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

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunication Act)	}
of 1996)	
)	
Petitions for Delegated Authority:)	
)	
Louisiana)	NSD File No. L-00-170
Maryland)	NSD File No. L-00-171
Massachusetts)	NSD File No. L-00-169
New Jersey)	NSD File No. L-00-95s
)	

APPLICATION FOR REVIEW

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March 16, 2001

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Attachment A: Sprint Opposition, CC Docket No. 99-200, NSD File No. L-00-95 (Aug. 7, 2000)

Attachment B: Sprint Ex Parte, CC Docket No. 99-200, NSD File Nos. L-00-169, 170 and 171 (Feb. 6, 2001)

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SPRINT APPLICATION FOR REVIEW

Sprint Corporation (“Sprint”), on behalf of its local, long distance and wireless divisions, respectfully requests the Commission to review the Order that the Common Carrier Bureau entered in this proceeding on February 14, 2001 insofar as the Bureau delegated to four states the authority (1) to order rationing after area code relief is implemented and (2) to hear and address requests for additional numbers outside the rationing process.¹ Sprint does not challenge that portion of the Bureau’s Order declining to extend rationing authority prior to area code relief or delegating other authority to these states.

¹ See *Numbering Resource Optimization*, CC Docket No. 99-200, *Order*, DA 01-386 (Feb. 14, 2001)(“*Four PUC Delegation Order*”). Sprint submits this application pursuant to 47 C.F.R. § 1.115.

I. The Order Is *Per Se* Arbitrary and Capricious

Appellate courts have held, repeatedly, that the Administrative Procedure Act imposes on the Commission “the duty to respond to significant comments.”²

Notice and comment rulemaking procedures obligate the FCC to respond to all significant comments for “the opportunity to comment is meaningless unless the agency responds to all significant points raised by the public.”³

A significant comment is one that “raises points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rule.”⁴ The Commission is “required to give reasoned responses to all significant comments”:

We will therefore overturn a rulemaking as arbitrary and capricious where the [agency] has failed to respond to specific challenges that are sufficiently central to its decision.⁵

Sprint demonstrated to the Bureau that the rationing of numbering resources is repugnant to the Commission’s needs-based assignment rules,⁶ inconsistent with the Commission’s directive that numbering resources be assigned on a “first-come, first-served basis,”⁷ and incompatible with the Commission’s recent determination that rationing poses an “insidious threat to competition.”⁸ See Attachments A and B. In granting the authority to impose rationing following area code relief to all four requesting

² *Alabama Power v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979).

³ *ACLU v. FCC*, 823 F.2d 1554, 1581 (D.C. 1987), quoting *Alabama Power v. Costle*, 636 F.2d 323, 384 (D.C. Cir. 1979), and *HBO v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977).

⁴ *HBO v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977). See also *Comsat v. FCC*, 836 F.2d 623, 634 (D.C. Cir. 1988) (“The fact that Comsat’s representation, if true, would itself be dispositive of the case should suffice to make it a ‘significant’ comment demanding consideration.”).

⁵ *International Fabricare v. EPA*, 972 F.2d 384, 389 (D.C. Cir. 1992).

⁶ See 47 C.F.R. § 52.15(g).

⁷ *First NRO Order*, CC Docket No. 99-200, FCC 00-104, 15 FCC Rcd 7574, 7612 ¶ 92 (March 31, 2000).

⁸ *Second NRO Order*, CC Docket No. 99-200, FCC 00-429, at ¶ 59 (Dec. 29, 2000).

states, the Bureau completely ignored the comments that Sprint had submitted on the subject of rationing.⁹ The Bureau's failure to address the substantial legal arguments that Sprint made renders the Order decision arbitrary and capricious as a matter of law.

II. The Order is Contrary to the Delegated Authority

The Commission has delegated to the Common Carrier Bureau the authority to act on state requests for additional numbering authority, but only so long as "no new issues are raised."¹⁰ The Bureau concluded that the requests for rationing authority after relief raised no new issues because there is "FCC precedent" for such authority.¹¹ But as Sprint pointed out to the Bureau, the precedent that the Bureau relied upon is no longer valid, given the Commission's subsequent decisions in the *First* and *Second NRO Orders*.¹² The issue that the Bureau addressed is not only new and therefore beyond the Bureau's delegated authority, but the Bureau's Order conflicts with the Commission's orders and rules.¹³

III. The Order Poses a Threat to Competition

Timely access to telephone numbers is a carrier's lifeblood because it cannot provide service to a customer unless it has a number to assign to the customer. The Commission adopted "needs-based" assignment rules "to ensure that carriers request and

⁹ The Bureau recited Sprint's opposition on other issues (*see Four PUC Delegation Order* at n.78), so this is not a situation where the Bureau was not aware of Sprint's opposition to rationing.

