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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the matter of: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98

PETITION OF THE INDIANA UTILITY REGULATORY COMMISSION FOR WAIVER OF 47 C.F.R. § 52.19 (C)(3)

The Indiana Utility Regulatory Commission ("IURC") submits to the Federal Communications Commission ("Commission") this Petition for Waiver to Implement a Technology-Specific Area Code.[1] Specifically, the IURC requests that the Commission grant the IURC a waiver of 47 C.F.R. § 52.19(c)(3). This waiver would allow the IURC to consider utilizing a technology-specific overlay as an additional mechanism to resolve the anticipated number exhaust in the 219 and 317 numbering plan areas ("NPAs").[2]

[1] The Indiana Utility Regulatory Commission authorized this petition in its September 9, 1999, order in Cause No. 41535, *In re: The Matter Of An Investigation Initiated On The Commission's Own Order Regarding Projected Exhaustion Of Allocable Telephone Numbers With The Various Number Plan Areas (NPAs) Throughout The State Of Indiana.*

[2] The May 23, 2000 Central Office Code Utilization Survey ("COCUS") indicates that the 219 NPA has an expected life of two years—an expiration date of no sooner than May of 2002. A number of events have taken place since COCUS that suggests that the 219 NPA may exceed its original life: 1) twenty-five NXX codes in the 219 NPA have been returned to the NANPA as a result of the number conservation measures adopted by this Commission becoming effective; 2) since the implementation of rationing procedures in the 219 NPA, carriers have requested less than the maximum of the three NXX codes; 3) last summer the FCC granted the IURC additional delegated authority to address carriers' requests for NXX codes outside the rationing process; and 4) on March 14, 2001this Commission delegated authority to the IURC to impose thousands-block number pooling. The IURC has not received a request from a carrier for numbering resources outside the rationing procedures in the 219 NPA. The COCUS also forecasted exhaust of numbering resources in the 317 NPA in the fourth quarter of 2002.

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I. BACKGROUND

On September 9, 1999, the IURC issued an Order initiating an investigation pursuant to Ind. Code §§ 8-1-2-58 and 59 and authority delegated to the IURC by the Commission. *In Re: The Matter Of An Investigation Initiated On The Commission's Own Order Regarding Projected Exhaustion Of Available Telephone Numbers Within The Various Numbering Plan Areas (NPAs) Throughout The State Of Indiana*, IURC Cause No. 41535 (Sept. 9, 1999). The purpose of this cause is to investigate the projected exhaust of allocable telephone numbers within the various NPAs of the State of Indiana, with initial focus to be on the present and projected status of the 219 and 317 NPAs.

The IURC petitioned the Commission for additional delegated authority to implement number optimization measures on September 20, 2000 and October 11, 2000.[3] On March 14, 2001, the Commission delegated to the IURC authority to implement thousands-block number pooling trials in both the 219 and 317 NPAs. *Number Resource Optimization*, CC Docket No. 99-200, DA 01-656, (Rel. March 14, 2001). In the Commission's order, it noted that the delegated authority is in addition to state commissions' authority to consolidate rate centers. *Id.* at 6.

The IURC files this petition in the context of its ongoing investigation into the projected exhaust of available telephone numbers within the various NPAs throughout the State of Indiana. The IURC desires to explore the potential use of technology-specific area codes as a mechanism in addition to, not in place of, the recently delegated authority and rate center consolidation.[4]

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[3] *Indiana Utility Regulatory Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures*, CC Docket No. 99-200, filed September 20, 2000 (Indiana Commission 317 Petition); *Indiana Utility Regulatory Commission's Request for Expedited Ruling and Second Supplement to Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket 99-200 filed October 11, 2000 (Indiana Commission 219 Petition).

[4] Nothing in this petition for waiver of the 47 C.F.R. § 52.19(c)(3) shall be interpreted as an indication or determination by the IURC of whether a technology-specific overlay should be imposed on the 219 NPA. The sole purpose

II. ARGUMENT

The Commission recently granted the IURC delegated authority to implement thousands-block number pooling. The Commission also recently granted wireless carriers a two-year extension to implement Local Number Portability ("LNP"). In order for a telecommunications provider to participate in thousands-block number pooling, the provider must be LNP capable. In granting the IURC delegated authority to implement thousands-block number pooling, the Commission stated:

> We [] reiterate that only those carriers that have implemented permanent local number portability (LNP) shall be subject to state-mandated thousands-block number pooling trials. At the present time, we do not grant the state commissions the authority to require a carrier to acquire LNP solely for the purpose of being able to participate in thousands-block number pooling.

In The Matter of Numbering Resource Optimization, CC Docket No. 99-200, DA 01-656 (Rel. March 14, 2001). Therefore, the IURC may only require those wireless carriers that are LNP capable to participate in the thousands-block number pooling.

Pursuant to 47 C.F.R. §1.3, the Commission may exercise its discretion to waive a rule when the party petitioning for the waiver shows "good cause."[5] The unique circumstances created by granting the IURC delegated authority to implement thousands-block number pooling while exempting certain wireless providers is "good cause" for this Commission to exercise its discretion and waive its rule on discriminatory allocation of numbering resources. 47 C.F.R. § 52.19(c)(3).

