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

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In the matter of:

CC Docket No. 99-200

Numbering Resource Optimization

**RESPONSE OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**

On December 29, 2000, the Federal Communications Commission (FCC or Commission) released the *Second Report & Order* in this docket. Eleven parties filed Petitions for Clarification and/or Reconsideration of the *Second Report & Order*. The California Public Utilities Commission and the People of the State of California (CPUC or California) submit this response to issues raised in the Petitions.

**I. THE FCC PROVIDED A TRANSITION PERIOD FOR  
CARRIERS TO MEET CALIFORNIA'S 75% UTILIZATION  
THRESHOLD**

In the *Second Report & Order*, the FCC adopted both a utilization threshold and a methodology for calculating number utilization. (*Second Report & Order*, ¶¶ 25, 30.) Specifically, the FCC established a 60% utilization threshold, effective three months after publication of the *Second Report & Order* in the Federal Register. (¶ 26.) That 60% utilization threshold, the FCC further concluded, should increase by 5% per year beginning July 1, 2002, until the utilization threshold reaches 75%. (¶ 26.) At the same time, the FCC acknowledged the efforts those states, including California, which had already established utilization thresholds of

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75%. (¶ 44.) The Commission determined that those states could continue to apply their existing utilization threshold, but must use the FCC’s utilization methodology. (*Id.*) California had ordered carriers to use a methodology different from the FCC’s to calculate their utilization levels in order to meet the CPUC’s 75% utilization threshold.

In its petition, SBC asserts that the FCC did not provide for a transition from use of the CPUC-approved utilization methodology to the FCC’s adopted utilization methodology. (SBC’s Petition, p. 5.) Because of the alleged absence of a transition period, SBC argues, its subsidiary, Pacific Bell, will be disadvantaged in efforts to “secure additional numbering resources” in California. (*Id.* At 6.)

SBC is wrong. The FCC explicitly provided for a transition period by ordering that the “initial utilization threshold of 60% shall be effective three months after publication of the *Second Report & Order* in the Federal Register”. (¶ 26.) The FCC ordered that California and Maine must conform their pooling rules to the FCC’s rules in the very same time frame – three months after publication of the *Second Report & Order* in the Federal Register. Thus, the FCC envisioned that both the states and the carriers would have a minimum of three months to adjust to the changes required by the *Second Report & Order*.<sup>1</sup>

Further, the solution to the “problem” that SBC claims to have identified does not lie in seeking an elimination of the CPUC’s 75% utilization threshold, though certainly, that is SBC’s preferred approach. Rather, SBC’s California subsidiary, Pacific Bell, is free to ask the CPUC to reconsider application of our 75% utilization threshold in light of the FCC’s newly-adopted utilization methodology. Mindful of the relationship between pooling and utilization, CPUC

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<sup>1</sup> The amount of time provided was longer than three months, as the *Second Report & Order* did not appear in the Federal Register until February 8, 2001, approximately six weeks after the order was released.

staff members have stated repeatedly in public meetings over the past six months that if the industry believes the 75% utilization threshold is not achievable, the industry should ask the CPUC to revisit its utilization threshold. The CPUC staff invitations to the industry began even before the FCC issued the *Second Report & Order*, and the offer was restated in at least three public meetings as well as numerous smaller private meetings with individual carriers. Most recently, at a statewide industry meeting just in March, CPUC staff again invited members of the industry to ask the CPUC to reconsider the 75% utilization threshold in light of the FCC's action. To date, not one carrier, including SBC's subsidiary, Pacific Bell, has formally requested that the CPUC reconsider the 75% utilization threshold.

On a related note, USTA argues that by allowing states to maintain their previously-adopted utilization thresholds, the FCC has created "disparate treatment for carriers operating in those states than [sic] for the rest of the country". (USTA Petition, p. 6.) USTA further complains that the FCC's policy will require carriers operating in states with a utilization threshold higher than the FCC's 60% "to prepare separate NRUF submissions for those states than [sic] for the other states not under the exception". This argument, too, is flawed. Carriers must prepare NRUF data on a rate center basis.<sup>2</sup> For example, SBC's subsidiary Pacific Bell must prepare NRUF data for its operations in the State of California. It must do so regardless of the utilization level the CPUC has established. USTA, then, is comparing apples and oranges. The fact that a carrier must report meet a higher utilization threshold in California than in other states does not in any way affect the requirement that the carrier must report its utilization

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<sup>2</sup> SBC argues in its Petition that the FCC should revise the reporting level for NRUF data from the rate center to the switch level. The CPUC responds to that argument in Section III of this pleading.

pursuant to the standards and categories established in the *First Report & Order*, issued March 31, 2000.

