

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

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition Provisions of the Telecommunication Act of 1996)	CC Docket No. 96-98
)	
)	
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-00-95
_____)	

SPRINT REPLY COMMENTS

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, “Sprint”), submits this reply in support of its application for review.¹ The states opposing Sprint’s application — Maryland, Massachusetts, and New Jersey (collectively, the “States”) — present no grounds to affirm the Bureau’s *Four PUC Delegation Order*.² Indeed, they make no attempt to refute Sprint’s demonstration that the Bureau’s *Order* is jurisdictionally and procedurally infirm.

A general observation is necessary at the outset. The States would have the Commission believe that Sprint is opposed to number conservation and opposed to any state role in this process. Nothing could be further from the truth. In the past two years alone, Sprint PCS acquired over six

¹ See Sprint, Application for Review, Docket No. 99-200 (March 16, 2001). See also *Numbering Resource Optimization*, CC Docket No. 99-200, *Order*, DA 01-386 (Feb. 14, 2001)(“*Four PUC Delegation Order*” or “*Order*”).

² See Opposition of New Jersey Board of Public Utilities, Docket No. 99-200 (April 2, 2001); Joint Opposition of the Maryland Public Service Commission and Massachusetts Department of Telecommunications and Energy, Docket No. 99-200 (April 6, 2001).

million net new customers and it has become increasingly difficult for Sprint PCS to acquire the telephone numbers it needs to continue to provide services that American consumers obviously find of value. Part of the problem is that some states have refused to implement area code relief timely.³ However, Sprint's inability to obtain, timely, the numbers it needs is also caused by the inefficiencies of the past number assignment process. In a very real sense, Sprint is a victim of the inefficiencies of prior procedures — and a beneficiary of the new “needs-based” assignment rules.

Sprint also supports legitimate state number conservation efforts. To take the most recent examples, Sprint was one of the few carriers that actively supported the requests of Michigan, Minnesota, and Missouri to engage in number pooling.⁴

The issue in this case, however, is rationing — specifically, the rationing of telephone numbers after area code relief has been implemented. The rationing of telephone numbers is not a legitimate number conservation measure; rationing does not improve, in any way, the efficiency in which carriers use numbers. Rationing, instead, precludes a carrier who has demonstrated a need for numbers from timely obtaining them. The Commission correctly observed that rationing poses an “insidious threat to competition.”⁵

I. RATIONING IS UNLAWFUL UNDER THE COMMUNICATIONS ACT AND THE COMMISSION'S ORDERS

The States make four arguments why they should be permitted to maintain rationing mechanisms for the assignment of telephone numbers. None of these arguments has merit.

³ For example, on March 1, 2001, the New Jersey Board adopted relief for the 973 NPA to take effect on December 1, 2001. The problem is that the 973 NPA exhausted on February 5, 2001, meaning that no carrier can obtain additional numbers for 10 months. This complete exhaust could have been prevented by timely action by the New Jersey Board.

⁴ See Sprint Comments, Docket No. 99-200 (March 23, 2001)(Michigan); Sprint Comments, Docket No. 99-200 (Feb. 12, 2001)(Minnesota and Missouri).

⁵ *Second NRO Order*, Docket No. 99-200, FCC 00-429, at ¶ 59 (Dec. 29, 2000).

1. FCC Precedent. The States contend that rationing is consistent with Commission precedent.⁶ This argument fails for two separate reasons. First, while the Commission did permit, prior to 2000, rationing in certain circumstances, it modified those decisions in its *First NRO Order*, which adopted needs-based assignment rules and directed that numbers be assigned on a “first-come, first served basis.”⁷ Rationing is incompatible with the *NRO Orders*, and the decisions the States recite are no longer valid precedent.

Second, even if the cases the States recite remain valid precedent, the Commission in those cases approved rationing *only* if rationing was applied to all carriers *equally*. The Communications Act, after all, specifies that numbers “shall” be made “on an equitable basis.”⁸ In the *Pennsylvania Numbering Order* relied upon by the States, the Commission explicitly ruled that an arrangement whereby some carriers are subjected to rationing while others are not is unreasonably discriminatory:

We agree with the Petitioners that the Pennsylvania Commission’s original reliance on the use of number pooling and transparent overlays unduly disfavored wireless and non-LRN capable carriers because it did not provide adequate assurances that those carriers would have access to numbering resources. We find, therefore, that the measures mandated [by the PUC] violated our rule requiring that number administration not unduly favor or disfavor any particular industry segment.⁹

Sprint challenges this *Order* because the Bureau has delegated to the States the authority to commence both pooling and rationing and, thus, the Bureau purported to authorize the States to engage in the very activity that the Commission has already ruled violates the Communications Act and its rules.

⁶ See New Jersey Opp. at 2-3; Maryland/Massachusetts Opp. at 2-3.

⁷ *First NRO Order*, 15 FCC Rcd 7574, 7612 ¶ 92 (March 31, 2000).

⁸ 47 U.S.C. § 251(e)(1).

⁹ *Pennsylvania Numbering Order*, 13 FCC Rcd 19009, 19035 ¶ 40 (1998).

2. No Harm. The States next assert that post-relief rationing “should not prevent a carrier who demonstrates a need from receiving numbers” and “Sprint may find that there is no harm in such rationing.”¹⁰ In fact, any rationing harms carriers, as a current example graphically illustrates.