The IURC petitions the Commission to exercise its discretion to waive the applicability

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of this petition is to determine whether the Commission is willing to delegate to the IURC authority to impose such additional number conservation authority.

[5] The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown. 47 C.F.R § 1.3

of 47 C.F.R. § 52.19(c)(3) to the 219 and 317 NPAs. Section 52.19(c) provides as follows:

> (c) New area codes may be introduced through the use of:
>
> . . .
>
> (3) An area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code, subject to the following conditions:
>
> (i) No area code overlay may be implemented unless all central office codes in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identify of, technology used by, or type of service provided by that entity. No group of telecommunications carriers shall be excluded from assignment of central office codes in the existing area code, or be assigned such codes only from the overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and . . .

The IURC contends that a waiver of this discriminatory allocation rule will allow the IURC to investigate and balance any preferential treatment realized by non-LNP capable wireless carriers as a result of the Commission's grant of an extension for wireless carriers.

The demand for numbers in the 219 and 317 NPAs has increased dramatically through the introduction of new wireless devices and the passage of the Telecommunications Act of 1996 ("TA-96").[6] As set forth in TA-96, its purpose is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, purpose statement, 110 Stat. 56, 56 (1996).

Non-LNP capable wireless providers in the 219 and 317 NPAs will impose a greater burden on limited numbering resources than non-wireless providers because they will be less efficient in their use of the limited numbering resource. Currently, 224 NXX codes of the 705 NXX codes assigned in the 219 NPA and 190 NXX codes of the 653 NXX codes assigned in the

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in sections of Title 47,

317 NPA are devoted to wireless service.[7] Wireless providers have achieved a utilization rate of 25% in the 219 NPA and 49% in the 317 NPA while non-wireless providers have achieved a collective utilization rate of 44% in the 219 NPA and 39% in the 317 NPA.[8] Further, it is anticipated that the utilization level of non-wireless carriers will improve through the implementation of thousands-block number pooling.

Non-LNP capable wireless carriers are not required to participate in thousands-block number pooling and will have lower utilization rates. When a carrier is LNP capable, they may be required to participate in number pooling and may obtain numbers in increments of one thousand (1,000). Without this capability, a carrier is required to obtain numbers in blocks of ten thousand (10,000). Thus, if a given carrier is in need of only five hundred numbers, a carrier that is LNP capable would have a utilization rate ten times that of one which is not—a utilization rate of 50% rather than 5%.

As previously noted, the Commission delegated authority to the IURC to implement thousands-block number pooling in the 219 and 317 NPAs. The IURC is in the process of developing procedures for implementing thousands-block number pooling in the 219 and 317 NPAs. When the IURC implements its recently delegated authority, it will not be able to impose the number conservation measures uniformly throughout the 219 and 317 NPAs because the wireless carriers are presently exempt from the LNP requirement. Within these specific

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United States Code).

[7] NXX assignment data was obtained from the NANPA website on April 4, 2001.

[8] The utilization rate is derived from information gathered through a Data Request issued by the IURC staff under Cause No. 42535, January 2, 2001. The utilization rate does not include those NXX codes that were not reported. The utilization rate for wireless providers in the 219 NPA was determined as follow: 507,880 assigned numbers/ 200 NXX codes (10,000 numbers per NXX code) = 25.394% utilization rate. The utilization rate for wireless providers in the 317 NPA was determined as follows: 848,618 assigned numbers /173 NXX codes (10,000 numbers per NXX code)= 49.05% utilization rate. The utilization rate for non-wireless carriers in the 219 NPA was determined as follows: 2,140,949 assigned numbers/482 NXX codes (10,000 numbers per NXX code) = 44.418% utilization rate. The utilization rate for non-wireless carriers in the 317 NPA was determined as follows: 1,774, 715 assigned numbers/450 NXX codes (10,000 numbers per NXX code)= 39.43%

circumstances, the extension granted to the wireless carriers may constitute preferential treatment in the allocation of limited numbering resources. The IURC desires to consider whether a technology-specific overlay may help to balance the possible preferential treatment received by wireless carriers and optimize the life of the 219 and 317 NPAs.

Upon receiving a waiver of 47 C.F.R.§ 52.19(c)(3), the IURC intends to continue to investigate, in an expedited manner, all means of number conservation available in the 219 and 317 NPAs. The IURC, after conducting such investigation, intends to take that action which will optimize the 219 and 317 NPAs, place the least burden on the providers of telecommunications service and the citizens of the State of Indiana and promote the public interest.

For the above identified reasons the IURC has shown "good cause" as to why the Commission should waive 47 C.F.R. § 52.19(c)(3) and grant the IURC discretion to implement a technology-specific overlay in the 219 and 317 NPAs. The IURC respectfully requests that this Commission grant the IURC a waiver of 47 C.F.R.§ 52.19(c)(3).

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By: _____

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CERTIFICATE OF SERVICE

I, Michael T. Batt, do hereby certify that on this 11th day of April, 2001, a copy of the foregoing "Petition of the Indiana Utility Regulatory Commission for Waiver of 47 C.F.R. § 52.19(c)(3)," was served by U.S. first-class mail, postage prepaid to the parties listed below

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