECONSIDER TWO ASPECTS OF ITS ORDER

A. Wireless Carriers Should Have Some Lead Time Between LNP Deployment And Participation In Pooling

In its Order, the Commission decided that it would not afford wireless carriers a transition period between their deployment of LNP and their participation in pooling. In part,

this decision was based on the fact that the technology of LNP supports pooling and the Commission believed there was no serious problem in coming into compliance with both the Commission's mandates simultaneously. This conclusion was in error and the Commission should reverse its position.

Preliminarily, the policies behind LNP and pooling are different. The former is a regulatory mandate meant to increase the flexibility of consumers in moving between carriers. The latter is a number conservation (or optimization) measure. Attempting to accomplish the objectives of both these regulatory policies and mandates simultaneously is certain to increase the risk that compliant deployment of either or both of these mandates will be compromised.

The Commission seeks to rationalize its position, in part, by asserting that wireless carriers have had "more than two years of lead time" to deploy LNP and during that period they have been aware of the possibility that pooling would be required at the same time.⁴ The other primary reasons for the Commission's decision have to do with (a) its belief that the "technology" of LNP and pooling are essentially the same, and the deployment of each will require the same network and Operation Support System ("OSS") changes; and (b) the fact that the administrative infrastructure associated with pooling will have somewhat matured by the time wireless carriers are required to participate, minimizing the complexity of the process and reducing the need for additional time to begin participation in the pooling process.⁵

In its analysis, the Commission does not seem to appreciate the fact that -- while the underlying technology and infrastructure of LNP and pooling may be the same -- the

⁴ Order ¶¶ 47-48, 50 and n.126.

⁵ Id. ¶¶ 50-51.

implementation and deployment of LNP and pooling are not the same. The different federal mandates require different implementation activities.

In observing that wireless carriers have been granted until November, 2002 to accomplish LNP, the Commission does not address why wireless providers were granted that extension -- because of technical issues, primarily the need to support seamless **nationwide** roaming. Other carriers never had to deal with “nationwide” LNP deployment from a compatibility perspective. Rather, their focus was on being able to accomplish LNP within their own networks only on a statewide or regionwide basis.

The LNP challenge and task for the wireless carriers, then, has been far more complicated and complex than for wireline carriers. Those persons working on wireless LNP deployment are working on -- not the “hardware” or “off-the-shelf” software of LNP -- but making LNP work in a wireless environment. As of now, no one really knows if it will work, at least right out of the box. It is certainly appropriate, indeed it is in the public interest, to allow for time to assure the consuming public that a benefit the Commission demanded be extended to them (i.e., LNP) work.

Number pooling, on the other hand, is less “visible” to the consuming public, involving as it does much “behind the scenes” activity associated with number conservation. Requiring wireless carriers to manage both this public federal mandate and the more administrative one simultaneously is certain to risk that both are not accomplished in a quality manner.

In its analysis, focused as it is on notice, technology, and infrastructure, the Commission does not really address the limited number of monetary and human resources that can be thrown at the deployment of LNP and pooling, especially simultaneously. Although there may be

common costs and common dedicated personnel to certain aspects of LNP/pooling,⁶ at some point those costs and personnel diverge and begin moving along separate implementation paths - LNP or pooling. It is supporting this “divergence” simultaneously that concerns Qwest. It is a proposal fraught with peril. And, it is quite predictable that, to avoid that peril, at some point wireless carriers will be filing petitions with the Commission (either for waivers or for extensions of time) to alleviate the risk to their business operations and their customers.

Given the predictability of the above scenario, the Commission should avoid it in advance by simply providing a lag period between final LNP deployment and wireless pooling. A six-month to a year period to determine that all the kinks have been worked through with respect to LNP deployment is certainly not unreasonable. **Moreover, the reasonableness of the position waxes as the volume of numbers wireless carriers have to contribute to pooling wanes⁷ and their participation in other number utilization and optimization activities (such as utilization threshold and months-to-exhaust calculations) continues similarly to other carriers.**

⁶ For example, based on very high level calculations, Qwest estimates that our total “common costs” for wireless LNP/pooling is in the range of \$57 to \$58 million (reflecting network, systems and other costs); the total hours for this common work is around 150,000. On top of that, however, there are incremental costs/hours for wireless LNP (between \$21 and \$22 million in costs and between 63,000 and 64,000 hours) and for pooling (between \$12.5 and \$13.5 million and between 36,000 and 37,000 hours).

⁷ The record in this proceeding has consistently demonstrated that wireless carriers are among the most efficient users of numbering resources. Moreover, the fact that wireless carriers tend to have larger rate centers than do wireline carriers means that their numbering resources do not become “isolated” to a small area and they can utilize the resources across a broader geography.

B. The Commission Should Modify Certain Of Its Decisions Regarding Audits

1. The Commission Should Not Require Random Audits

In its NRO Second Report and Order, the Commission determined that it would impose a two-tiered audit regime on carriers with respect to audits: random audits and “for cause” audits.⁸ Qwest requests the Commission reconsider its position on random audits.