¹⁰ *First NRO Order*, 15 FCC Rcd at 7652 ¶ 170. *See also* 47 C.F.R. § 0.291(a)(2) ("Common Carrier Bureau shall not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.").

¹¹ *Four PUC Delegation Order* at ¶¶ 7, 13 and 33.

¹² *See* Attachment A at 2-4 and Attachment B at 2-5.

¹³ *See* 47 C.F.R. § 1.115(b)(2)(i).

receive numbering resources only when and where needed.”¹⁴ The purpose of these “needs-based” rules is to ensure that carriers will not only receive the numbers they need, but also will receive the numbers when they need them:

[O]nce carriers meet the requirements set forth herein for initial and growth numbering resources, the NANPA *shall* continue to assign numbering resources on a first-come, first served basis, to those carriers that satisfy the necessary requirements.¹⁵

The Commission has recognized that rationing “poses an insidious threat to competition” because it can “rob consumers of competitive choices.”¹⁶ With rationing, a carrier meeting the Commission’s number assignment rules does not obtain the numbers it needs, but rather, receives a lottery ticket that *may* enable it to receive the numbers *at some unspecified time in the future*. In the end, rationing does not provide what the new rules guarantee: receipt of additional numbers “when and where needed.”¹⁷

For competition to flourish and for consumers to receive the services they desire, carriers need to receive additional numbers at the time they demonstrate compliance with the “needs-based” rules. A procedure whereby a carrier instead receives a lottery ticket, with a promise that it will receive the needed numbers at some unspecified point in the future (when, and if, it gets lucky) is, indeed, “an insidious threat to competition.”

IV. The Order Allows for Discrimination in Number Assignment

Congress has commanded that the Commission “shall . . . make [telephone] numbers available on an equitable basis.”¹⁸ The Bureau, by delegating both rationing and

¹⁴ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88.

¹⁵ *Id.* at 7612 ¶ 92 (emphasis added).

¹⁶ *Second NRO Order* at ¶ 59.

¹⁷ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88.

¹⁸ 47 U.S.C. § 251(e)(1).

pooling authority, has given states the license to discriminate in the way needed numbers are assigned and, as a result, to contravene the Communications Act. In fact, there is no way for the states to implement both rationing and pooling without contravening the Act's requirement that numbers be assigned "on an equitable basis."

This discriminatory arrangement is occurring in California today. The California Commission has noted that pooling carriers in California can obtain and use the additional numbers they need in "*less than one week.*"¹⁹ In contrast, wireless and other non-pooling carriers must wait "*several additional months*" even to receive the numbers they need (until they get lucky in the lottery) — *and they must then wait an additional 66 days before they can begin using the numbers.*²⁰ There is no place for such discrimination in the number assignment process, and such blatantly disparate arrangement certainly is not consistent with the Congressional directive that numbers "*shall [be made] available on an equitable basis.*"²¹

V. The Order Is Not Rationally Based and Constitutes an Impermissible Barrier to Entry

New Jersey and the other three states sought post-relief rationing authority to prevent a "run" on numbers:

[T]o control the accelerated demand that accompanies the announcement of the area code relief plan and to prevent another declaration of jeopardy immediately following the implementation of an area code relief, the Commission is requested to grant the Board additional authority to

¹⁹ California PUC Reconsideration Petition, Docket No. 99-200, at 6 (July 17, 2000).

²⁰ *Id.* (emphasis added).

²¹ 47 U.S.C. § 251(e)(1)(emphasis added).

implement a rationing procedure for at least 6 months following the area code relief plan.²²

The fear that there will be a “run” on numbers without rationing is groundless because the “needs-based” assignment rules now in place “ensure that carriers request and receive numbering resources only when and where needed.”²³ The only reason to permit rationing after area code relief has been implemented is to preclude a carrier demonstrating a need for additional numbers from obtaining them — that is, to delay entry as expressly forbidden by the Communications Act.

VI. The Delegation of “Safety Valve” Procedures Constitutes Unlawful Entry Regulation

The Bureau delegated to three states the authority to “respond to requests from individual carriers seeking to obtain NXX codes outside of the rationing process.”²⁴ Under this authority, the states have complete discretion to “determin[e] that such relief is necessary,” and they may demand “whatever information they deem necessary to evaluate a carrier’s request for additional numbering resources.”²⁵ The authority that the Bureau has purportedly delegated to states constitutes the regulation of entry. Under the Bureau’s Order, states — and states alone — will determine when and under what circumstances a carrier will receive additional numbers so it may continue to provide its services.

