

Before the
Federal Communications Commission
Washington, D.C. 20554

MAR 12 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)

CC Docket No. 99-200 /

**VERIZON WIRELESS
PETITION FOR CLARIFICATION AND RECONSIDERATION**

Verizon Wireless hereby petitions the Commission for reconsideration and clarification of certain aspects of its December 29, 2000 *Second Numbering Resources Optimization Report and Order*.¹ It should: (1) revise the utilization threshold formula or, at a minimum, confirm that resellers are subject to the FCC's numbering requirements, especially the fill rate; (2) implement a safety valve process; and (3) reconsider the decision to grandfather existing state fill rates and rely on the uniform, federal standard.

I. THE FCC SHOULD CLARIFY AND REVISE THE UTILIZATION THRESHOLD

Verizon Wireless petitioned the FCC previously to revise and clarify the utilization formula delineated in the *First NRO Report and Order* due to a concern that the formula overstated the numbers actually available to carriers to assign to their customers.² With no justification, beyond a cursory statement that the arguments in support of reconsideration were

¹ *Numbering Resource Optimization, 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*, released December 29, 2000 (relevant portions referred to as "*Second NRO Report and Order*" and "*Second Further Notice*", respectively).

² See Verizon Wireless Petition for Clarification and Reconsideration, CC Docket No. 99-200, at 2-5 (July 17, 2000). *Numbering Resource Optimization, CC Docket 99-200, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000), *Erratum* (rel. July 11, 2000), (continued on next page)

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“unpersuasive,”³ the Commission refused to reconsider its method for calculating number utilization. Utilization rates are now more critical than ever to carriers’ abilities to serve customers, given that non-pooling-capable carriers’ access to NXX codes will depend on their ability to meet a restrictive utilization threshold. Verizon Wireless continues to maintain that if carriers are unable to use numbers for their own end users, those numbers should not be considered as available inventory, thereby precluding carriers from getting additional numbering resources. The treatment of “intermediate” numbers raises the most serious concern for Verizon Wireless, given our demand from reseller carriers for large amounts of numbers, that may not be used. Consequently, Verizon Wireless is repeating its request for reconsideration of the fill rate definition, with respect only to the treatment of intermediate numbers.

If the Commission does not revise the utilization threshold definition, Verizon Wireless requests that the Commission confirm that facilities-based carriers have authority to restrict access to numbers by resellers in accordance with the Commission’s utilization criteria. Additionally, the Commission must adopt a safety valve mechanism to ensure access to numbers by carriers that face high reseller demand for numbers, and consequently, cannot meet the numbering demands of their customers within the confines of the Commission’s utilization rules. When there is legitimate and demonstrable demand for numbers, the Commission must ensure that carriers have the ability to obtain to new NXX codes.

(footnote continued)

summarized, 65 Fed. Reg. 37,703 (June 16, 2000), 65 Fed. Reg. 43,251 (July 13, 2000) (“*First NRO Report and Order*”).

³ *Second NRO Report and Order* at ¶ 30.

A. The Utilization Formula Must Be Revised to Include Intermediate Numbers in Utilization (the Numerator) or to Exclude them from Inventory (the Denominator)

The Commission's utilization formula calculates a carrier's utilization rate by dividing the total amount of a carrier's *assigned* numbers by the total numbering resources assigned to the carrier. This calculation is an inaccurate measure of utilization because it presumes that numbers in the aging, administrative, intermediate, and reserved categories are unutilized and available for assignment. Accordingly, Verizon Wireless has maintained consistently that these categories of numbers should either (a) be included in the numerator of the formula, just like assigned numbers, or (b) be subtracted from the total numbering resources assigned to the carrier in the denominator of the formula, so that the denominator reflects the true inventory of numbers available for assignment to end users.⁴ Of these categories, intermediate numbers pose the greatest threat to carriers being able to access numbers when needed to serve their own customers. Intermediate numbers are often assigned to resellers who may not themselves use numbers efficiently. Moreover, final assignment of numbers by resellers to end-user customers is not within the control of Verizon Wireless. While Verizon Wireless recognizes the Commission's interest in defining a strict utilization rule that will promote efficient number utilization, the intermediate number category deserves more refined treatment. Consequently, Verizon Wireless now urges the Commission to reconsider its treatment of intermediate numbers in its fill rate definition.