The appropriate avenue for SBC and other carriers that perceive a problem meeting a state's higher utilization threshold is to pursue relief from the state commission, which is acting pursuant to delegated authority from the FCC. The FCC should reject the arguments of SBC and USTA that the Commission has failed to allow for a transition period.

## **II. THE FCC APPROPRIATELY ESTABLISHED AN ESCALATING UTILIZATION THRESHOLD**

In its Petition, USTA asserts that the FCC should not have established a 60% utilization threshold, with annual 5% threshold increases for the next three years. (USTA Petition, pp. 5-6.) Doing so, USTA argues, was premature, because "experience with the data to be submitted by the carriers should be gained first". Other petitioners complain that the FCC should not have allowed states with established utilization thresholds to maintain those thresholds in light of the FCC's newly-adopted utilization calculation methodology.<sup>3</sup>

The CPUC disagrees with USTA's assessment as well as with that of carriers demanding that the FCC override states that adopted a utilization threshold higher than the FCC's 60%. California has applied a 75% utilization threshold statewide for approximately a year, and the results have been impressive. Carriers must actually demonstrate a need for numbers rather than submit a simple request to obtain an NXX code, as was the case in the past. Instituting the utilization threshold, coupled with sequential numbering and other conservation measures, have forced carriers to track their number holdings more carefully. The FCC should both allow states to keep their higher utilization thresholds and maintain its own plan to escalate the utilization

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<sup>3</sup> See Petitions of Cingular and Verizon Wireless.

threshold over a period of several years. This will continue to put pressure on the carriers to better monitor and manage their inventories of public numbering resources.

### **III. THE FCC SHOULD NOT EXEMPT POOLING CARRIERS FROM MEETING UTILIZATION THRESHOLDS**

In its Petition, WorldCom urges the FCC to exempt pooling carriers from meeting utilization thresholds. The FCC should deny this request. In the *First Report & Order*, the FCC determined that pooling carriers need not meet a utilization threshold, but stated its interest in revisiting applicability of the utilization threshold “if we find that such thresholds significantly increase numbering use efficiency”. (*First Report & Order*, ¶ 103.) In comments on the *FNPRM* contained in the *First Report & Order*, California and other parties provided a record to support the FCC’s determination that applying a utilization threshold to pooling carriers indeed increases “numbering use efficiency”. In light of the record states presented to the Commission, which supported the Commission’s determination to apply the utilization threshold to pooling and non-pooling carriers, it would be arbitrary for the FCC now to reverse its determination. The Commission should deny WorldCom’s request.

### **IV. THE FCC SHOULD NOT ALLOW CARRIERS TO REPORT UTILIZATION AT THE SWITCH, RATHER THAN THE RATE CENTER, LEVEL**

In its Petition, SBC continues to insist that the FCC should allow carriers to report utilization at the switch level, rather than on a rate center basis. The FCC has rejected SBC’s argument at least twice, most recently in the *Second Report & Order*,

We are not persuaded at this time that we should adopt a switch-based utilization or “lowest code assignment point” utilization as suggested by SBC. We are concerned that allowing carriers to receive additional numbering resources when they have not reached the overall rate center utilization threshold will increase the likelihood that numbering resources will become stranded in

underutilized switches. We also believe that switch-based utilization undermines our policy of encouraging rate center consolidation, which allows numbering resources to be used over a wider geographic area. Switch-based utilization calculation would represent, in essence, rate center de-consolidation. (*Second Report & Order*, ¶ 33.)

Despite the FCC's rejection of the argument, SBC continues to press the point

Just as consistently as SBC has advocated for switch-based utilization reporting, the CPUC has opposed that approach. Here again, California urges the FCC to stick with its sensible conclusion that utilization should be reported at the same level as NXX codes are assigned.