The Commission does not have the statutory authority to delegate this “safety valve” authority to the states. Congress has made unmistakably clear that “no State or

²² New Jersey Petition at 4. *See also* Maryland Petition at 4 (post-relief rationing needed to prevent a “run” on numbers); Louisiana Petition at 12 (post-relief rationing needed for “breathing room”); Massachusetts Petition at 23 (same).

²³ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88

²⁴ *Four PUC Delegation Order* at ¶ 31. The three states are Louisiana, Maryland, and Massachusetts.

²⁵ *Id.* at ¶ 32.

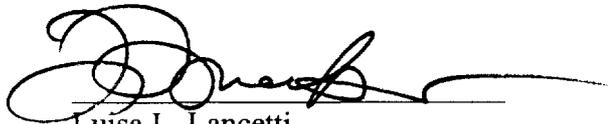
local government *shall have any authority to regulate the entry* of or the rates charged by any commercial mobile service.”²⁶ The Commission may not do indirectly what Congress has decided states may not do directly: regulate the entry of CMRS providers.

VII. Conclusion

For the foregoing reasons, Sprint respectfully requests that the Commission vacate that portion of the Bureau Order delegating to the four states involved the authority (1) to impose rationing after area code relief has been implemented and (2) to respond to requests for additional numbers outside the rationing process.

Respectfully submitted,

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March 16, 2001

²⁶ 47 U.S.C. § 332(c)(3)(A)(emphasis added).

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this ___th day of March 2001, I served a copy of the foregoing Sprint Application for Review by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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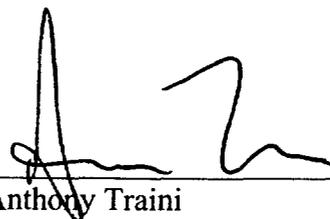
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Attachment A:



**The FCC Acknowledges Receipt of Comments From ...
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of 1996)	
)	
New Jersey Board of Public Utilities)	NSD File No. L-00-95
Petition for Delegated Authority to)	
Implement Number Conservation Measures)	
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SPRINT OPPOSITION

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, "Sprint"), opposes in part the petition filed by the New Jersey Board of Public Utilities ("NJBPU") seeking delegated authority to implement certain number conservation measures.¹ Specifically, Sprint opposes the NJBPU's request to ration NXX codes in violation of new FCC rules. While Sprint PCS does not oppose the NJBPU receiving authority to implement interim pooling in certain NPAs, it opposes such pooling in those NPAs likely to exhaust within the next year. The Commission has already ruled that in such NPAs, the costs of interim pooling exceed the benefits.

¹ See *Public Notice*, "Common Carrier Bureau Seeks Comment on the New Jersey Board of Public Utilities Petition for Delegated Authority to Implement Number Conservation Measures," NSD File No. L-00-95 (July 7, 2000).

I. The Rationing of NXX Codes Is Incompatible with FCC Rules

The NJBPU seeks authority to implement a rationing procedure for at least 6 months following implementation of the new area code relief plan.² The NJBPU states that this authority is necessary to “control the accelerated demand that accompanies the announcement of the area code relief plan” and, therefore, “prevent another declaration of jeopardy immediately following the implementation of an area code relief.”³ The Bureau must deny this request because rationing is incompatible with the new “needs based” number assignment rules.

The Commission recently established new eligibility requirements for the assignment of both initial and growth codes/1,000s blocks “to ensure that carriers request and receive numbering resource only when and where needed.”⁴ Specifically, it adopted “a more verifiable needs-based approach for both initial and growth numbering resources that is predicated on proof that carriers need numbering resources when, where, and in the quantity requested.”⁵ The Commission further determined that available number resources should be assigned on a “first-come, first-served basis”:

[O]nce carriers meet the requirements set forth herein for initial and growth numbering resources, the NANPA *shall* continue to assign numbering resources on a first-come, first served basis, to those carriers that satisfy the necessary requirements.⁶

Thus, under the new rules, a carrier is entitled to receive an initial code if it “will be capable of providing service within sixty (60) days of the numbering resources activation

² NJBPU Petition at 4.

³ *Id.*

⁴ *NRO Order*, 15 FCC Rcd 7574 at ¶ 88 (March 31, 2000).

