

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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MAR 14 2002

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98 /
Provisions of the Telecommunications Act of	)	
1996	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

**PETITION FOR RECONSIDERATION BY  
j2 GLOBAL COMMUNICATIONS, INC.**

Philip L. Verveer  
David M. Don  
Stephanie L. Podey  
**WILLKIE FARR & GALLAGHER**  
1155 21<sup>st</sup> Street  
Suite 600  
Washington, DC 20036  
(202) 328-8000

Its attorneys

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## SUMMARY

The overarching objective of the Numbering Optimization proceeding is to achieve additional efficiencies in numbering administration while imposing minimal harm to consumers and competitive service providers. The recent decision to lift the blanket restriction on specialized overlays (“SOs”) fails to realize these objectives in the case of unified messaging (“UM”) services.

Lifting the blanket prohibition on SOs for UM was premised on a material mistake of fact that will adversely impact UM subscribers and competitive UM service providers. The Order mistakenly understood UM to be non-geographically sensitive (its primary rationale for permitting states to move UM services into SOs), when in fact consumers of UM services often have a preference for utilizing local numbers. The Order also mistakenly suggested that UM could be easily segregated into a separate category of SOs. UM is not a distinct class of service; rather, it is an integration of varied communications services that defy precise definition or easy segregation. Leaving the definition of UM to the states will result in inconsistency, confusion and possible discrimination.

The numbering crisis, which prompted the initiation of this proceeding several years ago, has largely subsided -- due mainly to dramatic changes in the telecommunications market as well as the Commission’s efforts to promote efficient numbering administration. Imminent NANP exhaust is no longer a risk; as evidenced by NANPA’s own assessment which concludes that number exhaustion is not likely until as late as 2034. Numbering policies should reflect this change. Where, as here, a policy will provide no measurable relief to area code exhaustion, while the underlying purpose for the policy itself has diminished, the Commission should reconsider its decision.

Finally, reconsideration of the decision to permit UM SOs is in the public interest. Reconsideration would ensure the consumer welfare benefits that result when competitive service providers can continue to offer UM on equal footing with the UM services provided by LECs. In practice, SOs for UM would create an artificial competitive advantage for LECs who typically provide UM services over a customer's existing communication line.

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**PETITION FOR RECONSIDERATION BY  
j2 GLOBAL COMMUNICATIONS, INC.**

j2 Global Communications, Inc., (“j2 Global”) pursuant to section 1.429 of the Commission’s Rules, 47 C.F.R. § 1.429, hereby submits its Petition for Reconsideration in the above captioned proceeding.<sup>1</sup>

**I. INTRODUCTION**

The Numbering Optimization proceeding seeks to balance the need for efficient numbering administration with the basic principles of the Communications Act of 1934, as amended (“Communications Act”). Among the principles relevant to the proceeding, the Commission sought especially to “minimize the negative impact” that changes in numbering administration might have on consumers, ensure “access to numbering resources . . . in a

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<sup>1</sup> Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, CC Dkt. Nos. 99-200; 96-98; 95-116, *Third Report and Order and Second Order on Reconsideration in CC Dkt. No. 96-98 and CC Dkt. No. 99-200*, 17 FCC Rcd 252 (2001) (“Order”).

competitively neutral manner,” and “ensure that no class of carrier or consumer is unduly favored or disfavored” by the Commission’s actions.<sup>2</sup>

With respect to the recent decision to lift the blanket restriction on specialized overlays (“SOs”) for unified messaging (“UM”) services, the Order has failed to achieve the numbering optimization goals in a manner that is consistent with these principles. As a result, UM service providers, such as j2 Global, will be at a significant, unnecessary disadvantage that may threaten the success of competitive UM services and ultimately the welfare of UM consumers.

j2 Global is one of the largest independent non-carrier UM service providers in the nation. j2 Global currently offers UM services to over four million customers who subscribe to a wide range of services that rely upon access to local telephone numbers.<sup>3</sup> The vast majority of j2 Global’s subscribers are small businesses, home offices and consumers. Most prefer a local number, although customers marketing products and services nationwide may opt for a more expensive toll-free number.<sup>4</sup> Subscriber preferences are demonstrated clearly in the large number of UM customers that find value in having a local number for UM. j2 Global offers both free and paid services. Its free services include randomly assigned numbers that generally are

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<sup>2</sup> Numbering Resource Optimization, et al., CC Dkt. No. 99-200, et al., Notice of Proposed Rulemaking, 14 FCC Rcd 10322, ¶ 6 (1999) (“Numbering Optimization Notice”).

