

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

RECEIVED

SEP 19 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Numbering Resource Optimization)
)
Petition for Reconsideration filed by)
Competitive Telecommunications)
Association and Personal Communications)
Industry Association regarding Reporting)
Requirements for 500/900 NPAs)
)

CC Docket No. 99-200

NSD File No. L-01-143

COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)¹ hereby submits its comments on the petition for reconsideration of the requirement that 500 and 900 Numbering Plan Areas ("NPAs") be included in carriers' Numbering Resource Utilization and Forecast ("NRUF") reports.² The petition was filed by the Competitive Telecommunications Association and the Personal Communications Industry Association (jointly "the petitioners") in the above-captioned proceeding.

¹ The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

² The comment cycle was established in the Commission's *Public Notice*, DA 01-1966, released August 20, 2001.

No. of Copies rec'd 014
List ABCDE

The petition seeks reconsideration of the Commission's *Public Notice*³ that designates the inclusion of 500 and 900 NPAs in the carrier semi-annual reporting obligations on FCC Form 502. In that *Public Notice*, the Commission also stated that it had instructed the North American Numbering Plan Administrator ("NANPA") to withhold numbering resources from carriers that fail to comply with the expanded reporting requirements. Petitioners claim that the changes announced in the *Public Notice* are an expansion of the carrier reporting requirements to non-geographic NPAs without adhering to notice and opportunity for public comment requirements or seeking the necessary Office of Management and Budget ("OMB") approval for changes in FCC Form 502. Petitioners urge the Commission to set aside the reporting requirements for 500 and 900 NPAs pending completion of the proper administrative procedures.

USTA is concerned about the expansion of the existing NRUF reporting requirements to 500 and 900 NPAs without adequate notice and opportunity for public comment. USTA believes that the procedural requirements of the Administrative Procedure Act ("APA")⁴ apply to this situation, but were not followed. Without adhering to the proper procedures, the Commission cannot lawfully impose these additional reporting requirements on carriers and, for this reason, it should rescind its instructions to NANPA to withhold numbering resources from carriers for non-compliance with these expanded 500 and 900 NPA reporting requirements.

USTA further contends that, if opportunity for public comment were provided prior to the Commission's expansion of the reporting requirement, the Commission

³ *Public Notice*, DA 01-1409, released June 11, 2001 ("*Public Notice*").

⁴ 5 U.S.C. §§ 551 *et seq.*

would have had the benefit of public and carriers' views on the impact of reporting of 500 and 900 NPAs and on the appropriateness of the form designated by the Commission. Since the NRUF report was created for geographic numbers based on reporting at the rate center level, reporting of non-geographic 500 and 900 numbers does not conform to the NRUF rate center format.

For these reasons, USTA supports the petitioners' request that the Commission set aside the expanded NRUF reporting requirements for 500 and 900 non-geographic NPAs and follow required notice and comment rulemaking procedures before determining whether to impose such requirements.

The existing NRUF reporting requirements for central office codes or NXX codes within geographic NPAs were adopted in the *First Report and Order* in CC Docket No. 99-200⁵ after parties were given notice and opportunity for comment on the proposed reporting requirements.⁶ In the *Public Notice* that is the subject of the current petition for reconsideration, the Commission unilaterally expanded the reporting requirement to non-geographic 500 and 900 numbers. This significant expansion of the reporting obligations from solely geographic NPAs to encompass non-geographic NPAs was taken without notice or opportunity for comment. Such action violates the APA. Specifically, Section 553 of the APA requires an agency to provide "general notice of a proposed rule making"⁷ and give "interested persons an opportunity to participate in the rule making."⁸

⁵ *Report and Order and Further Notice of Proposed Rule Making*, CC Docket No. 99-200, 15 FCC Rcd 7574 at 7593-7610, (2000) ("*First Report and Order*").

⁶ *See Notice of Proposed Rulemaking*, CC Docket No. 99-200, 14 FCC Rcd 10322 at 10352-10358 (1999) ("*First Notice*").

⁷ 5 U.S.C. § 553(b).

⁸ 5 U.S.C. § 553(c).

