NUMBERING RESOURCE OPTIMIZATION ISSUES – SECOND FNPRM (FCC00-429)

The Commission Should Continue to Prohibit Technology-Specific Overlays and Consider Allowing a Phased-In Overlay

- AWS opposes technology-specific overlays (where wireless carriers are segregated and use a separate code), because they (1) are discriminatory; (2) disproportionately affect wireless providers and customers; and (3) detract from efficient allocation of numbers.[1] Technology-specific overlays that result in "take-backs" of wireless numbers are particularly burdensome and costly because of the need to program new numbers into wireless devices. Given that the wireless industry will soon pool numbers, a technology-specific overlay makes no sense as it would prevent wireless carriers providers from sharing their codes with non-wireless pooling carriers – many of which have numbers to share.

- In the interim before wireless carriers become pooling-capable in November 2002, however, the Commission could delegate states authority to implement *interim* area code relief in the form of phased-in overlays in pooling area codes -- subject to certain safeguards.[2] The Commission should require that, to the extent that a state implements a phased-in overlay, the state commission: (1) implement it only in area codes in which there is pooling, allowing non-pooling carriers to use the new overlay code; (2) must not require "take-backs" of numbers; (3) waive mandatory 10-digit dialing only during the temporary phased-in overlay; and (4) ensure that the overlay is limited and temporary in duration, converting to an all-services overlay with mandatory 10-digit dialing when either the underlying area code is exhausted, or when all carriers in the area code have become pooling-capable.[3]

- In contrast to technology-specific overlays, a phased-in overlay is not discriminatory; does not segregate carriers indefinitely; and serves the public interest by promoting number conservation and access to numbering resources. [*see attached ex parte*]

The Commission Should Adopt a Safety Valve Mechanism for Assignment of Growth Codes

- Currently, carriers must meet certain utilization and months-to-exhaust levels in order to obtain a growth code. Even if carriers meet these criteria, in many states they must enter a lottery in order to get numbers. Carriers that are not successful in the lottery or that do not meet these requirements must apply for growth codes through a waiver process to the state commission (if the state has been delegated authority to grant such relief), or to the FCC. Although AWS has been fairly successful at obtaining codes through this waiver process, this process is still somewhat slow and cumbersome. A number of states have acted on AWS' requests within a few weeks, but other states have taken as long as 3 months. In addition, AWS has had to use this waiver process more times than is reasonable. AWS estimates that it has filed requests for approximately 40 codes in the past year, 24 in one state alone.

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[1] In New York, the only area in which a technology-specific overlay has been implemented, there were too many unassigned wireless-codes, and 8 years after the overlay was adopted, the New York Commission ultimately opened this wireless-code to all carriers.

[2] *See Numbering Resource Optimization,* FCC 00-429, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No.99-200, Second Further Notice of Proposed Rulemaking in CC Docket No.99-200 (2000) ("*Second NRO Order/FNPRM*") at para. 133.

[3] *See* Letter from Judith St. Ledger-Roty and Todd D. Daubert, Kelley Drye &Warren, to Magalie Roman Salas, FCC (Nov. 15, 2000).

- Although the FCC cannot anticipate every circumstance justifying an exception to the rules, it is reasonable to develop a "safety valve" mechanism to address the most common and verifiable circumstances in which numbers are urgently needed (e.g., where a carrier meets utilization criteria and is close to exhaust but has been denied numbers through the lottery process).[4]

- For this reason, AWS proposes a limited exception under which NANPA is delegated authority to automatically grant a code, in situations where a carrier is able to demonstrate a bona fide need by showing that its numbers in the rate center will exhaust within 90 days or less and its average projected monthly activation rate is within 15 percent of its historical activation rate. This exception is easy for a carrier to demonstrate, is clearly verifiable, and does not require NANPA to exercise discretionary authority. Finally, a safety valve mechanism would promote efficient allocation of numbers by expeditiously distributing codes to carriers and customers where there is an urgent demand for growth codes.

The Commission Must Ensure that a Carrier's NPA-Wide Data is Confidential and that Third Parties Analyzing Carrier Data Are Independent and Neutral

- The Commission should grant AWS' petition for reconsideration and: (1) rule that NPA-wide data is confidential, and (2) clarify that states may provide numbering data for analysis only to third parties that are independent and neutral. *See AWS Petition for Reconsideration of NRO Order*. No parties appear to have opposed AWS' petition.

  - The Commission should reconsider its finding in the *NRO Order* that a carrier's NPA-wide data is not confidential.[5] A carrier's NPA-wide utilization data is essentially the number of customers it serves within a market. Carriers have traditionally treated customer data at the market level as confidential, and the FCC has routinely granted these requests for confidential treatment. Customer data at the NPA-level reflects an even more granular and confidential level of data than at the market level. NPA-level data is thus extremely competitively sensitive information regarding a carrier's entry into certain areas of markets, and would cause carriers significant competitive harm if such information were released to competitors.

  - The Commission's current rules provide that states may provide numbering data to third parties to undertake analysis for them.[6] Although AWS does not object to states using third parties for analysis of numbering data, the Commission must clarify this rule so that only *neutral* parties obtain access. Such clarification is important because some states have interpreted the provision to permit non-neutral parties in contested proceedings access to this data.[7]

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[4] *See Second NRO Order/FNPRM* at paras. 187-89. Holiday and seasonal fluctuations may also create increased demand for numbers, and carriers entering new markets may experience significant demand for numbers that is not necessarily reflected in current utilization.

[5] *Numbering Resource Optimization,* FCC 00-104, Report and Order and Further Notice of Proposed Rulemaking (2000) ("*NRO Order*") at para. 79.

[6] *See, e.g., Second NRO Order* at para. 119.

[7] *See, e.g., Order, Illinois Commerce Commission on its Own Motion, Order Designating an Entity for the Processing of data received by the Commission under 47 CFR 52.15(f)(7) and Directing the Provision of Such Data to that Entity, Docket No.01-0065* (adopted Jan. 24, 2001) (selecting the non-neutral consumer advocate group

There is No Need to Delegate to States Additional Audit or Enforcement Authority

- The Commission's national audit framework more than adequately ensures carrier compliance with numbering guidelines and rules, and ensures certainty and uniformity. The FCC has already afforded state commissions an integral role in this process by encouraging states to suggest carriers to be audited and to participate on audit teams. Delegating states authority for state-specific audits or enforcement actions would create varying and conflicting standards and practices, and detract from a uniform national numbering system.

Citizens Utility Board (CUB) to process confidential carrier numbering data). Although the Illinois Commerce Commission later limited the purposes for which CUB could use the data, the FCC should clarify its rules so that non-neutral third parties cannot even obtain access to the data.