<sup>3</sup> While UM is not a “new” service it is only within the last several years that it has been offered to the so-called “SOHO” (small office, home office) and residential markets by service providers such as j2 Global. Previously, UM was limited to large companies willing to invest significant sums in hardware upgrades.

<sup>4</sup> j2 Global subscribers with nationwide market opportunities may subscribe to the 800 service to ensure that their customers can access them without incurring long distance toll charges. Smaller businesses and consumers similarly wish to absorb the cost for incoming messages, but do so on a more narrowly circumscribed, local basis. For instance, a local restaurant would likely request a local number to receive reservations via facsimile, as would a local delivery service for its business.

non-local to the subscriber. j2 Global's paid services generally include assignment of a local number, chosen by the subscriber. j2 Global markets its paid services, in part, on the basis of this local presence. The fact that consumers will pay an additional amount for a local number is the strongest possible evidence of the inherently local nature of the service to a material segment of the market.

Notably, j2 Global is an exceedingly efficient utilizer of telephone numbering resources and can report a utilization level of 95% for the numbers assigned to it.<sup>5</sup> Over the last several years, j2 Global has devoted a considerable amount of time, energy and financial resources to ensure that its inventory of telephone numbers is efficiently assigned to subscribers. This process is managed, in part, through j2 Global's Life Cycle Management ("LCM") program. The LCM process identifies subscribers who no longer use the service. Those users targeted by LCM are notified that their service is being terminated, and, once cancelled, the numbers are aged for a short period before being reassigned to other users. In fact, j2 Global only maintains an approximately two month inventory of unassigned numbers.<sup>6</sup>

The Order's critical mistake, and the reason it should be reconsidered as to UM, is the belief that UM services are geographically insensitive and are easily segregated into unique SOs. A review of UM services offered by both LECs and UM service providers, however, reveals that for a great many consumers these services are indeed geographically sensitive, *i.e.*, consumers are very much interested in obtaining telephone numbers from particular geographic areas. Furthermore, UM is not really a single service, easily moved from one NPA code to another. Rather, it is a combination of services, many of which are already provided by LECs over

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<sup>5</sup> Declaration of Scott Jarus, Attachment, ¶ 10.

<sup>6</sup> Jarus Decl. ¶ 10.

customers' lines to their existing telephone numbers. To allow states to somehow segregate UM services (based upon an arbitrary definition of the term) will, in practice, allow states to segregate certain UM service providers (non-LECs) into perceived inferior area codes -- to the detriment of UM subscribers and service providers.

A cost-benefit analysis of this provision of the Order further supports its reconsideration. The Order has the effect of discriminating against UM service providers in a manner that could threaten the success of this nascent, competitive industry, while the benefits to NANP preservation are nonexistent. SOs limited to UM services will actually increase the deployment of NPA codes and significantly decrease the rate of telephone number utilization in those codes. When coupled with the fact that the rate of NANP exhaust has dramatically declined, there is no basis for the Commission to permit states to single-out UM services for SOs.

## **II. THE DECISION TO ELIMINATE THE PROHIBITION ON SERVICE-SPECIFIC OVERLAYS FOR UNIFIED MESSAGING SERVICES IS BASED ON MISTAKES OF FACT.**

Petitions for reconsideration are appropriate where there has been a material error or omission in the original order.<sup>7</sup> The Order determined that “circumstances have changed . . . that justify lifting the blanket prohibition on SOs, and . . . [the Commission will now] consider SO proposals on a case-by-case basis.”<sup>8</sup> The “changed circumstances” cited in the order as grounds for lifting the blanket prohibition are that (1) “carriers in 1996 were not faced with the exigent numbering shortages that exist today,” and (2) “in recent years, there has been a proliferation of

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<sup>7</sup> Cf. WWIZ, Inc., 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965) (stating that “valid grounds for rehearing [are] manifest error or omissions so material that their correction will result in substantial alteration of the original decision”).

<sup>8</sup> Order ¶ 72.

new telecommunications services that use vast amounts of numbering resources but do not necessarily need numbering resources from a particular geographic area.”<sup>9</sup>

The Order concludes that permanent SOs may now include UM services on the mistaken belief that they “generally do not require numbers from a specific geographic area.”<sup>10</sup> The Order further provides guidelines to states indicating the principles that the Commission will follow when deciding if a SO is appropriate.<sup>11</sup> These guidelines illustrate that the Commission intends to favor state proposals establishing permanent SOs that include services it considers to be geographically insensitive, including UM services.

The decision is based upon a mistaken understanding of the nature of UM. First, it incorrectly characterizes UM services as geographically insensitive. Second, it mistakenly understands UM to be a clear classification of service, easily segregated into unique SOs.

