
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)

To: The Commission

**REPLY COMMENTS REGARDING
PETITIONS FOR RECONSIDERATION
OF THE *SECOND REPORT AND ORDER AND
ORDER ON RECONSIDERATION***

CINGULAR WIRELESS LLC

J. R. Carbonell
Carol L. Tacker
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
(404) 236-6030

Its attorneys.

April 23, 2001

TABLE OF CONTENTS

I.	TRANSITION PERIOD BETWEEN WIRELESS NUMBER PORTABILITY AND WIRELESS NUMBER POOLING.....	1
II.	MODIFICATION OF THE UTILIZATION FORMULA	5
III.	GRANDFATHERED STATE UTILIZATION THRESHOLDS.....	6
	CONCLUSION.....	9

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)

To: The Commission

**REPLY COMMENTS REGARDING
PETITIONS FOR RECONSIDERATION
OF THE *SECOND REPORT AND ORDER AND
ORDER ON RECONSIDERATION***

Cingular Wireless LLC hereby replies to comments on the petitions for reconsideration of the Commission’s *Second Report and Order and Order on Reconsideration*.¹

**I. TRANSITION PERIOD BETWEEN WIRELESS NUMBER PORT-
ABILITY AND WIRELESS NUMBER POOLING**

The Maine and California state commissions have opposed Cingular’s request that a reasonable transition period be established between the implementation dates for wireless number portability (“WNP”) and wireless thousands’ block number pooling (“WTBPN”). They fail to recognize that being “LNP-capable” does not equate to being capable of immediately participating in actual service provider porting of numbers or pooling. As Cingular showed in its petition for reconsideration, both WNP and WTBPN capability depend upon a common technological and systems core — the location routing number (“LRN”) architecture that was developed for wireline local number portability. While having LRN capability is essential to

¹ *Numbering Resource Optimization*, CC Docket 99-200, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, FCC 00-429 (Dec. 29, 2000) (referred to herein as the *Second Report and Order*), as corrected by *Errata* (CCB Jan. 24, 2001).

both WNP and WTBNP, each of the latter capabilities requires different operational requirements for implementation.

A good analogy is digital television. The fact that a consumer has a digital television set does not mean that a consumer is capable of receiving digital satellite video or HDTV. To implement either of these capabilities, additional unique technologies must be layered atop the digital video display capability in the set. Purchasing a digital satellite receiver and dish does not give this “digital-ready” television the ability to receive over-the-air HDTV signals. That requires a separate technological enhancement, a set-top box designed to receive and decode over-the-air HDTV.

In short, having the ability to provide one capability does not give a carrier the ability to provide the other with only trivial effort. Significant modifications are required for both wireline and wireless service providers in order to provide WNP and WTBNP functionalities. California’s claim that because the two use “the identical technical platform [,] . . . relatively little work” is needed to pool numbers after becoming able to port numbers² cannot be sustained.

While it is true that both porting and pooling rely on the use of an LRN for routing, pooling introduces complexities in the management of numbers, both in the inventory data bases and in switch and subscriber data bases, that are not present with porting. On the other hand, porting imposes additional requirements for Service Order Administration and for the internal Port Support Center that are more intensive than with pooling. Further, porting requires the establishment of Intercarrier Communications processes and Point of Sale system modifications that are not required for pooling.

² California Response at 8.

Maine claims that wireless carriers have had ample notice that they will be subject to pooling in November 2002 and are now resorting to scare tactics.³ Nothing could be farther from the truth. While it is correct to say that the *First Report and Order*⁴ gave covered CMRS carriers notice that they would be subject to the pooling requirement, that order did not set in stone the November 2002 deadline. Instead, it *tentatively* set this as the deadline, while at the same time it requested comment in a further notice of proposed rulemaking on whether or not there should be a transition period, and, if so, how long a transition was needed.⁵ In the *Second Report and Order*, the Commission acknowledged the tentative nature of its earlier decision, stating:

In the *Further Notice*, we sought comment on whether covered CMRS carriers should be required to participate in pooling by the end of the LNP forbearance period on November 24, 2002. In the alternative, we sought comment on whether we should allow a transition period between the time that covered CMRS carriers must implement LNP and the time they must participate in pooling, and if so, what the minimum reasonable allowance for such a transition period would be.⁶

Wireless carriers were thus on notice that they *might* be subject to a pooling requirement by November 2002, not that they *would* be.

