

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

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

**COMMENTS OF THE CELLULAR TELECOMMUNICATIONS & INTERNET  
ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”),<sup>1</sup> hereby submits its Comments on the petition filed by the Competitive Telecommunications Association and the Personal Communications Industry Association (“Petitioners”) contending that a new reporting requirement for non-geographic numbering resources was adopted without notice or an opportunity to comment.<sup>2</sup>

**I. INTRODUCTION AND SUMMARY**

Last year, in furtherance of its effort to promote the efficient allocation and use of numbering resources, the Commission adopted mandatory number utilization reporting requirements for central office codes (“CO Codes”) within geographic numbering plan

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<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> See *Common Carrier Bureau Seeks Comment on Petition for Reconsideration Filed by Wireless LNP Forbearance Petition Filed by Competitive Telecommunications Association and Personal Communications Industry Association, Public Notice* (rel. Aug. 20, 2001).

areas (“NPAs”).<sup>3</sup> CTIA supported the Commission’s efforts to develop a numbering resource database of the demand, allocation, and use of numbering resources, which would permit the NANPA to collect “data which is critical to the accurate forecasting of NANP and NPA exhaust.”<sup>4</sup>

In a June 11, 2001 Public Notice (“*Reporting Notice*”), the Common Carrier Bureau extended the reporting requirement to the non-geographic 500 and 900 NPAs, as well as to toll free NPAs, *i.e.*, 800, 888, 877, 866, 855, 844, 833, and 822 NPAs, international inbound NPA 456 NXX codes, carrier identification codes, vertical service codes, 855-XXXX line numbers and 555-XXXX line numbers.<sup>5</sup> The Petitioners have filed a petition urging the Commission to rescind its *Reporting Notice* and initiate a Notice of Proposed Rulemaking of the Commission’s action imposed a new reporting requirement and such action requires certain procedural safeguards that the Commission did not observe.<sup>6</sup> CTIA supports the Petition for Reconsideration and strongly urges the Commission to reconsider its decision to impose a reporting requirement on non-geographic NPAs, including the 500 and 900 NPAs.

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<sup>3</sup> *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200 (rel. March 31, 2000) (“Report and Order”).

<sup>4</sup> *Id.* at ¶37.

<sup>5</sup> *Numbering Resource Optimization*, CC Docket No. 99-200, *Public Notice*, DA 01-1409 (rel. June 11, 2001) (“*Reporting Notice*”).

<sup>6</sup> *Competitive Telecommunications Association and Personal Communications Industry Association Petition for Reconsideration*, CC Docket No. 99-200 (filed July 12, 2001) (“Petition”). Specifically, the Petitioners have petitioned for reconsideration of the Commission’s decision because it failed to provide notice and opportunity for comment and obtain Office of Management and Budget “OMB” approval.

## II. THE NEW REPORTING REQUIREMENT WAS IMPOSED WITHOUT NOTICE AND OPPORTUNITY FOR COMMENT AND WITHOUT PROPER OMB APPROVAL

CTIA agrees with the Petitioners that the Commission's new reporting requirement was adopted in violation of Section 553(b) of the Administrative Procedure Act, which requires notice and the opportunity for comment before promulgation of a final rule.<sup>7</sup> The Commission's *Report and Order* does not address reporting requirements outside of the scope of geographic NPAs. Furthermore, the record does not reflect that the state commissions, the industry, or any other interested parties to the proceeding considered a reporting requirement for non-geographic NPAs at the time or any time after the Commission promulgated the *Report and Order*. Moreover, interested parties did not receive any indication that the Commission was considering imposing an additional reporting requirement until it released its *Reporting Notice*, nearly a year-and-a-half after it adopted the *Report and Order*.

CTIA also agrees with the Petition's contention that the Commission failed to satisfy the requirements of the Paperwork Reduction Act ("PRA") by failing to obtain prior approval from the OMB.<sup>8</sup> The PRA requires a government agency to obtain OMB clearance before seeking to collect information from ten or more persons or entities.<sup>9</sup> More significantly, an agency is required to obtain approval from the OMB prior to making a substantive or material modification to a collection of information.<sup>10</sup> Over a

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<sup>7</sup> See Petition at 5-12.

<sup>8</sup> See Petition at 12-15.

<sup>9</sup> 44 U.S.C. §3502(3)(A)(i) (Supp. IV 1998)

<sup>10</sup> 44 U.S.C. §3507(h)(3).

year ago, the Commission designated the FCC Form 502 to collect information about numbering resources within geographic NPAs that are subject to the CO Code Assignment Guidelines, in accordance with its *Report and Order*. By imposing the new reporting requirement for non-geographic NPAs on the same form, the Commission made a substantive and material modification. In light of these procedural defects, the Commission should reconsider its decision to require carriers to report information on non-geographic NPAs.

### **III. THE COSTS OF THE NEW REPORTING REQUIREMENT OUTWEIGH ANY BENEFIT**

The costs associated with imposing the new reporting requirement far outweigh any tangible benefit. When the Commission adopted the original reporting mandate for CO codes in geographic NPAs, the industry generally agreed with the Commission that certain benefits would inure to the industry and the public, while recognizing there were significant costs and other burdens associated with the mandatory reporting system. In contrast to the original reporting requirement, there is no evidence that the public will benefit from requiring the industry to report the utilization of non-geographic codes.