**A. UM Services Are Geographically Sensitive.**

The Order repeatedly refers to “unified messaging services” as geographically insensitive, based on the assumption that UM subscribers have no preference for a particular area code when ordering service.<sup>12</sup> It is clear, however, that many UM services, such as j2 Global’s

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<sup>9</sup> Id.

<sup>10</sup> Id. ¶ 69.

<sup>11</sup> See id. ¶ 81.

<sup>12</sup> See id. ¶ 69 (“For example, a service-specific overlay could include services that generally do not require numbers from a specific geographic area (e.g., some data services, automatic teller machines (ATMs), and unified messaging services . . . .”); id. ¶ 74 & n.190 (“We would also likely favor service-specific overlays that would include non-geographically sensitive services (such as data lines like those used for automatic teller machines or credit card approval, unified messaging services, or vehicle response systems such as OnStar . . . .). Examples of these services include ATMs, On-Star, and unified messaging services.”); id. ¶ 82, n.201 (“Non-geographic-based services include unified messaging services and automobile-based services such as OnStar. Consumers of

jConnect Premier and eFax Plus, are geographically sensitive. Geographic sensitivity in UM is evidenced by UM service subscribers' demand for local numbers. Subscribers to these services generally prefer a phone number that is associated with a specific geographic location, in particular, their own office or home locations.<sup>13</sup> In fact, most of j2 Global's paid customers subscribe to services that include a local telephone number for the dual purpose of allowing third parties to contact them without incurring toll charges and to give the customer a perceived local presence.

Current area codes contain an inherent "geographic identification." This is evidenced by the fact that consumers and businesses continue to seek, as an example, 212 area code telephone numbers in the New York City area. The 212 area code is not a "vanity number," but rather a perceived identifier of geographic origin to the calling party. Over time, this will become less important to consumers and businesses as the 917, 646 and other New York City area codes become more universally understood as "New York City area codes." The same holds true for providing geographic identity to UM telephone numbers. Consumers and businesses want their customers to know that they are located in a particular city -- area codes provide a local identity and eliminate barriers to callers due to concerns about incurring long distance charges.

Concluding that all UM is geographically insensitive is not accurate. Many UM consumers have a preference for the geographic location of their assigned number and UM

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such services are likely unaware of, or have no preference for, where their number comes from.").

<sup>13</sup> See, e.g., Caron Carlson, *Verizon Unifies Communications*, eWeek, Jan. 28, 2002, at <http://www.eweek.com/article/0,3658,s=701&a=21702,00.asp> (describing Verizon's various unified communications packages that permit subscribers to utilize either a local or a toll-free number with the service).

service providers must continue to have the ability to meet that demand.<sup>14</sup> Because the view that UM is, as a rule, geographically insensitive is erroneous, the decision to eliminate the prohibition on SOs for UM should be reconsidered.<sup>15</sup>

**B. It Is Inappropriate To Consider Unified Messaging A Segregable Category Of Service.**

UM is not appropriate for a “service-specific” overlay because it is not a specific service classification. According to the Order, “some SOs would be more likely to achieve . . . optimization goals than others” and specific classes of services, such as “non-geographically sensitive services” would be favored for SOs.<sup>16</sup> The Order apparently views UM as a clear classification of service that can easily be moved to a unique SO. In reality, UM is not a neat service classification, rather it is an amalgam of services, consisting of a variety of communications services and service combinations.

In its most basic form, UM is a consolidation of messaging services via one telephone number, *i.e.*, one telephone number that can receive voice-mails, e-mails, facsimiles, and/or conference calls in a variety of service combinations. Although the Commission has explained

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<sup>14</sup> The Ohio Public Utilities Commission supported SOs only for services with numbers that are “invisible to consumers.” Ohio proposed SOs for “point-of-sale terminals, remote automatic teller machines, coin-operated telephones, known data-only lines (even second lines in the home strictly for computer use), and any numbers without public telephone number association such as numbers in a hunt group behind one published number.” See Comments of Ohio Public Utilities Commission in Numbering Resource Optimization, CC Dkt. No. 99-200, at 15 (filed Feb. 12, 2001). Notably, the Ohio PUC did not include unified messaging in this detailed list.

<sup>15</sup> This petition does not seek reconsideration of the decision to lift the SO ban for other services the Commission has determined are geographically insensitive, such as data lines used for ATMs or Point-of-Sale terminals, or vehicle response systems like OnStar. UM, however, should not be considered in the same category as these other services.