Every day carriers comply with hundreds of Commission mandates, rules and regulations. While the Commission may have general “random audit authority,” which it can exercise according to its discretion, incorporating random audits as a formal part of rulemaking enforcement is not sound regulatory policy.⁹ The more common practice of promulgating rules and expecting compliance is not only the general regulatory model but it is one that has worked well for decades. The Commission simply expects compliance with its rules and does not seek to buttress that expectation through additive types of “monitoring” or “deterrence” activity.¹⁰ The current trend toward (a) promulgating rules and (b) then fashioning additional regulation to monitor enforcement (such as certifications of compliance¹¹ or audits) is simply unnecessary.

⁸ Order ¶ 85.

⁹ It is no answer to say that “All carriers should be prepared at any time to show their compliance with our requirements; the use of random audits will spare the vast majority of carriers from having to do so while providing a similar deterrent effect” (id. ¶ 88) because if this were a mainstay of federal regulatory jurisprudence, the concept of random audits would be an ongoing rule enforcement issue in every proceeding involving the promulgation of federal rules. It has not been.

¹⁰ See id. ¶ 88 referencing the “monitoring” and “deterrence” objectives that the Commission believes is achieved by random audits.

¹¹ On rare occasions, the Commission demands “certifications” attesting to compliance (see, e.g., 47 C.F.R. § 64.2009(e); and In the Matter of Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC’s Rules, Order, 4 FCC Rcd. 1040, 1124 (1989) (ARMIS Reporting Requirements))). Even such attestations appear at odds with the notion that the Commission prescribes rules and carriers are expected to comply.

Moreover, adding a “ready-made” enforcement tool on top of already highly-detailed rules is overkill. Given the deregulatory thrust of the Telecommunications Act of 1996 (“the Act”), the Commission should not be crafting regulatory regimes that combine highly-detailed (as opposed to “high level”) rules with random audits. Such audits might be appropriate if the Commission were regulating by “principle,” where the principle was meant to achieve a certain objective but might not be appropriately insinuated into the carrier’s business. But the combination of complex, detailed rules and random audits is at odds with Congressional intent as reflected in the Act as well as the approach expected of the Commission under its current leadership.¹² The Commission should modify its current position and incorporate only “for cause” audits into its regulatory regime with respect to number optimization and utilization.

C. Carriers Should Be Able To Participate In “Triggering Events”
With Respect To Audits

In its discussion of audits and state participation, the Commission describes possible “triggers” of federal “for cause” audits, including written requests from the North American Numbering Plan Administrator (“NANPA”), the Pooling Administrator or state commissions. Nowhere in its process does it discuss a carrier’s opportunity to respond to the triggering event.

¹² See the May 11, 1999 Separate Statement of then-Commissioner Powell in the Truth-in-Billing proceeding, CC Docket No. 98-170, stating (in an obviously different context) that the Commission should be about “promoting . . . deregulation [and] shifting regulatory resources from drafting complex prophylactic rules to vigorous enforcement.” In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7492, 7567 (1999). The clear implication from this remark is that if there are “complex prophylactic rules” -- which the numbering rules certainly are -- that to achieve a more meaningful state of deregulation, the enforcement burden would be correlatively minimized. This is clear from a remark made close to that cited above where the Commissioner states that, “Rather, enforcement **must be targeted** so that **government intervenes -- only when and only to the extent -- the record demonstrates that there are real, identifiable harms** that the market participants’ voluntary actions will not correct.” Id. (italics in the original; bold added). Random audits are clearly not targeted to demonstrated, real and identifiable harms.

The Commission should reconsider this and provide for carrier participation in the triggering process.

As mentioned above, various parties can request a federal “for cause” audit. Such request “shall state the reason for which a ‘for cause’ audit is being requested and shall include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines.”¹³ From this submission, the Commission’s described process moves directly to consideration by the auditor (“The Auditor shall determine from the application whether a ‘for cause’ audit is warranted.”). The described process makes no provision for a carrier to have the opportunity to rebut the *prima facie* case that was ostensibly made to trigger the federal audit. This may have been a matter of oversight or it may have been intentional.

If intentional, the Commission should reconsider its position. Fundamental fairness requires a carrier not be subject to a “for cause” audit based on allegations regarding which it has no opportunity to rebut. Subsequent to the “application” for a “for cause” audit, and prior to the review and determination by the Auditor whether to proceed, carriers should be afforded an opportunity to review the documentation and present “their side of the case.” The Commission should make such an accommodation in its processes.

III. CONCLUSION

For the above reasons, the Commission should modify its NRO Second Report and Order as urged by Qwest. The Commission’s number conservation objectives will certainly not be materially compromised by allowing wireless carriers some lead time between their deployment

¹³ Order ¶ 87.

of LNP and pooling. And, given the “internal” focus of the pooling mandate, the public will not be adversely affected in any significant way, either.

The Commission should also modify its audit rules. It should eliminate “random audits” from its fabric of regulations associated with number optimization enforcement. It should also build in an opportunity for carriers to participate in the process leading up to the final decision to proceed with a “for cause” audit.

The changes proposed by Qwest are in the public interest and should be adopted by the Commission.

Respectfully submitted,

QWEST CORPORATION

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March 12, 2001

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **PETITION FOR RECONSIDERATION OF QWEST CORPORATION** to be filed electronically with the FCC by using its Electronic Comment Filing System, and a copy of the **PETITION** to be served, via hand delivery, upon the persons/entity listed on the attached service list.

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