The Commission's action that imposed reporting requirements on carriers for 500 and 900 NPAs constitutes a "rule making" as defined by the APA. That term is defined as "agency process for formulating, amending, or repealing a rule."⁹ "Rule" is defined in pertinent part as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy...and includes the approval or prescription for the future of...practices...."¹⁰ As stated above, the Commission adhered to the APA procedures when it initially adopted the NRUF requirements. The expansion of the reporting requirements to 500 and 900 NPAs clearly constituted a "rule making" because it formulated a rule that has general applicability and future effect of prescribed practices. Nevertheless, the Commission did not follow the APA requirements of providing notice and opportunity to participate in a proceeding to adopt the rule. Furthermore, if a rule is "procedurally flawed," as it has shown to be in this case, it is invalid and cannot be legitimately enforced.¹¹

USTA believes that there are substantial questions raised by the expansion of reporting requirements, as unilaterally accomplished in the *Public Notice*. For example, the value of the data to be collected and the creation of unnecessary burdens on the reporting carriers, as well as the appropriateness of the reporting form itself, should be fully considered through the prescribed rulemaking process before additional requirements are imposed on carriers, let alone sanctions due to nonconformity with those requirements.

⁹ 5 U.S.C. § 551(5).

¹⁰ 5 U.S.C. § 551(4).

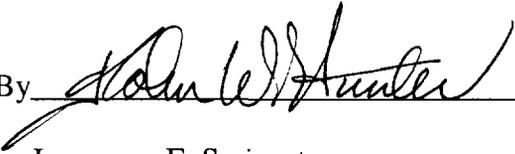
¹¹ See *Mobil Oil Corp. v. U.S. E.P.A.*, 35 F.3d 579 (D.C. Cir. 1994).

Conclusion

USTA supports the request in the petition for reconsideration that the Commission set aside the expanded NRUF reporting requirements for 500 and 900 non-geographic NPAs and follow required notice and comment rulemaking procedures before imposing such obligations on carriers, for the reasons stated herein. On this basis, the Commission should also rescind its instructions to NANPA to withhold numbering resources from carriers for non-compliance with the subject invalid reporting requirements.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By  _____

Its Attorneys:

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones

1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 326-7375

September 19, 2001

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on September 19, 2001, Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.


Meena Joshi

Jeannie Grimes
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Donald W. Downes
Glenn Arthur
Jack R. Goldberg
Connecticut Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

John W. Betkoski, III
Linda Kelly Arnold
Connecticut Department of Public Utility Control
Ten Franklin Square
New Britain, CT 06051

Peter Arth, Jr.
Lionel B. Wilson
Helen M. Mickiewicz
PUC of California
505 Van Ness Avenue
San Francisco, CA 94102

Douglas F. Carlson
P.O. Box 12574
Berkeley, CA 94712

Donald L. Dear
City of Gardena
P.O. Box 47003
Gardena, CA 90247

Henry G. Hultquist
WorldCom
1133 19th Street, NW
Washington, DC 20036

Marc D. Poston
William K. Haas
Dan Joyce
Missouri PSC
301 West High Street, POB 360 - Room 530
Jefferson City, MO 65101

Carl K. Oshiro
Small Business Alliance for Fair Utility Regulation
100 First Street - Suite 2540
San Francisco, CA 94105

Bob Pinzler
South Bay Cities Council of Governments
5033 Rockvalley Road
Rancho Palos Verdes, CA 90275

Karlyn D. Stanley
Cole, Raywid & Braverman, LLP
(Centennial Cellular Corp.)
1919 Pennsylvania Avenue, NW - Suite 200
Washington, DC 20006

Mark J. Burzych
Foster Swift Collins & Smith, PC
(Thumb Cellular)
313 South Washington Square
Lansing, MI 48933

Susan W. Smith
Centurytel Wireless, Inc.
3505 Summerhill Road
No. 4 Summer Place
Texarkana, TX 75501

Kenneth E. Hardman
Moir & Hardman
(Trillium Cellular)
1828 L Street, NW - Suite 901
Washington, DC 20036

W. Robert Keating
Paul B. Vasington
Eugene J. Sullivan, Jr.
Massachusetts Department of Telecomms. and Energy
One South Station - Second Floor
Boston, MA 02110