<sup>16</sup> Order ¶ 74.

that “[u]nified message service providers use one number to consolidate (unify) incoming messages from multiple sources,”<sup>17</sup> the combination of services can vary from one service provider to the next. While the Order makes no accommodation for this, attempts to define UM service into a segregable category of service would be difficult. The Commission would continually struggle to avoid creating an under inclusive or over inclusive category of services as the technology develops.<sup>18</sup>

Some UM service providers offer integration of voice-mail and e-mail into one computer interface,<sup>19</sup> others combine voice-mail, e-mail and facsimiles.<sup>20</sup> Still other UM service providers integrate voice-mail, e-mail, pages, facsimiles, personal contact lists and personal calendars into one service or a combination of services. For example, j2 Global offers a service called jConnect Lite that enables subscribers to receive facsimiles and voice-mail messages as e-mail attachments, to initiate and manage conference calls and to send facsimiles and voice-mail messages directly from their e-mail accounts. j2 Global also offers jConnect Premier which

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<sup>17</sup> Numbering Resource Optimization, CC Dkt. No. 99-220, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd. 7574, n.38 (2000) (“Numbering Optimization Further Notice”).

<sup>18</sup> In its comments opposing technology-specific SOs, ALTS foresaw that SOs would artificially constrain new and innovative services, such as UM, and would cause the Commission to “plac[e] a value judgment on how telephone numbers are used, [implying that] there are ‘worthy’ uses and ‘less worthy’ uses.” See Comments of Association for Local Telecommunication Services (“ALTS”) in Numbering Resource Optimization, CC Dkt. No. 99-200, at 7 (filed Feb. 14, 2001).

<sup>19</sup> See, e.g., Unified Messaging, Voice Mail and Fax Mail Services, at <http://www.pcmsi.com/HTML/unified-messaging.html> (UM services offered by Professional Communications Messaging Service, Inc.).

<sup>20</sup> See, e.g., Products and Services - Features, at [http://www.conexys.com/products\\_services\\_features.htm](http://www.conexys.com/products_services_features.htm) (UM services offered by Conexys).

enables customers to subscribe to a local or toll-free number, and allows them to access and manage their e-mail, voice-mail and facsimile messages by telephone. jConnect Lite and jConnect Premier offer different combinations of features, but they are both “unified messaging” services.

Because UM is an amalgam of services, segregating UM into a unique SO would be a considerable challenge, most notably because these services can be, and often are, provided over customers’ existing phone lines. To move UM services to a separate NPA code would require some subscribers to change telephone numbers that may include voice communications as well as UM services.

**III. IF IMPLEMENTED FOR UNIFIED MESSAGING SERVICES, SPECIFIC OVERLAYS WOULD NOT BE COMPETITIVELY NEUTRAL AND WOULD RESULT IN INEFFICIENT UTILIZATION OF NANP RESOURCES.**

Seven years ago, when first confronted with the implementation of a SO for wireless services, the Commission concluded that such a plan would be contrary to section 202(a) of the Communications Act.<sup>21</sup> It recognized that non-discriminatory access to numbering resources is critical to “the introduction of new technologies, the modernization of the nation’s telecommunications infrastructure, and the offering of new services to the public” -- basic tenets of the Communications Act.<sup>22</sup> Since then, Congress has codified these principles<sup>23</sup> and the Commission has reiterated on several occasions the need for non-discriminatory administration of numbering resources. As applied to UM service providers, SOs continue to be “unreasonably

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<sup>21</sup> See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, IAD File No. 94-102, *Declaratory Ruling and Order*, 10 FCC Rcd 4596 (1995) (“Ameritech Order”).

<sup>22</sup> Ameritech Order ¶ 13.

<sup>23</sup> See 47 U.S.C. § 251(e).

discriminatory” and “unduly inhibit competition.”<sup>24</sup> Furthermore, SOs for UM service providers only aggravate, rather than alleviate, inefficient use of numbering resources. The public interest therefore requires reconsideration of the decision to lift the blanket restriction on SOs for UM service providers.<sup>25</sup>

**A. The Commission Should Reinstate Its Blanket Prohibition Of SOs For Unified Messaging Because These SOs Are Unreasonably Discriminatory.**

Facing an unanticipated numbering crisis, resulting in large part from the proliferation of competitive service providers taking advantage of the framework established in the Telecommunications Act of 1996 (“1996 Act”), the Commission acted quickly to effectuate administrative and structural reforms to numbering administration. However, efficient telephone numbering administration cannot supercede the basic principles of the 1996 Act and the Communications Act. The Commission must therefore continue to promote a competitive market and mandate that access to telephone numbers not be used as an anti-competitive or discriminatory tool.<sup>26</sup>

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<sup>24</sup> See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et al., CC Dkt. Nos. 96-98, 95-185, et al., *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, ¶ 282 (1996) (“Second Report and Order”).