The provision of notice of a pooling deadline two years ago, whether tentative or definitive, did not make maintenance of that deadline either achievable or reasonable when it was promulgated, and does not do so now. The simple fact is that wireless carriers have a

³ Maine Opposition at 6.

⁴ *Numbering Resource Optimization*, CC Docket 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 7574 (2000) (*First Report and Order*).

⁵ *Id.* at ¶ 249.

⁶ *Second Report and Order* at ¶ 47.

monumental task ahead of them to flash-cut systems over to WNP capability by November 2002 in a manner that preserves nationwide roaming.

California further states that most states will have only a few pools underway by the time wireless implementation begins. According to the pooling timeline on Neustar's website, pooling will be implemented in 67 NPAs by the end of the year.⁷ Twelve states have received delegated authority from the FCC to implement additional pooling trials and can be expected to schedule implementation by November 2002. Assuming a conservative FCC rollout schedule that does not include any additional NPAs, wireless carriers would need to be capable of implementing pooling in 79 NPAs on November 24, 2002. In addition, the regional Number Portability Administrator Center ("NPAC") centers, the pooling administrator, and the intercarrier support systems would need to be ready to manage the increased demand from wireless carriers in those NPAs simultaneously.

In contrast, the FCC today has restricted pooling implementation for wireline carriers to three NPAs per region per quarter or 21 NPAs per quarter nationwide. It would seem reasonable that the Commission should have the same concerns about the implementation of wireless pooling that it did for wireline pooling and allow a reasonable schedule for implementation. Similarly, a transition should be provided between the implementation of the two processes as was provided with wireline pooling and porting.

Maine and California seem to think that wireless carriers are seeking endless postponement of wireless pooling, or even an exemption. Given the current known demand for pooling and the uncertain demand for actual porting, Cingular would support implementing pooling on a staggered schedule beginning November 2002 and delaying actual service provider

⁷ See <http://www.numberpool.com/timeline_by_state/Poolingtimeline%20revised.xls> (visited April 23, 2001).

porting. Wireless carriers are seeking a reasonable period — Cingular suggests nine months — between two major system upgrades that will make *both* upgrades more robust and transparent. Implementing nationwide roaming, porting, and pooling simultaneously on a flash-cut basis compromises network integrity and poses unnecessary risks to customers.

II. MODIFICATION OF THE UTILIZATION FORMULA

Several petitioners for reconsideration, including Cingular, urged the Commission to modify its utilization formula to account for administrative, aging, intermediate, and reserved numbers. There were no comments opposed to such modifications, given that there is no reasoned basis for the Commission’s exclusion of these categories. Cingular notes that while California’s comments on the petitions for reconsideration did not address the issue, it did reach the issue in its reply comments recently filed in response to the *Second Further Notice Of Proposed Rulemaking* accompanying the *Second Report and Order*. There, California noted that it “has chosen a different approach to calculating utilization in the 310 NPA.” California Reply Comments at 2 (filed April 9, 2001).

In particular, California required carriers to calculate the 75% fill rate in that NPA by including in the numerator “assigned[,] aging, administrative[,] and reserved” numbers. *Id.* While this does not explicitly address intermediate numbers, because it was prescribed before the Commission had established that category, it apparently does indirectly include some or all intermediate numbers.⁸ Accordingly, California states that it “would not object to including in

⁸ California required carriers to “account for . . . numbers for customers served by a reseller or provided to dealer pools.” *Id.* at 2, 3 & n.3. Before the Commission created the new category of “intermediate” numbers, such numbers were typically classified as “assigned.” *See First Report and Order* at ¶¶ 16-18, 20-21.

the numerator administrative, reserved, and aging numbers in addition to assigned numbers.” *Id.* at 2. Therefore, even the state commissions do not oppose changing the utilization methodology.

Cingular recommended in its petition to include these categories in the numerator, and divide by the total numbering resources in the carrier’s inventory (the “Total”), in the following manner:

$$\text{Utilization} = (\text{Assigned} + \text{Aged} + \text{Intermediate} + \text{Reserved} + \text{Administrative}) / \text{Total} * 100\%$$

In the alternative, Cingular recommended that, at a minimum, intermediate numbers be excluded from the carrier’s inventory in the denominator, consistent with the manner that the NRUF, FCC Form 502, computes utilization:

$$\text{(Alternative) Utilization} = \text{Assigned} / (\text{Total} - \text{Intermediate}) * 100\%$$

PCIA provided support for this recommendation in its response to the petitions. *See* Cingular Petition at 18; PCIA Opposition at 3-4. Either of these methods would provide a better reflection of the degree to which a carrier is utilizing the numbering resources that are actually available to it than the FCC ordered methodology, which does not measure utilization at all.