Robert H. Bennink, Jr.
Erin K. Duffy
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603

Lynda L. Dorr
PSC of Wisconsin
610 N. Whitney Way
P.O. Box 7854
Madison, WI 53707

Howard J. Symons
Sara F. Seidman
Uzoma C. Onyeije
Mintz, Levin, Cohn, Ferris, et al (AT&T)
701 Pennsylvania Avenue, NW - Suite 900
Washington, DC 20004

Douglas I. Brandon
AT&T
1150 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

John M. Goodman
Michael E. Glover
Bell Atlantic
1300 Eye Street, NW
Washington, DC 20005

Janet Gail Besser
James Connelly
Massachusetts Department of Telecomms. and Energy
One South Station
Second Floor
Boston, MA 02110

Lawrence G. Malone
NYDPS
Three Empire State Plaza
Albany, NY 12223

Michael A. Sullivan
15 Spencer Avenue
Somerville, MA 02144

Theresa Fenelon Falk
Pillsbury Madison & Sutro, LLP
(Saco River Telegraph and Telco.)
1100 New York Avenue, NW - Ninth Floor, East Tower
Washington, DC 20005

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.
AT&T
295 North Maple Avenue - Room 3245H1
Basking Ridge, NJ 07920

Daniel Mitchell
Commonwealth of Massachusetts
200 Portland Street
Boston, MA 02114

John F. Raposa, HQE03J27
GTE
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75015

Andre J. Lachance
GTE
1850 M Street, NW
Washington, DC 20036

Philip F. McClelland
Pennsylvania Office of Consumer Advocate
555 Walnut Street
Forum Place - Fifth Floor
Harrisburg, PA 17101

Joseph Assenzo
Sprint Corp.
4900 Main - 11th Floor
Kansas City, MO 64112

Kathryn Marie Krause
James T. Hannon
U S WEST
1020-19th Street, NW
Suite 700
Washington, DC 20036

James S. Blaszak
Levine, Blaszak, Block and Boothby, LLP
(Ad Hoc Telecomm.)
2001 L Street, NW
Suite 900
Washington, DC 20036

Elizabeth G. Kistner
(ALTS)
Three Spoede Ridge
St. Louis, MO 63141

Michael F. Altschul
Randall S. Coleman
Lolita D. Smith
CTIA
1250 Connecticut Avenue, NW - Suite 800
Washington, DC 20036

Bruce E. Beard
Jeanne A. Fischer
SBC Wireless, Inc.
13075 Manchester Road
St. Louis, MO 63131

Jay C. Keithley
Sprint Corporation
401 Ninthth Street, NW, #400
Washington, DC 20004

Lee L. Selwyn
Helen Golding
Economics and Technology, Inc.
One Washington Mall
Boston, MA 02108

Teresa K. Gaugler
Jonathan Askin
ALTS
888-17th Street, NW
Suite 900
Washington, DC 20006

Peggy Arvanitas
RE/MAX First Class
621 Bypass Drive
Clearwater, FL 33764

David Ellen
Cablevision Lightpath, Inc.
1111 Stewart Avenue
Bethpage, NY 11714

Cherie R. Kiser
Gil M. Strobel
Carlos A. Gutierrez
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
(Cablevision Lightpath)
701 Pennsylvania Avenue, NW - Suite 900
Washington, DC 20004

Dana Frix
Swidler, Berlin, Shereff, Friedman, LLP
(Choice One Comms. & GST Telecomms.)
3000 K Street, NW
Suite 300
Washington, DC 20007

Raymond L. Gifford
Vincent Majkowski
Robert J. Hix
Colorado PUC
1580 Logan Street, Office Level Two
Denver, CO 80203

Larry A. Blosser
Kemal Hawa
Swidler, Berlin, Shereff, Friedman, LLP
(Connect Comms.)
3000 K Street, NW, Suite 300
Washington, DC 20007

Richard Eyre
P.O. Box 2408
Tempe, AZ 85280

Richard L. Jones
INENA
c/o Loves Park 9-1-1
540 Loves Park Drive
Loves Park, IL 61111