The Commission need not exclude intermediate numbers from the numerator of the fill rate in order to protect the integrity of its utilization threshold regime. Given the new auditing

⁴ See Verizon Wireless Comments in Response to First Further Notice, CC Docket 99-200, at 18-21 (May 19, 2000) ("Further Notice Comments"); Verizon Wireless Reply Comments in Response to Further Notice, CC Docket 99-200, at 9-12 (June 9, 2000) ("Further Notice Reply Comments").

and enforcement mechanisms now authorized by the FCC,⁵ the Commission would have ample ability to determine whether a carrier is gaming the system through the intermediate category. The Commission should punish any intentional evasion of the rules severely.

If a carrier has significant sales to resellers, the utilization rate as defined currently would create serious number shortages. To rectify this problem, the Commission can include intermediate numbers in the numerator or it can exclude them from the denominator. The latter option is consistent with the recognition in the *First NRO Report and Order* that intermediate numbers “should not be counted in the code or block holder’s inventory because the code or block holder does not control the provision of these numbers to end users.”⁶ The utilization rate should reflect how well or poorly the carrier has utilized *its* inventory. The Commission should seek to hold the actual users accountable for their number utilization, rather than place underlying code holders in the difficult position of having to restrict numbering assignments to their reseller competitors. Under this approach, a carrier’s utilization rate should use the “carrier’s inventory” as its denominator and thereby, exclude intermediate numbers, which are completely outside the control of the code holder.

B. Alternatively, the FCC Should Confirm that Resellers Must Meet The Same Utilization Thresholds as Facilities Based Carriers Before Obtaining Additional Numbers

As indicated above, the FCC’s new utilization threshold definition has placed wireless carriers in need of numbering resources in a difficult situation *vis a vis* resellers, which obtain their numbering resources from wireless carriers. If the Commission does not revise the fill rate definition as requested above, the FCC should confirm that the its numbering utilization requirements apply to resellers.

⁵ See *Second NRO Report and Order* at ¶¶ 81-99.

Specifically, unless the utilization standard is changed with regard to intermediate numbers, Verizon Wireless will apply the FCC's utilization standards to resellers before allocating additional growth numbering resources. Verizon Wireless believes that a good faith application of the Commission's numbering rules is not in conflict with the FCC's resale rule. Consequently, no carrier should be subject to complaints pursuant to sections 201 and 202 of the Communications Act of 1934 regarding resellers' access to numbers as long as all sales channels are treated similarly in the allocation of scarce numbering resources. Wireless carriers should not face the prospect of unwarranted complaints for ensuring that their supply of numbering resources is used efficiently, as per the FCC's rules and policies.

In the *First Report and Order*⁷ regarding interconnection and resale obligations of CMRS carriers, the Commission adopted a rule to permit resale of CMRS services.⁸ The *First Report and Order* specifically prohibited CMRS carriers from restricting resale or *unreasonably discriminating* against resellers.⁹ Moreover, common carriers providing interstate services generally are subject to proscriptions of unjust and unreasonable practices and unjust and unreasonable discrimination under sections 201(b) and 202(a) of the Act.¹⁰ The *First Report and Order* also clarified the resale rule by delineating "two straightforward aspects" first, no provider may offer like communications services to resellers at less favorable prices, terms or conditions than available to other similarly situated customers, *absent reasonable justification*; second, no provider may directly or indirectly restrict resale in a manner that is *unreasonable* in light of the

(footnote continued)

⁶ See *First NRO Report and Order* at ¶ 21.

