

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)
Petitions for Reconsideration)
)

CC Docket No. 99-200 /

PETITION FOR RECONSIDERATION OF WORLDCOM, INC.

On December 29, 2000, the Commission released its *Second NRO Order*.¹

Therein, the Commission reversed an earlier decision and determined that participants in thousands-block number pooling should be required to achieve the same utilization threshold as non-participants before qualifying for additional numbering resources.

WorldCom, Inc. (WorldCom) respectfully seeks reconsideration of this reversal. Neither logic nor any facts in the record support the decision. Even if there were a record basis for establishing a utilization threshold for pooling carriers, there is no reason to believe that it would be identical to the threshold for non-pooling carriers. Moreover, application of the utilization threshold to pooling carriers will disproportionately burden new entrants.

In the *First NRO Order*, the Commission exempted pooling carriers from the utilization threshold "in recognition of their requirement to donate to the pool uncontaminated and lightly contaminated thousands-blocks that are not needed to

¹ In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, *Second Report and Order, Order on Reconsideration*.

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maintain short-term inventory levels.”² The Commission said that it would revisit this issue if it found “that such thresholds significantly increase numbering use efficiency.”³

Subsequent to the release of the *First NRO Order*, several state commissions sought reconsideration of the Commission’s decision to exempt pooling carriers from the utilization threshold.⁴ To support their petitions, the state commissions relied on an argument and evidence submitted by the California Commission which purported to demonstrate that unless pooling carriers faced a utilization threshold, they would draw more thousands blocks than actually needed to serve customers. The evidence consisted of a showing that in California, which had adopted a utilization threshold for pooling carriers pursuant to a delegation of authority, block forecasts exceeded actual block requests.⁵ The California Commission argued that the explanation for this disparity was the success of its utilization threshold in preventing carriers from requesting all forecasted blocks.

As WorldCom demonstrated in its opposition to these petitions for reconsideration, the evidence actually showed only that pooling carriers consistently over-forecast demand for blocks *regardless* of any utilization threshold.⁶ The pattern was no different in California than in Illinois, which had never imposed a utilization threshold on pooling carriers.

² In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking* (rel. March 31, 2000), ¶ 103.

³ *Id.*

⁴ *See, e.g.*, Petition for Reconsideration and Clarification by the California Public Utilities Commission and the People of the State of California (filed July 17, 2000) (California Petition), 3-7.

⁵ *Id.* at 4.

⁶ Opposition of WorldCom, Inc. (filed August 15, 2000), 3-4.

In the *Second NRO Order*, the Commission reversed itself and decided that pooling carriers should be subject to the same utilization threshold as non-pooling carriers. To support this decision, the Commission said the following:

We are encouraged by the results achieved in pooling trials using a utilization threshold, and are persuaded that our national numbering optimization goals can be met more quickly and efficiently if we require all carriers, including pooling carriers, to meet a utilization threshold to obtain growth numbering resources. We agree with Maine that applying the utilization threshold to pooling carriers helps ensure that only those thousands blocks that are needed are assigned. Thus, the rationale we applied in establishing a utilization threshold for non-pooling carriers, we believe, applies equally in a pooling environment. Further, utilization rates provide an objective, uniform means of determining when carriers are in need of additional numbering resources. We therefore conclude that pooling carriers, also, shall be subject to meeting the utilization thresholds established herein to obtain growth numbering resources.⁷

A close reading of this paragraph does not support any of its conclusions.

There is no evidence in the record that would make a rational decision-maker any more “encouraged” about the results from pooling trials using utilization thresholds, than about the results from trials not using such thresholds. The Commission has provided no insight whatsoever into the sources of its particular encouragement from pooling trials with utilization thresholds. WorldCom specifically drew the Commission’s attention to the importance of looking at trials without utilization thresholds to assess the validity of any claim that trials with utilization thresholds produce superior numbering optimization results. Nonetheless, the Commission appears to have made no attempt to make such a comparison. Indeed, the Commission did not attempt to rebut or even address WorldCom’s argument. The Commission must provide a better reason for changing its rules than seemingly irrational “encouragement.”