At the same time, the CPUC is sympathetic to the concern that SBC raises regarding its difficulty in meeting a utilization threshold in some rate centers where it has multiple switches. The solution to that dilemma, however, is not to allow utilization reporting by switch. Rather, the solution is two-fold. First carriers with multiple switches in a rate center should continue to press the appropriate vendor for production of software that will enable carriers to port numbers from one switch to another in the same rate center. Pacific Bell employees have informed CPUC staff that the software should be available soon, but it is not available yet. Deployment of this software will eliminate the problem by allowing carriers to port numbers from an underutilized switch to a switch where the carrier is experiencing much higher number demand.

In the meantime, the second part of the solution is for a carrier with multiple switches in a rate center and a need for numbers in one of those switches to seek from the relevant state commission a waiver of the state's utilization threshold. California addressed this very issue in its comments and reply comments on the FCC's recent *FNPRM* contained in the *Second Report & Order*. We noted that in a pooling environment, carriers can solve the problem of uneven utilization thresholds in different switches in the same rate center by donating blocks to the pool in one or more switches to increase the overall utilization level for the entire rate center. We

pointed out in our pleading, however, that in a non-pooling environment, this strategy cannot work. Therefore, in the case of a non-pooling NPA, the CPUC supports use of a waiver process for a carrier seeking to obtain an NXX code when the carrier possesses multiple switches in a rate center but cannot meet the utilization threshold for that rate center.

The FCC should not revise the basis for reporting utilization. Rather, the Commission should address and resolve the issue of a waiver.

## **V. THE FCC SHOULD CONTINUE TO REQUIRE CARRIERS TO REPORT UTILIZATION AND MEET THE MONTHS-TO-EXHAUST REQUIREMENT**

In their Petitions, both SBC and USTA argue that “carriers should not be required to meet both a utilization threshold and a months-to-exhaust requirement in order to receive additional numbering resources”. (USTA Petition, p. 2; see also, SBC Petition, pp. 1-2.) SBC goes so far as to complain that the FCC lacked an adequate record to support requiring carriers both to make a months-to-exhaust (MTE) showing and meet a utilization threshold. (SBC Petition, p.1.) The basis for SBC’s claim is that the FCC admitted MTE forecasts are “speculative and need to be ‘validated’ by utilization thresholds.” (Id.)

This is a curious argument. The FCC has determined that MTE projections, which used to form the sole basis for carrier requests for numbers, are unreliable. Rather than discount carrier projections altogether, the FCC concluded that the forecasts should be verified with a comparison to the carrier’s actual demand for numbers. On the one hand, the CPUC sees a certain value to relying exclusively on carrier demand rather than on a combination of forecasts and demand. At the same time, however, California has found the use of forecasts to be helpful in showing carrier expectations of their number use. MTE shows what a carrier anticipates its number needs will be – the forecast can match, exceed, or undercut utilization results. In

California pools, forecasts have been almost universally disproved by actual demand, with actual demand steadily running at one tenth to one quarter of the forecasted demand. But that may not continue to be the case in the existing California pools, nor be the case in future pools.

At some point, the FCC may wish to abandon the use of MTE, but for now, the CPUC considers it still to be a useful tool in monitoring anticipated industry demand. Finally, MTE is a component of the sacred industry guidelines. Presumably, if the FCC determines that MTE forecasts are no longer necessary, the relevant set of INC guidelines would need to be revised.

## **VI. THE FCC SHOULD NOT ALLOW WIRELESS CARRIERS ANY ADDITIONAL TIME TO IMPLEMENT POOLING**

In their petitions, Sprint, BellSouth, Cingular, and CTIA ask the FCC to allow wireless carriers after deployment of local number portability (LNP) technology additional time to implement number pooling. The CPUC opposes any further delay in implementation of number pooling by wireless carriers. At least one wireless carrier has told CPUC staff informally that it will be LNP-capable ahead of the November, 2002 deadline. CPUC staff have heard anecdotally that other wireless carriers already are LNP capable. This alone, of course, is not adequate reason to mandate that carriers to meet the LNP and pooling requirements on the same date. The facts, however, demonstrate that meeting both requirements simultaneously is achievable.