Richard M. Rindler
Ronald W. Del Sesto, Jr.
Swidler Berlin Shereff Friedman, LLP
(Level 3 Comms.)
3000 K Street, NW, Suite 300
Washington, DC 20007

Douglas F. Carlson
P.O. Box 12574
Berkeley, CA 94712

Marsha N. Cohen
2201 Lyon Street
San Francisco, CA 94115

Werner K. Hartenberger
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
(Cox Comms.)
1200 New Hampshire Avenue, NW, Suite 800
Washington, DC 20036

Cynthia B. Miller
Florida PSC
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

William P. Hunt, III
Level 3 Comms., Inc.
1450 Infinite Drive
Louisville, CO 80027

Robert J. Aamoth
Judith St. Ledger-Roty
Kelley, Drye & Warren, LLP
1200-19th Street, NW, Suite 500
Washington, DC 20036

Reginald N. Todd
County of Los Angeles
440 First Street, NW
Suite 440
Washington, DC 20001

Susan M. Eid
Tina S. Pyle
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, NW - Suite 610
Washington, DC 20006

James R. Hobson
Donelan, Cleary, Wood & Maser, PC
(NENA)
1100 New York Avenue, NW, Suite 750
Washington, DC 20005

L. Marie Guillory
Jill Canfield
NTCA
4121 Wilson Blvd.
10th Floor
Arlington, VA 22203

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Comms.
2001 Edmund Halley Drive
Reston, VA 20191

Daniel M. Waggoner
Robert Tanner
Davis Wright Tremaine, LLP
(NextLink Comms.)
1500 K Street
Washington, DC 20005

Trina M. Bragdon
Maine PUC
242 State Street
18 State House Station
Augusta, ME 04333

H. Gilbert Miller
Mitretek Systems
Center for Telecommunications and Advanced Technology
7525 Colshire Drive
McLean, VA 22102

Carol Ann Bischoff
Jonathan Lee
Competitive Telecommunications Assoc.
1900 M Street, NW, Suite 800
Washington, DC 20036

Lawrence G. Malone
NYDPS
Three Empire State Plaza
Albany, NY 12223

John J. Farmer
Frederick F. Butler
New Jersey Board of Public Utilities
124 Halsey Street, Fifth Floor
P.O. Box 45029
Newark, NJ 07101

J.G. Harrington
Laura Roecklein
Dow, Lohnes & Albertson, PLLC
(Nextel Comms.)
1200 New Hampshire Avenue, NW - Suite 800
Washington, DC 20036

Gerard Salemme
Daniel Gonzalez
Jason Williams
Nextlink Comms.
1730 Rhode Island Avenue, NW - Suite 1000
Washington, DC 20036

Robert H. Bennink, Jr.
Erin K. Duffy
North Carolina Utilities Comm.
430 N. Salisbury Street
Raleigh, NC 27603

Benjamin H. Dickens, Jr.
Michael B. Adams, Jr.
Blooston, Mordkofsky, Jackson & Dickens
(Omnipoint Comms.)
2120 L Street, NW
Washington, DC 20037

Alfred G. Richter, Jr.
Robert K. Toppins
John S. DiBene
SBC Comms.
1401 I Street, NW, Suite 1100
Washington, DC 20005

Carl K. Oshiro
Small Business Alliance for Fair Utility Regulation
100 First Street
Suite 2540
San Francisco, CA 94105

Richard A. Askoff
Regina McNeil
NECA
100 South Jefferson Road
Whippany, NJ 07981

Betty D. Montgomery
Duane W. Luckey
Jodi J. Bair
Robert A. Abrams
PUC of Ohio
180 E. Broad Street - Seventh Floor
Columbus, OH 43215

Richard-Michelle Eyre
REC Networks
P.O. Box 2408
Tempe, AZ 82580

Carol Salva
632-14th Street
Santa Monica, CA 90402

Joseph Assenzo
Sprint PCS
4900 Main Street - 12th Floor
Kansas City, MO 64112

Alberto Levy
Melissa Caro
Texas Office of Public Utility Counsel
1701 N. Congress - Suite 9-180
P.O. Box 12397
Austin, TX 78711

Brian Conboy
Thomas Jones
David Don
Willkie Farr & Gallagher (Time Warner Turner)
1155-21st Street, NW
Washington, DC 20036