Sprint PCS is facing exhaust of two of its NXX codes in the 310 NPA (Los Angeles). It met the needs-based assignment rules for growth codes and participated in the February 2001 lottery. However, Sprint PCS received only one of the two codes that it needed. Because of priority assignment given to other carriers, additional 310 NXX codes will not be available until the October lottery. Sprint PCS will exhaust its current supply of Inglewood numbers long before that time. Even assuming Sprint PCS will be successful in the October lottery (and because it takes a minimum of 66 days before a carrier can begin using new numbers), Sprint PCS will be without numbers to assign to Inglewood customers until mid-December.

3. Weed Out the Truly Needy. The States finally assert that rationing “ensures that only those carriers which really need NXX codes . . . will receive them”:

[Rationing] will act as a restraint on carriers which might otherwise request numbers simply because they are available.¹¹

Assigning numbers based on the “luck of the draw” does not assure that only those carriers that “really need” numbers will receive them. Sprint PCS really needs numbers to assign to its Inglewood, California customers because its existing supply of numbers will exhaust imminently. This example demonstrates that the States are wrong in claiming that rationing will ensure that carriers will receive numbers when they need them.

4. Time for Verification. The assertion by New Jersey that rationing “will provide the Board the opportunity to review and analyze the utilization data” that NANPA

¹⁰ New Jersey Opp. at 5. *See also* Maryland/Massachusetts Opp. at 3.

¹¹ Maryland/Massachusetts Opp. at 3. *See also* New Jersey Opp. at 4 (Rationing “ensure[s] that numbers are not assigned prematurely or inefficiently”).

assembles¹² is untenable. First, New Jersey concedes that it is already reviewing this utilization data, and it never explains how new rationing authority will assist it in any way in conducting this review.¹³ More fundamentally, industry utilization data is not relevant to the question of whether a carrier meeting the needs-based rules at a particular rate center is entitled to receive numbers it has documented it needs.

Maryland and Massachusetts make a slightly different verification argument. They assert that, without rationing, “it is *possible* that if many carriers request numbers within a short time, NANPA personnel *may* be overwhelmed and unable to carry out a thorough investigation.”¹⁴ The existence of numerous applications for numbers only reflects that carriers actually meet the needs-based requirements and are entitled to numbers. Besides, if the current rules are inadequate (and it is noteworthy that NANPA has not complained about the 10-day assignment rule), the remedy is to change the assignment rules, not to empower states to determine which carriers may provide their services and which carriers may not.

II. THE DELEGATION OF “SAFETY VALVE” AUTHORITY CONSTITUTES UNLAWFUL ENTRY REGULATION

Congress has made it unmistakably clear that “no State or local government shall have any authority to regulate the entry of . . . any commercial mobile service.”¹⁵ There are no exceptions to this sweeping prohibition. The Bureau, nonetheless, delegated to the States the authority to determine whether and when CMRS carriers may receive numbers outside of the rationing process, which, in turn, will determine when and where CMRS carriers can provide their federally licensed services. The Bureau further held that these States may ask “whatever information they deem

¹² New Jersey Opp. at 4-5.

¹³ *Id.*

¹⁴ Maryland/Massachusetts Opp. at 5 (emphasis added).

¹⁵ 47 U.S.C. ¶ 332(c)(3)(a).

necessary” to evaluate a CMRS carrier’s request for additional numbers.¹⁶ In short, the Bureau purports to delegate to the States the very authority that Congress has determined States may not exercise under any circumstance — the authority to regulate CMRS entry.

The States’ response to Sprint’s argument: “Giving states the sole authority to consider numbering requests outside of rationing would appear to be a sound policy decision” because states can perform “a market-stabilizing act.”¹⁷ However, whether a state (or this Commission) believes that giving states “safety valve” authority constitutes “sound policy” is legally irrelevant. As the Supreme Court declared recently:

Regardless of how serious the problem an administrative agency seeks to address, however, it may not exercise its authority “in a manner that is inconsistent with the administrative structure that Congress enacted into law.” And although agencies are entitled to deference in the interpretation of statutes that they administer, a reviewing “court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.”¹⁸

III. CONCLUSION

The Commission has adopted needs-based assignment rules “to ensure that carriers request and receive numbering resources only when and where needed.”¹⁹ It has further declared that “once 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.”²⁰ The rationing of telephone numbers is incompatible with these rules and directives. The only effect of rationing is to preclude a carrier having a need for numbers from obtaining the numbers it needs.

¹⁶ *Four PUC Delegation Order* at ¶ 32.

¹⁷ Maryland/Massachusetts Opp. at 5.

¹⁸ *FDA v. Brown & Williamson*, 120 S. Ct. 1291, 1296 (2000)(internal citations omitted).

¹⁹ *First NRO Order*, 15 FCC Rcd at 7611 ¶ 88.

²⁰ *Id.* at 7612 ¶ 92 (emphasis added).

For all the foregoing reasons, Sprint respectfully requests that the Commission vacate that portion of the Bureau *Order* delegating to Louisiana, Maryland, Massachusetts and New Jersey the authority to impose rationing under any circumstances.

Respectfully submitted,

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April 12, 2001

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