⁷ See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket 94-54, *First Report and Order*, released July 12, 1996 ("*First Report and Order*").

⁸ 47 C.F.R. §20.12.

⁹ *First Report and Order* at ¶ 7 (emphasis added).

¹⁰ *Id.*

policies stated in the *First Report and Order*.¹¹ In the *Reconsideration MO&O*,¹² the FCC clarified the resale rule to prohibit restrictions on resale, unless the carrier demonstrates that the restriction *is reasonable*.

Unless the treatment of intermediate numbers is changed in the fill rate definition, facilities-based carriers will need to be the numbering “gate keepers” for resellers. As long as facilities-based carriers treat resellers as they do their own sales channels, they will not unreasonably restrict resale, even if a lack of numbers results in a decrease in sales. In order to comply with the Commission’s utilization rules and meet our legitimate demand for numbers, Verizon Wireless intends to require resellers to demonstrate or certify in good faith that they meet the FCC’s utilization threshold requirements before receiving additional numbering resources.

Verizon Wireless does not seek to restrict a reseller’s ability to resell our services. Verizon Wireless seeks only to require resellers to meet the same utilization standards and numbering access restrictions applicable to us. This is particularly justified because under the current fill rate definition, our number usage (and ability to qualify for more numbers) is inextricably linked with reseller utilization. The FCC should confirm that application of its numbering efficiency standards by carriers to resellers is reasonable and fully permissible under the resale rules.

¹¹ *First Report and Order* at ¶ 12 (emphasis added).

¹² See *Interconnection and Resale Obligations Pertaining to CMRS*, CC Docket 94-54, *Memorandum Opinion and Order on Reconsideration*, released September 27, 1999 at ¶54 (“*Reconsideration MO&O*”).

A carrier's access to numbering resources should depend on its own utilization and not on how well or poorly a competing reseller has used its resources. An inefficient reseller should not be an obstacle for an efficient underlying carrier to obtain numbers.

C. The FCC Should Clarify that Resellers Must Report their Intermediate Numbers to NANPA

The Commission should clarify that resellers must report their use of intermediate numbers to NANPA and apply sanctions to resellers if they fail to comply with the reporting requirements. The *First NRO Report and Order* requires the underlying carrier who obtains these numbers from NANPA to report them as intermediate numbers, and it also requires any carrier, such as a reseller, who obtains these numbers to file periodic reports on their number usage.¹³ However, only carriers obtaining numbers from NANPA must file applications for growth numbering resources. When requesting growth codes, the underlying carrier would report any numbers assigned to resellers as intermediate numbers, and (under the current utilization formula) its utilization would not take reseller numbers into account. When a utilization threshold is applied to determine eligibility for growth codes, a carrier might fail to meet the threshold because numbers assigned to resellers were never deemed assigned. Given that the reseller using those numbers, as a non-codeholder, will never file an application for growth codes, numbers assigned to resellers might not be counted under the current rules for seeking growth codes. It is important that NANPA have a complete picture of intermediate

¹³ 47 C.F.R. § 52.15(f)(2) defines "reporting carrier" as including "a telecommunications carrier that receives numbering resources from the NANPA, a Pooling Administrator, or another telecommunications carrier." Reporting carriers are obligated to submit forecast data and utilization reports by §§ 52.15(f)(4)(i), (5)(i), and (6)(i). The Commission should clarify how double counting is to be avoided under this procedure.

number utilization in case a code holder seeks an NXX assignment through a safety valve process.¹⁴