⁵ *Id.* at ¶ 91.

date.”⁷ Similarly, a carrier is entitled to a growth code if it has “no more than a six-month inventory of telephone numbers in [the] rate center.”⁸

Rationing is incompatible with this new “needs based” number assignment regime.⁹ First, with rationing, a carrier meeting the FCC number assignment rules does not receive the numbers it needs, but a lottery ticket that *may* enable it to receive additional numbers *at some unspecified time in the future*. Second, rationing is inconsistent the Commission’s directive that numbers “shall” be assigned on “a first-come, first-served basis” because with lotteries, numbers are instead assigned based on a carrier’s luck of the draw. In the end, rationing does not provide what the new FCC rules guarantee: receipt of additional numbers “when and where needed.”¹⁰

Nor has the NJBPU met its “heavy burden” justifying a waiver of these FCC rules.¹¹ The only reason the NJBPU recites in support of its request is its belief that ra-

⁶ *Id.* at ¶ 92 (emphasis added).

⁷ 47 C.F.R. § 52.15(g)(2)(ii).

⁸ *Id.* at § 52.15(g)(3)(iii).

⁹ It bears repeating that rationing *cannot* legitimately be considered to constitute number conservation because rationing does not improve in any way “the efficient and effective use of” numbers. *See* NXX Code Assignment Guidelines, INC 95-0407-008 § 13 Glossary: Conservation. Instead, rationing is a procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow). Rationing constitutes an entry barrier that is unlawful under the Communications Act.

¹⁰ *NRO Order*, 15 FCC Rcd 7574 at ¶ 88. Not only is rationing incompatible with new FCC rules, but rationing is also unlawfully discriminatory if used in conjunction with number pooling.

¹¹ *Riverphone*, 3 FCC Rcd 4690, 4692 ¶ 13 (1988). A waiver applicant “faces a high hurdle even at the starting gate.” *US WEST*, 7 FCC Rcd 4043, 4044 ¶ 6 (1992), *quoting WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). A waiver *may* be appropriate *if* “[1] special circumstances warrant a deviation from the general rule *and* [2] such deviation will serve the public interest.” *Texas NPA Order*, 13 FCC Rcd 21798, 21800 ¶ 6 (1998), *citing Northeast Cellular v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the applicant “must clearly demonstrate that the general rule is not in the public interest when applied to its particular case and that granting the waiver will not undermine the public policy served by the rule.” *US WEST*, 12 FCC Rcd 8343, 8346 ¶ 10 (1997); *Bell Atlantic*, 12 FCC Rcd 10196, 10198 ¶ 5 (1996). Of course, “[t]he very essence of a waiver is the assumed validity of the general rule.” *WAIT Radio*, 418 F.2d at 1158.

tioning would “control the accelerated demand that accompanies the announcement of the area code relief plan.”¹² Sprint does not dispute that in the days when numbers were assigned without any demonstration of need, demand for NXX codes often increased when a new NPA was opened and rationing in the old NPA was lifted. But with the new “needs based” assignment rules, numbers will now be assigned (whether before or after relief) only “when and where needed.” There is, therefore, no basis to believe that the practices of the past will repeat themselves in the new “needs based” assignment environment.

II. There Is No Basis to Permit the NJBPU to Implement Interim Pooling in NPAs With a Life Span of Less Than One Year

The NJBPU seeks authority to implement interim pooling in all six New Jersey NPAs. The NJBPU states that it is “aware” that pooling is “not a substitute for area code relief” and further represents that “[a]rea code relief will be provided if and when necessary.”¹³ The facts do not support these statements, however.¹⁴

NANPA currently estimates that the 973 NPA will exhaust early next year, during the first quarter of 2001.¹⁵ Industry asked the NJBPU to adopt a relief plan *two years ago* (August 1998),¹⁶ yet the NYBPU has not adopted any such plan. Similarly, the 732 NPA

See also Southwestern Bell, 12 FCC Rcd 10231, 10239 ¶ 13 (1997). The NJBPU has not begun to meet this heavy burden in its one-paragraph discussion addressing its request to ration codes.

¹² NJBPU Petition at 4.

¹³ NJBPU Petition at 2.

¹⁴ Completely unexplained is the NJBPU’s assertion that receipt of pooling authority will enable it “to adopt more effective area code relief.” NJBPU Petition at 4. *See also id.* at 2 (Pooling “should provide this state the additional flexibility needed to implement timely and appropriate [NPA] relief.”).

¹⁵ *See NANPA, Status of Active and Pending NPA Relief Projects*, at 17 (July 25, 2000). The exhaust dates set forth in the NJBPU are not the most current projections.