LNP capability and pooling use the identical technical platform. With relatively little additional work, once a carrier can port numbers, it has the capability to pool numbers. What remains is for the carrier to program its facilities to accommodate the pools that will be in progress in November, 2002. The national roll-out of pooling will not begin until at least next year, and most states will have but a few pools underway by the LNP deadline. Carriers have consistently asserted to the CPUC, and to the FCC, that deployment of 3.0 software will further

simplify implementation of pooling. The 3.0 software is scheduled to be deployed nationwide in the next several months, well in advance of the LNP deadline. Given the four-year lead time wireless carriers have had to reach this goal, any complaints about the difficulties of doing so are specious at best.

Further, Sprint's assertion that "there is no need to rush the implementation of pooling given the other number conservation measures . . . already adopted" is completely disproved by the facts.<sup>4</sup> In California, wireless demand for full NXX codes is driving the drain of numbers in several area codes. Our utilization studies in several area codes concluded that without the need to satisfy wireless demand for full NXX codes, a significant number of California's area codes could last for many years.<sup>5</sup> Contrary to Sprint's claim, there is great urgency in having wireless carriers participate in pooling. To that end, the CPUC has consistently opposed any extension of time to the wireless industry to begin to pool. Once carriers can port, they can pool and the FCC should continue to require them to do so.

## **VII. THE FCC SHOULD NOT PROHIBIT STATES FROM RATIONING NUMBERS**

In its Petition, Sprint claims that "rationing is unlawful and poses 'an insidious threat to competition'".<sup>6</sup> Sprint goes on to assert that rationing is "highly discriminatory". To underscore its claim, Sprint cites to the CPUC's Petition for Reconsideration (PFR) of the *First Report & Order*, filed July 17, 2000. Sprint quotes the CPUC as stating that carriers can obtain numbers through pooling in "less than one week". That, of course, is not quite what we said. In our

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<sup>4</sup> Sprint Petition, p. 7.

<sup>5</sup> Copies of all CPUC utilization studies are available on the CPUC's web site, and have been provided to FCC staff.

<sup>6</sup> Sprint Petition, p. 1.

petition, we were arguing that the FCC should apply a utilization threshold to pooling carriers, and in that context, we noted that pooling affords carriers the opportunity to obtain 1,000-blocks more quickly than whole NXX codes.

The beauty of number pooling is that there is a very quick turn-around time to begin using numbers. Traditionally, to put a whole NXX code into service takes a week or two to receive the NXX code from the NANPA, and then sixty-six days to publish the code in the Local Exchange Routing Guide (LERG). If the NPA is in rationing, it may take several additional months for a carrier to be awarded a code through the lottery process. With number pooling, it can take as little as three weeks from the time a carrier requests a 1,000-block from the PA until numbers can be assigned to customers. There is an expedited process that can shorten this time frame to less than one week. Therefore, requiring carriers to meet a 75% fill rate is not burdensome, because shortly after the carrier reaches that threshold, the carrier can obtain and use immediately a new 1,000-block of numbers. (CPUC PFR, July 17, 2000, p. 6, emphasis added.)

As noted, carriers can only obtain numbers in less than a week by using an expedited process. Further, by ignoring the context of our comment, Sprint has misrepresented our argument.

Pooling affords enormous benefits, which the wireless industry could be realizing today if it had made the decision to deploy LNP earlier. Indeed, the CPUC would be happy to give any wireless carrier with LNP-capability 1,000-blocks if the carrier were able to take blocks instead of whole codes. But, instead, the wireless industry sought a delay in implementing LNP, and now complains bitterly that wireline carriers can obtain numbers in 1,000-blocks, while they must wait in line for whole NXX codes. This is not discrimination on the part of the CPUC or any other state commission. It is simply the result of the wireless industry setting itself apart by seeking extra time to implement LNP and thus to pool. When the FCC granted the wireless industry an extension of time to deploy LNP, it made plain that there would be no commensurate

delay in implementing pooling simply because one class of carriers was not able to participate. Finally, we note that when wireline carriers participate in a pool, wireless carriers are only competing against each other, and not against all other carriers, in a lottery. Wireless carriers have told CPUC staff that in this way, pooling benefits them as well.

The FCC should not deprive states of the necessary tool of continuing rationing even after pooling is in place. Once all carriers can participate in pooling, rationing may no longer be necessary.

Respectfully submitted,

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