⁷ ¶ 28.

Since the Commission has not explained why it believes pooling to be more successful where a utilization threshold is applied, it is difficult to understand why the Commission would be “persuaded” that its optimization goals can be met more quickly and efficiently by requiring pooling carriers to meet a utilization threshold. Again, the assertion is unsupported by any rationale or evidence.

Nor has the Commission explained why a utilization threshold is needed to ensure that pooling carriers take only those blocks that are actually needed. As WorldCom demonstrated, existing evidence does not show that the lack of a utilization threshold results in unnecessary block requests. In Illinois, the state with the longest-running pooling trial, there is no evidence of unjustified block requests. Thus, there is no rational basis upon which the Commission could conclude that a utilization threshold is needed to prevent needless block requests.

Since the Commission had no evidence to support the extension of its utilization threshold to pooling carriers, its conclusion that the same rationale used to establish the threshold for non-pooling carriers applies equally in a pooling environment, is a complete *non sequitur*. Assuming that the Commission had some basis for adopting its utilization threshold for non-pooling carriers, the two issues are distinct. The Commission has failed utterly to articulate a valid reason for requiring pooling carriers to meet a utilization threshold as a prerequisite to obtaining additional resources.

Finally, even if the Commission could articulate a valid reason to impose a utilization threshold on pooling carriers, it strains credulity well past the breaking point to imagine that the threshold would be *identical* to the threshold for non-pooling carriers. Differences in the quantities of numbers involved make it extraordinarily unlikely that a

percentage threshold appropriate for carriers drawing numbers in blocks of 10,000 would also be appropriate for carriers drawing numbers in blocks of 1,000.

The Commission's initial utilization threshold of 60% means that a non-pooling carrier can apply for additional resources when it has a minimum of 4,000 numbers available,⁸ but a pooling carrier might have to wait until it has only 400. While the activation of an NXX code may take longer than the time needed to make numbers from a pooled block available, it is highly unlikely that application of an identical utilization threshold is the appropriate way to balance the different activation times. More importantly, the Commission did not even pretend to examine these issues.

Application of the Commission's utilization threshold to pooling carriers will in all likelihood harm pooling carriers, particularly new entrants. If a pooling carrier has only achieved 50% utilization, and thus may have as few as 500 numbers available, that carrier will be unable to respond quickly to customer requests for more than 500 numbers. The carrier will have to ask the customer to be patient while the carrier pursues whatever "safety valve" may be available. While the carrier is seeking relief from application of the utilization threshold, the customer may decide to take its business elsewhere. This problem is more likely to afflict new entrants than incumbent local exchange carriers, because the incumbents will tend to have a larger base of embedded, contaminated blocks. Thus, the incumbents' utilization will always tend to be based on a larger inventory that provides a larger cushion. Indeed, if an incumbent has multiple NXX codes in a rate area, it is possible that the incumbent could apply for a significant

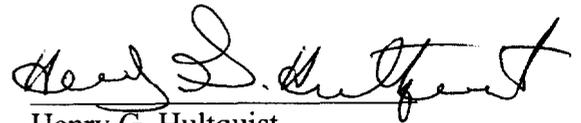
⁸ When a carrier has multiple NXX codes in a rate area, this disparity would be even greater. For example, a carrier with 5 NXX codes would have 20,000 numbers available when it reaches the utilization threshold.

amount of numbering resources without causing its utilization level to dip below the threshold. This is fundamentally unfair.

Rather than acknowledge that establishment of a utilization threshold for pooling carriers raises different issues than for non-pooling carriers, the Commission simply stated its conclusion that pooling carriers should meet the same threshold as non-pooling carriers. In so doing, the Commission ignored its responsibility to provide a reasoned basis for its decision. The disproportionate impact of this rule on new entrants is completely at odds with the Commission's policy to promote competition in all telecommunications markets. The Commission should reinstate the former rule and undertake a more thorough analysis of the usefulness of a utilization threshold in a pooling environment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom, Inc. were sent via first class mail, postage paid, to the following on the 12th day of March 2001.

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