¹⁶ *See id.*

is projected to exhaust later this year (4Q00), and industry petitioned the NJBPU to adopt a relief plan *18 months ago* (January 1999).¹⁷ Yet, the NJBPU still has not adopted a relief plan. The NJBPU nonetheless proposes that interim pooling be implemented first in these two NPAs — even though pooling could not be implemented soon enough to avoid much needed area code relief.¹⁸

The Commission has determined that the public interest is served by implementing pooling under a national plan. It has further recognized that pooling can “only be implemented in a limited number of areas at any given time” and that a staggered rollout “is necessary.”¹⁹ It has noted that implementing pooling in too many NPAs at one would not only strain carrier and pooling administrator resources, but also jeopardize the continued reliability of the public switched network.²⁰

The Commission has delegated the Bureau authority to permit states in certain circumstances to implement interim pooling in advance of the national plan. One of the requirements is that the NPA in question have “a remaining life span of at least a year.”²¹ The Commission imposed this requirement “to ensure that pooling is implemented in areas where it has the potential to be the most beneficial,”²² because pooling is less effective if implemented shortly before a NPA exhausts.²³ In fact, with regard to NPAs whose

¹⁷ *See id.* at 12.

¹⁸ As of June 6, 2000, there were only 59 NXX codes remaining in the 732 NPA, and only 55 remaining in the 973 NPA. *June 26, 2000 Industry Meeting Minutes on Disposition of Set-Aside Codes for the 732 NPA and 973 NPA in New Jersey.*

¹⁹ *NRO Order*, 15 FCC Rcd 7574 at ¶¶ 157 and 159.

²⁰ *See id.* at ¶ 159. The Commission just granted two other states in the Mid-Atlantic NPAC region, Pennsylvania and Virginia, authority to pool.

²¹ *NRO Order*, 15 FCC Rcd 7574 at ¶ 170.

²² *Id.*

²³ *See, e.g., Pennsylvania Numbering Order*, 13 FCC Rcd 19009, 19028 ¶ 29 (1998).

life spans are one year or less, the Commission has determined that the costs of implementing pooling exceed the benefits.²⁴

In addition, all carriers do not enjoy the benefits of pooling. While pooling can provide some relief for pooling carriers, it provides *no* relief for wireless and other non-pooling carriers:

Number pooling is not a substitute for area code relief because, at this time, it does not provide sufficient assurance that all telecommunications carriers will have access to numbering resources.²⁵

The Bureau's authority to authorize interim pooling is further circumscribed. The Commission has specifically held that the Bureau may grant states pooling authority only if the Bureau determines that interim pooling "*will conserve numbers and thus slow the pace of area code relief, without having anticompetitive consequences.*"²⁶

The NJBPU has not presented any facts justifying the implementation of pooling in NPAs with life spans of one year or less. The only "special circumstance" it recites is that pooling is "viable" and that participating landline carriers have thousands blocks to contribute to the pool.²⁷ These are not special circumstances; these facts exist in most, if not all NPAs. More fundamentally, implementation of pooling would provide *no* relief for wireless and other non-pooling carriers, which still require access to whole NXX codes. The NJBPU petition does not address at all how the needs of non-pooling carriers will be met under its proposal.

²⁴ See *NRO Order*, 15 FCC Rcd 7574 at ¶ 162 ("We find that the benefit of the limited life extension of the NPA that may be achieved by implementing pooling in NPAs with only a small number of NXXs still available would not likely exceed the costs.").

²⁵ *Pennsylvania Numbering Order*, 13 FCC Rcd at 19028 ¶ 29.

²⁶ *Id.* at 19030 ¶ 31 (emphasis added). The Commission reaffirmed these limits on the Bureau's delegation authority in its *NRO Order*, 15 FCC Rcd 7574 at ¶ 170 and n.408.

²⁷ NJBPU Petition at 3.

The facts are that it is too late for pooling to save the 732 and 973 NPAs. It is unlikely to save the 201 NPA either, which is projected to exhaust during the first quarter of 2002. It is time, rather, for the NJBPU to act on the relief petitions that were filed 18 and 24 months ago.

With one condition, Sprint would not oppose grant of interim pooling authority for the three NPAs projected to exhaust during late 2002 — 609, 856 and 908 NPAs — even though the 609 and 856 NPAs are not in the 100 most populous NPAs. The condition is that the NJBPU be prohibited from commencing any pooling proceeding regarding these three NPAs until it acts on the 18- and 24-month-old petitions addressing the 201, 732, and 973 petitions.