II. EXCLUSIVE RELIANCE ON UTILIZATION THRESHOLDS FOR GROWTH CODE ELIGIBILITY IS UNWARRANTED

Verizon Wireless demonstrated in its Comments and Reply Comments in response to the *Second Further Notice* that exclusive reliance on utilization thresholds for determining carriers' eligibility for growth codes is unwise.¹⁵ Verizon Wireless explained the need for a "safety valve" procedure that would allow carriers to overcome the presumption that they are not entitled to a growth code based on their utilization rate. The need for a safety valve is especially grave if the Commission's utilization definition is retained, because "available" numbers will be consistently overstated. Rather than repeating the explanation for why a safety-valve procedure is needed, Verizon Wireless hereby incorporates its Comments by reference.¹⁶

III. THERE IS NO BASIS TO GRANDFATHER A STATE'S UTILIZATION THRESHOLD UNLESS THE UNDERLYING STATE UTILIZATION DEFINITION IS RETAINED AS WELL

In paragraph 23 of the *Second NRO Report and Order*, the Commission allowed state commissions that have ordered a utilization threshold that exceeds the FCC's 60% threshold (pursuant to delegated authority) to continue to use their utilization threshold under two conditions: (1) the threshold must not exceed the Commission's established ceiling of 75%, and

¹⁴ In clarifying the reporting obligations, the Commission should take into account the fact that reseller numbers are generally coupled with a carrier's service. Accordingly, a reseller that obtains numbers from two competing carriers in the same market cannot use the numbers from one underlying carrier to satisfy the demands of customers for the service of a different underlying carrier.

¹⁵ See Comments and Reply Comments by Verizon Wireless, CC Docket No. 99-200, (February 14, 2001 and March 7, 2001, respectively.)

¹⁶ *Id.*

(2) utilization must be calculated consistent with the FCC's new fill rate definition (*e.g.*, including only assigned numbers in the numerator).¹⁷

This conclusion is infirm on a number of grounds. First, the FCC found in the very same paragraph of the *Second NRO Report and Order* that "disparate utilization thresholds may be more difficult to administer and may increase the difficulty of monitoring compliance," and consequently, denied requests from additional states to allow them to set their own state-specific fill rates. The Commission provided no basis for treating states that already have adopted utilization thresholds any differently.

Second, the Commission found that 60% is the appropriate initial utilization rate, and provides no justification for a higher rate in certain states. Specifically, the Commission found that "an initial threshold of 60% is high enough to encourage carriers to use numbers from their existing inventory before seeking more resources, yet low enough to be achievable by carriers that truly need additional resources."¹⁸ If a 60% rate is needed initially to ensure that all carriers have access to numbers when truly needed, then the Commission is sanctioning certain state commissions to withhold numbers from deserving carriers by grandfathering higher initial fill rates. The only way a higher state rate potentially could be consistent with the Commission's own findings is if each state's fill rate definition is grandfathered as well.

Most if not all of the legacy state definitions included all unavailable numbers in the numerator (in contrast to including only "assigned" numbers in the numerator). Obviously, it is easier to comply with a 75% fill rate under the FCC's old definition than under the FCC's more restrictive new definition. However, as the FCC implicitly recognized, the use of multiple fill

¹⁷ See *Second NRO Report and Order* at ¶ 23.

rate definitions across the country will complicate, and potentially undermine compliance with utilization mandates.

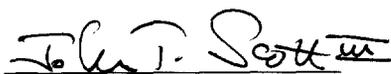
Consequently, the best course is for the FCC to reconsider its decision to grandfather existing state fill rate regimes and instead mandate one consistent fill rate standard and definition nationwide.

CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to reconsider and clarify its rules and policies adopted in the *Second NRO Report and Order*.

Respectfully submitted,

VERIZON WIRELESS

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(footnote continued)

¹⁸

See *Second NRO Report and Order* at ¶ 22.

Certificate of Service

I hereby certify that on this 12th day of March copies of the foregoing "Petition for Reconsideration of Verizon Wireless" in CC Docket 99-200 were sent by hand delivery to the following parties:

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A handwritten signature in cursive script, reading "Sarah E. Weisman", written in black ink. The signature is fluid and includes a long horizontal flourish at the end.

Sarah E. Weisman