Extending the reporting requirement to non-geographic NPAs does not advance the key purpose of a uniform reporting system recognized by the Commission in its *Report and Order*. The Commission adopted mandatory reporting requirements to “promote more efficient allocation and use of NANP resources by tying a carrier’s ability to obtain resources more closely to its actual need for numbers to serve its customers.”<sup>11</sup> However, many non-geographic NPAs, such as the 900 NPA, are translated by the carrier

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<sup>11</sup> See *Report and Order* at ¶5.

instead of being routed to the rate center for translation, allowing carriers greater flexibility to efficiently allocate numbering resources.<sup>12</sup> Furthermore, carriers seeking to obtain non-geographic NPAs face greater restrictions than carriers applying for CO codes in geographic NPAs and must comply with service-specific assignment requirements.<sup>13</sup> Thus, the scarcity of non-geographic NPAs has historically not been as great as for CO codes in geographic NPAs.<sup>14</sup>

In its *Report and Order*, the Commission identified several benefits it hoped to achieve by monitoring carriers' use of numbering resources, none of which are realized by the new reporting requirement. For example, the Commission intended the reporting requirements to provide the FCC with nationwide information of "how numbering resources are being used in *all* markets."<sup>15</sup> However, the collection of data on non-geographic NPAs, all of which have been uniquely set aside by the Commission for a particular service and are not market-specific, will not benefit the Commission, the industry, or the public. Nor will the new reporting requirement facilitate the states'

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<sup>12</sup> In the 900 Service Area Code (SAC), carriers are designated and identified by specific NXX codes. A local exchange carrier (LEC) translates the 900 NXX portion of a 900-NXX-XXXX number for purposes of call routing. *See* 900 NXX Code Assignment Guidelines, INC 97-0404-012 (rel. Sept. 15, 2000) at 1.2.

<sup>13</sup> For example, a carrier's ability to obtain a NXX code in the 900 SAC is limited by the number of codes it can apply for at any given time and a carrier must demonstrate code activation of its existing code assignments, as well as comply with other assignment criteria. *See id.* at 4.0 and 5.0.

<sup>14</sup> There have been no 900 NPA requests to the NANPA in the past two-and-a-half years and exhaust is not a concern. *See* NANPA Report to the NANC, JUL01NANPA at 5-6 (July 17-18, 2001).

<sup>15</sup> *See Report and Order* at ¶37

numbering resource optimization efforts by providing the state commissions with location-specific data.<sup>16</sup>

Finally, the new reporting requirement unnecessarily burdens carriers, which have limited resources. The Commission should not force the industry to waste its resources at a time when it is preparing to meet more important implementation deadlines—local number portability (“LNP”) and thousands-block number pooling (“TBNP”).

#### **IV. THE NEW REPORTING REQUIREMENT IS INCONSISTENT WITH THE COMMISSION’S PRIOR TREATMENT OF NON-GEOGRAPHIC NPAS AND WILL UNDERMINE EXISTING NUMBERING RULES**

Neither the Commission nor the NANPA previously recognized or enforced the reporting requirement for non-geographic NPAs announced in the Commission’s *Reporting Notice*. In that notice, the Commission interpreted its *Report and Order* numbering mandate to retroactively apply to “all carriers that receive numbering resources from the NANPA or that receive numbering resources from a Pooling Administrator in thousands blocks.” However, the *Report and Order* is clear that the reporting obligation only pertains to carriers that are assigned and/or utilizing numbering resources subject to the Central Office Code (NXX) Assignment Guidelines.<sup>17</sup>

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<sup>16</sup> See *id.*

<sup>17</sup> The Commission’s *Reporting Notice* also announced that it plans to enforce the reporting requirement penalties against carriers that fail to report non-geographic NPAs. See *Reporting Notice* at 1.

It is clear that the Central Office Code Assignment Guidelines apply only to geographic NPA codes.<sup>18</sup> The Commission's historic treatment of non-geographic numbering resources indicates that it has provided greater latitude to the NANPA to effectively manage and accommodate the utilization of service-specific NPAs. Furthermore, state commissions have established rules mirroring the Commission's reporting requirements for activities such as investigation of carrier use of numbers, audits, and reclamation of numbers based upon compliance with the Commission's rules. Changing the Commission's rules will disturb these rules and lead to conflicting interpretations among various state commissions over the utilization and reporting of non-geographic numbering resources, over which the states have no authority or control.

The Commission's interpretation of the *Report and Order* may extend other obligations upon carriers utilizing non-geographic NPAs. For example, the Commission's sequential numbering mandate requires "all carriers" to assign all available numbers within an opened thousands-block before assigning numbers from an uncontaminated block;<sup>19</sup> however, imposing this requirement on toll free NPAs or 500 and 900 NPAs does not make sense given the widespread use of "vanity" numbers. Furthermore, the Commission expressly designated non-geographic NPAs for service-specific uses and altering the existing rules will destroy many of the benefits intended for the end-users of these specialized codes.

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<sup>18</sup> The *NPRM* and the *Report and Order* only address numbering resources subject to the Central Office Code Assignment Guidelines and the discussion is limited to problems relating to geographic NPAs. See, e.g., *International Inbound NPA Assignment Guidelines*; *CIC Assignment Guidelines*; *VSC Assignment Guidelines*; *800-855 Number Assignment Guidelines*; *555 Number Assignment Guidelines*.

<sup>19</sup> See *Report and Order* at 242-46.

**V. CONCLUSION**

For these reasons, CTIA respectfully requests that the Commission reconsider its new reporting requirement for actual and forecast number usage of non-geographic NPAs.

Respectfully submitted,

/s/ \_\_\_\_\_

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