The Commission recently reaffirmed that area code relief is “ultimately a federal question”:

It is our policy that no carrier should be denied numbering resources simply because needed area code relief has not been implemented. . . . We are troubled by these allegations [that certain states are not adopting timely relief], and we will closely monitor these situations to ensure that federal numbering policies are followed.²⁸

It is time that the Commission take steps to ensure that states like New Jersey timely adopt much needed area code relief.

III. The Bureau Should Deny the NJBPU Request for “Catch-All” Authority

The NJBPU also seeks authority to “implement the remainder of the conservation measures and rules set forth in Appendix A of the FCC’s March 31 Report and Order.”²⁹

²⁸ *NRO Order*, 15 FCC Rcd 7574 at ¶ 171.

²⁹ NJBPU Petition at 4.

The FCC rules contained in Appendix A are now in effect. There is, therefore, no reason to delegate to the NJBPU authority it already possesses.

In the same paragraph, the NJBPU further states that it “specifically . . . seeks delegated authority to mandate reporting requirements, defined number use categories, set rules regarding applications for number resources . . . [and] require sequential number assignments.”³⁰ These are all subjects where the Commission has adopted national rules, the Commission determining that “industry and consumers are best served by national number resource optimization standards implemented consistently and in a competitively neutral manner across the nation.”³¹ Having just adopted national rules on this subject, now is not the time to permit states to adopt their own, disparate set of number conservation measures.

³⁰ *Id.*

³¹ *NRO Order*, 15 FCC Rcd 7574 at ¶ 121.

IV. Conclusion

For all the foregoing reasons, the Common Carrier Bureau should deny the NJBPU's request to implement rationing in any NPA or implement interim pooling in NPAs that do not have a life span of one year or more.

Respectfully submitted,

SPRINT CORPORATION

/s/Joseph Assenzo

Joseph Assenzo

General Attorney

Sprint PCS

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August 7, 2000

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 7th day of August 2000, I served a copy of the foregoing Sprint Petition for Limited Reconsideration by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

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Washington, D.C. 20036

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Common Carrier Bureau
Federal Communications Commission
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Washington, D.C. 20554

*Thomas J. Sugrue, Chief
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445 12th Street, S.W., Room 3C-207
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*James D. Schlichting, Deputy Chief
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s/sAnthony Traini
Anthony Traini

Attachment B:



Jeffrey M. Pfaff
Legal Department
Attorney

Sprint PCS
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February 06, 2001

By Hand Delivery

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

RECEIVED

FEB 6 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: *Ex Parte Notification*

*Numbering Resource Optimization, CC Docket No. 99-200,
Local Competition Provisions of the Act, CC Docket No. 96-98,
State Petitions for Delegated Authority:*

*Louisiana NSD File No. L-00-170
Maryland NSD File No. L-00-171
Massachusetts NSD File No. L-00-169*

Dear Ms. Salas:

Sprint Corporation, pursuant to Section 1.1206 of the Commission's rules, hereby submits an original and ten copies of a notification of a written *ex parte* contact. Please associate this letter with the file in the above-captioned proceedings.

Please contact me should you have any questions concerning the foregoing.

Sincerely yours,

Jeffrey M. Pfaff

by

Jeffrey M. Pfaff
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February 6, 2001

By Hand Delivery

Mr. L. Charles Keller, Chief
Network Services Division
Common Carrier Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Presentation*

*Numbering Resource Optimization, CC Docket No. 99-200,
Local Competition Provisions of the Act, CC Docket No. 96-98,
State Petitions for Delegated Authority:*

<i>Louisiana</i>	<i>NSD File No. L-00-170</i>
<i>Maryland</i>	<i>NSD File No. L-00-171</i>
<i>Massachusetts</i>	<i>NSD File No. L-00-169</i>

Dear Mr. Keller:

The public utility commissions (“PUCs”) of Louisiana, Maryland, and Massachusetts seek delegated authority to implement various number conservation measures.¹ Many of these requests have become moot in light of the Commission’s subsequent release of its *Second NRO Order*.² Sprint Corporation (“Sprint”) therefore limits this letter to the request by these PUCs for authority to ration NXX codes and/or thousands-blocks.

Maryland and Massachusetts seek authority “to order rationing as an area code nears jeopardy.”³ All three states (including Louisiana) seek authority to “order the continuation of a rationing plan for six months following the implementation of area code relief.”⁴ The Commission must deny these requests because rationing is incompatible

¹ See *Public Notices*: Louisiana, DA 00-2175, 15 FCC Rcd 18109 (Sept. 25, 2000); Maryland, DA 00-2176, 15 FCC Rcd 18112 (Sept. 25, 2000); Massachusetts, DA 00-1982 (Aug. 29, 2000).