III. GRANDFATHERED STATE UTILIZATION THRESHOLDS

California and Maine both urge the Commission to reject petitions for reconsideration of the “grandfathering” of state utilization thresholds set above the national 60% standard. In fact, their comments illustrate why the Commission’s supposed grandfathering of state thresholds is insupportable. Both states had established 75% utilization thresholds in accordance with state standards for computing utilization that differ from the FCC standards. In at least one case, the state standards included categories of numbers other than assigned numbers — *i.e.*, administrative, aging, and reserved numbers, as well as some or all intermediate numbers.⁹ The

⁹ *See* discussion below.

Commission's decision grandfathered the 75% threshold level in these states, but not the way in which it is computed. For example, prior to the FCC's *Second Report and Order*, California determined utilization as illustrated below:¹⁰

$$\text{CPUC Utilization} = \frac{\text{(Assigned (including some or all Intermediate) + Administrative + Aging + Reserved) }}{\text{Total}} * 100\%$$

The Commission now requires that only assigned numbers be included in the numerator when computing utilization:

$$\text{FCC Utilization} = \frac{\text{Assigned}}{\text{Total}} * 100\%$$

The FCC grandfathered the state's utilization level. However, it required all states to comply with the FCC methodology. To grandfather California's percentage threshold but not the formula that is used to compute it does not preserve an individual state's previous decision as to what utilization level is appropriate.

We assume, for the sake of argument, that the Commission owed sufficient deference to the various states' judgment of the appropriate threshold to allow their decisions to stay in effect after adoption of a 60% threshold elsewhere. Even so, there is no justification for grandfathering the level of the threshold alone, while preempting the means by which it was calculated. It is as though a federal agency grandfathered states' numerical speed limits, but required that they be specified in kilometers per hour instead of miles per hour.

Both Maine and California originally adopted their 75% utilization thresholds based on a different formula from that which the Commission imposed when it grandfathered their rates.¹¹

¹⁰ See page 5, above.

¹¹ Maine admits that it "initially used a different formula." Maine Opposition at 4. Maine previously told the Commission that "Maine never explicitly stated how the utilization rate should be calculated." See Maine ex parte filing dated October 25, 2000 at 5. Likewise, "California had ordered carriers to use a methodology different from the FCC's to calculate their

(footnote continued on next page)

Both of these states subsequently changed their computation to conform to the FCC's formula, but left the utilization number the same.¹² And while Maine's previous formula is unclear, California's old formula unquestionably included categories in computing utilization that are be excluded by the Commission's standards.¹³

In other words, the Commission's decision did *not* preserve an individual state's prior judgment, which it was claiming to grandfather. Rather, the decision imposed a new, higher utilization rate for carriers to meet than either the national standard or states' chosen standards. If a carrier's administrative, aging, intermediate, and reserved numbers are assumed to total 15 percent, a carrier would meet either the old state threshold of 75% or the new federal threshold of 60% when it has 60% assigned numbers. The carrier would meet the either California's or Maine's thresholds in accordance with the federal formula, however, only after achieving 75% assigned numbers. There is no basis in law or in logic for such a result.

Cingular urges the Commission to establish a standard utilization threshold of 60% for carriers in all states and to reconsider its decision to grandfather higher utilization levels in certain states.¹⁴

(footnote continued from previous page)

utilization levels in order to meet the CPUC's 75% utilization threshold." California Response at 2.

¹² See California Response at 2; Maine Opposition at 4.

¹³ See note 11 and page 5, above.

¹⁴ If the Commission does not reconsider its utilization formula, it is essential that, in the alternative, it lower the utilization threshold to 50%, as Cingular asked in its petition for reconsideration. This is especially critical for carriers with a high degree of intermediate number usage by other carriers. Even with a safety valve procedure, a carrier whose service is often resold or marketed through dealers should not be forced to utilize this special procedure routinely.

CONCLUSION

For the foregoing reasons and as set forth in its Petition for Reconsideration, Cingular urges the Commission to reconsider its *Second Report and Order*.

Respectfully submitted,

CINGULAR WIRELESS LLC

/s/ J. R. Carbonell

By: _____

J. R. Carbonell
Carol L. Tacker
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
(404) 236-6030

Its attorneys.

April 23, 2001