Brian Thomas O'Connor
Robert A. Calaff
VoiceStream Wireless Corp.
1300 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20004

Gilbert J. Yablon
SMART Dialing Systems
21914 Dumetz Road
Woodland Hills, CA 91364

Teresa K. Gaugler
Jane Kunka
Qwest
4250 North Fairfax Drive
Arlington, VA 22203

Kathryn Marie Krause
QWEST
1020 19th Street, NW
Suite 700
Washington, DC 20036

David L. Heaton
Office of the State's Attorney - Cook County, Illinois
Public Interest Bureau
69 West Washington
Chicago, IL 60602

James Bradford Ramsay
NARUC
1101 Vermont Avenue, NW
Suite 200
Washington, DC 20005

Howard J. Symons
Sara F. Seidman
Amy Bushyeager
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, PC
701 Pennsylvania Avenue, NW - Suite 900
Washington, DC 20004

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.
AT&T
295 North Maple Avenue - Room 3245H1
Basking Ridge, NJ 07920

Pamela J. Riley
David A. Gross
AirTouch Comms.
1818 N Street, NW - Suite 800
Washington, DC 20036

Don Woodford
Mobility Canaca
1420 Blair Place
Suite 800
Gloucester, Ontario K1J 9L8
Canada

Rogers Cantel, Inc.
333 Bloor Street East
Toronto, Ontario
M4W 1G9
Canada

Brian Conboy
Thomas Jones
Christi Shewman
Willkie Farr & Gallagher
3 Lafayette Centre
1155 21st Str. NW
Washington, D.C. 20036

Russell C. Merbeth
Daniel F. Gonos
Winstar Communications, Inc.
1615 L Street, NW, Suite 1260
Washington, DC 20036

Robert L. Hoggarth
Harold Salters
Personal Communications Industry Assoc.
500 Montgomery Str. Suite 700
Alexandria, VA 22314-1561

Danny E. Adams
Todd D. Daubert
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

John T. Scott, III
Verizon Wireless
1300 I Street, NW, Ste. 400 West
Washington, DC 20005

Deanne M. Brutts
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Teya M. Penniman
Oregon Public Utility Commission
Department of Justice
1162 Court Street NE
Salem, OR 97310

New Hampshire Public Utilities Commission
E. Barclay Jackson, Esq.
8 Old Suncook Road
Concord, NH 03301

Michael E. Glover
Edward Shakin
John M. Goodman
Verizon
1300 Eye Street, NW
Washington, DC 20005

Michael F. Altschul
Cellular Telecommunications Industry Assoc.
1250 Connecticut Avenue, NW
Suite 800
Washington, DC 20036

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, NW, Rm. 4002
Washington, DC 20405

M. Robert Sutherland
Angela N. Brown
BellSouth Corp.
1155 Peachtree Street, NE, Suite 1700
Atlanta, GA 30309-3510

Cheryl Tritt
Morrison & Foerster, LLP
(NeuStar)
2000 Pennsylvania Avenue, NW
Washington, DC 20006

Michael S. Slomin
Telcordia Technologies, Inc.
445 South Street, MCC-1J130R
Morristown, NJ 07960

Louise M. Tucker
Telcordia Technologies, Inc.
2020 K Street, NW
Suite 400
Washington, DC 20006

Mike Hatch
Karen Finstad Hammel
Minnesota Public Utilities Commission
445 Minnesota Street, #900
St. Paul, MN 55101-2127

K. David Waddell
Tennessee Regulatory Authority
460 James Robertson Pkwy
Nashville, TN 37243-0505

Patrick W. Pearlman
West Virginia Public Service Commission
201 Brooks Street, P.O. Box 812
Charleston, WV 25323

Michael T. Batt
Indiana Utility Regulatory Commission
302 W. Washington St., Room E306
Indianapolis, IN 46204-2764

Lynn Lane Williams
Oklahoma Corporation Commission
P.O. Box 52000-2000
Oklahoma City, OK 73142-2000

Michael H. Dworkin
Vermont Public Service
112 State Street
(Chittenden Bank Bldg.)
Drawer 20
Montpelier, VT 05620-2701