² See *Numbering Resource Optimization*, CC Docket No. 99-200, *Second Report and Order*, FCC 00-429 (Dec. 29, 2000) (“*Second NRO Order*”).

³ Maryland Petition at 4. See also Massachusetts Petition at 20-22 (seeking authority to “set and/or revise rationing procedures”).

⁴ Maryland Petition at 4. See also Louisiana Petition at 11-12; Massachusetts Petition at 23.

with its “needs-based” number assignment rules. The PUCs have not demonstrated “good cause” that would justify entry of a waiver, so they should not be permitted to deny numbers to a carrier demonstrating a need for them under the “needs-based” assignment rules.

Last year, the Commission established eligibility requirements for the assignment of both initial and growth codes/thousands-blocks “to ensure that carriers request and receive numbering resource only when and where needed.”⁵ Specifically, it adopted “a more verifiable needs-based approach for both initial and growth numbering resources that is predicated on proof that carriers need numbering resources when, where, and in the quantity requested.”⁶ The Commission further determined that available number resources should be assigned on a “first-come, first-served basis”:

[O]nce carriers meet the requirements set forth herein for initial and growth numbering resources, the NANPA *shall* continue to assign numbering resources on a first-come, first-served basis, to those carriers that satisfy the necessary requirements.⁷

Under the new rules, a carrier is entitled to receive an initial code if it “will be capable of providing service within sixty (60) days of the numbering resources activation date.”⁸ Similarly, a carrier is entitled to a growth code if it has “no more than a six-month inventory of telephone numbers in [the] rate center” and has achieved “a 60% utilization threshold.”⁹ Indeed, a fast-growing carrier may be entitled to receive additional numbers even if it has not achieved a 60% utilization rate at the time of its application.¹⁰ The purpose of these rules is to ensure that only carriers in need of numbers receive them, but that carriers will *timely* receive the numbers they need upon demonstrating compliance with the national assignment rules. Timely access to numbers is essential to full and fair competition, as the Commission has recognized:

Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.¹¹

⁵ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88.

⁶ *Id.* at 7612 ¶ 91.

⁷ *Id.* at ¶ 92 (emphasis added).

⁸ 47 C.F.R. § 52.15(g)(2)(ii) and (h).

⁹ *Id.* at § 52.15(g)(3)(iii).

¹⁰ *See Second NRO Order* at ¶ 33.

¹¹ *Second NRO Order* at ¶ 61.

Rationing is completely incompatible with the new “needs-based” number assignment rules.¹² First, with rationing, a carrier meeting the Commission’s number assignment rules does not receive the numbers it needs, but rather it receives a lottery ticket that *may* enable it to receive the numbers *at some unspecified time in the future*. Second, rationing is inconsistent the Commission’s directive that numbers “shall” be assigned on “a first-come, first-served basis” because with lotteries, numbers are instead assigned based on a carrier’s luck of the draw. In the end, rationing does not provide what the new FCC rules guarantee: receipt of additional numbers “when and where needed.”¹³ Indeed, the Commission has recognized that rationing poses “an insidious threat to competition.”¹⁴

None of the three PUC petitioners has met its “heavy burden” justifying a waiver of these FCC rules.¹⁵ Maryland provides no reason in support of its request for rationing authority prior to the implementation of relief.¹⁶ Massachusetts seeks pre-relief rationing authority because it believes that such rationing “may be a crucial step towards prolonging [the life of] the 413 NPA.”¹⁷ But the Commission has “emphasized” repeatedly that “state commissions may not use rationing as a substitute for area code relief.”¹⁸ Mary-

¹² It bears repeating that rationing *cannot* legitimately be considered to constitute number conservation because rationing does not improve in any way “the efficient and effective use of” numbers. *See* NXX Code Assignment Guidelines, INC 95-0407-008 § 13 Glossary: Conservation. Instead, rationing is a procedure adopted to slow *artificially* the demand for additional numbering resources (when demand for services does not slow). Rationing constitutes an entry barrier that is unlawful under the Communications Act.

¹³ *NRO Order*, 15 FCC Rcd 7574 at ¶ 88.

¹⁴ *Second NRO Order* at ¶ 59.

¹⁵ *Riverphone*, 3 FCC Rcd 4690, 4692 ¶ 13 (1988). A waiver applicant “faces a high hurdle even at the starting gate.” *US WEST*, 7 FCC Rcd 4043, 4044 ¶ 6 (1992), *quoting* *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). A waiver *may* be appropriate *if* “[1] special circumstances warrant a deviation from the general rule *and* [2] such deviation will serve the public interest.” *Texas NPA Order*, 13 FCC Rcd 21798, 21800 ¶ 6 (1998), *citing* *Northeast Cellular v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the applicant “must clearly demonstrate that the general rule is not in the public interest when applied to its particular case and that granting the waiver will not undermine the public policy served by the rule.” *US WEST*, 12 FCC Rcd 8343, 8346 ¶ 10 (1997); *Bell Atlantic*, 12 FCC Rcd 10196, 10198 ¶ 5 (1996). Of course, “[t]he very essence of a waiver is the assumed validity of the general rule.” *WAIT Radio*, 418 F.2d at 1158. *See also* *Southwestern Bell*, 12 FCC Rcd 10231, 10239 ¶ 13 (1997).

¹⁶ *See* Maryland Petition at 4.

¹⁷ Massachusetts Petition at 20.

¹⁸ *Second NRO Order* at ¶¶ 62 and 78. *See also* *Pennsylvania Numbering Order*, 13 FCC Rcd 19009, 19027 ¶ 25 (1998)(“[A] state commission may not impose a rationing plan on its own to avoid making a decision on area code relief.”).

land and Massachusetts thus seek a rule waiver to do precisely what is expressly prohibited: use rationing to delay adoption or implementation of needed area code relief.

Equally lacking in merit is the request for rationing authority after area code relief has been implemented. Louisiana and Massachusetts state they need this authority to give themselves “breathing room.”¹⁹ Maryland seeks such authority to prevent “a ‘run’ on the existing area code . . . if an overlay is ordered as the method of relief.”²⁰ These unsupported arguments are not credible. There will be no “run” on NXX codes (whether in the existing NPA or relief NPA), because with the “needs-based” assignment rules now in place, numbers will be assigned only “when and where needed.” The only reason to permit rationing after area code relief has been implemented is to preclude a carrier demonstrating a need for additional numbers from obtaining them — that is, to prohibit entry as forbidden by Section 253(a) of the Communications Act.

Sprint recognizes that the Common Carrier Bureau in its *15 State Delegation Order* permitted certain states to engage in rationing after implementation of relief.²¹ But as Sprint has previously explained, the Bureau’s rationale is legally insufficient.²² The only reason the Bureau cited in support of its decision was “FCC precedent” decided *before* adoption of national needs based rules and *before* the Commission ruled that numbers should be assigned on a “first-come, first-served basis.”²³ The Commission has an obligation to “articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.”²⁴ Obviously, reliance on precedent that has been subsequently modified is legally inadequate under the Administrative Procedures Act.

In summary, the Commission has adopted rules to ensure that carriers receive additional numbers “only when and where needed.”²⁵ Given competitive markets, the Commission has further ruled, correctly, that numbers “shall” be assigned on “a first-

¹⁹ See Louisiana Petition at 12; Massachusetts Petition at 23.

²⁰ Maryland Petition at 4.

²¹ See *Numbering Resource Optimization Order*, CC Docket No. 99-200, DA 00-1616 (July 20, 2000)(“*15 State Delegation Order*”).

²² See Sprint Petition for Limited Reconsideration, CC Docket No. 99-200, at 2-6 (Aug. 7, 2000).

²³ See *15-State Delegation Order* at ¶ 62.

²⁴ See, e.g., *Motor Vehicle Manufacturer Ass’n v. State Farm*, 463 U.S. 29, 43 (1983). See also *AT&T v. FCC*, No. 99-1535 (D.C. Cir., Jan. 23, 2001)(FCC order vacated because agency failed to adequately explain its decision); *Qwest v. FCC*, 229 F.3d 1172 (D.C. Cir. 2000)(same); *USTA v. FCC*, 227 F.3d 450 (D.C. Cir. 2000)(same); *Trinity Broadcasting v. FCC*, 211 F.3d 618 (D.C. Cir. 2000)(same); *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000)(same).

²⁵ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 66.

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come, first-served basis.”²⁶ Rationing is completely antithetical to these rules because a carrier demonstrating compliance with the national assignment rules does not receive the numbers it needs when it needs them, but rather receives only a lottery ticket, which may allow it to obtain its needed numbers at some point in the future — namely, when it gets lucky. The Commission was thus entirely justified in noting that rationing poses “an insidious threat to competition.”²⁷

Respectfully submitted,

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²⁶ *Id.* at 7612 ¶ 92.

²⁷ *Second NRO Order* at ¶ 59.