<sup>25</sup> See FCC v. WNCN Listeners Guild, 450 U.S. 582, 603 (1981) (“[T]he Commission should be alert to the consequences of its policies and should stand ready to alter its rules if necessary to serve the public interest more fully.”).

<sup>26</sup> See Reply Comments of BellSouth Corporation in Numbering Resource Optimization, CC Dkt. No. 99-200, at 3 (filed Mar. 7, 2001) (“service- and technology-specific overlays are anti-competitive because they put a certain class of carriers at a competitive disadvantage since they must obtain codes from the new NPA.”); Reply Comments of WorldCom, Inc. in Numbering Resource Optimization, CC Dkt. No. 99-200, at 2 (filed Mar. 7, 2001).

UM SOs will have the effect of unreasonably discriminating between service providers offering largely substitutable services, an outcome contrary to one of the overarching principles expressed in the 1996 Act -- promotion of competition in the communications market. While the Commission has concluded that SOs are no longer *per se* unreasonable, it is also well aware of the opportunity for SOs to serve as a means for lessening competition in certain markets. The use of SOs for UM services presents such an opportunity.

In 1995, the Commission relied upon section 202(a) to prohibit unreasonably discriminatory numbering administration.<sup>27</sup> In the Ameritech Order, the Commission recognized the competitive significance of non-discriminatory numbering administration and rejected Ameritech's numbering administration proposal to implement a SO. The Commission reasoned that Ameritech's proposal to exclude consumers of wireless services from an existing NPA and to segregate them into a separate NPA "would confer a significant competitive advantage on the wireline companies in competition with paging and cellular companies, and, in particular, Ameritech itself."<sup>28</sup> Importantly, the Commission balanced the disadvantages that wireless carriers would have faced with the need for numbering relief and concluded that "Ameritech has not shown that other plans that do not have unreasonably discriminatory impacts could not also equally meet the needs for additional numbering resources."<sup>29</sup>

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<sup>27</sup> Ameritech Order ¶ 13, 20 ("[W]e note that under Title II, a carrier may not discriminate unreasonably in its 'charges, practices, classifications, regulations, facilities, or services.' . . . We find that Ameritech's proposed numbering plan would unreasonably discriminate against wireless carriers." (quoting 47 U.S.C. § 202(a)).

<sup>28</sup> Id. ¶ 27.

<sup>29</sup> Id. ¶ 28.

Subsequently, the Commission revisited its decision and reaffirmed the importance of administering telephone numbers in a non-discriminatory manner. Pursuant to section 251, which directs the Commission to “make such numbers available on an equitable basis,”<sup>30</sup> the Commission established that numbering administration should “not unduly favor or disadvantage any particular industry segment or group of consumers . . . [or] unduly favor one technology over another.”<sup>31</sup> In 1998, the Commission reiterated the importance of implementing number conservation methods that also promote a competitive market.<sup>32</sup> In that decision, the Commission criticized the Pennsylvania Public Utilities Commission for adopting a number conservation plan that discriminated against wireless carriers by making numbering resources available only to those carriers that could participate in number pooling. The Commission concluded that “[f]or competition to continue to develop, all carriers must have access to numbering resources.”<sup>33</sup>

In these decisions, the Commission established the framework that should continue to govern numbering administration -- technology neutral assignment of telephone numbers is a

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<sup>30</sup> 47 U.S.C. § 251(e)(1).

<sup>31</sup> Second Report and Order ¶ 278; see also Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utilities Commission Regarding Area Codes 412, 610, 215, and 717, CC Dkt. No. 96-98, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 19009, ¶ 31 (1998) (“Pennsylvania Order”) (holding that the FCC would consider delegating authority to states to use number conservation methods if the method would both “slow the pace of area code relief” and not result in “anticompetitive consequences”).

<sup>32</sup> Pennsylvania Order ¶ 37.

<sup>33</sup> Id. ¶ 38 (emphasis added).

prerequisite to competition.<sup>34</sup> The conclusions that the Commission reached in the Ameritech Order still hold true in today's developing market for UM services:

successful administration of the NANP should seek to accommodate new telecommunications services and providers by making numbering resources available in a way that does not unduly favor one industry segment or technology.<sup>35</sup>

The Order abandoned this reasoning, instead concluding that circumstances have changed since the Ameritech Order was adopted. Essentially, a cost-benefit analysis led to the conclusion that “the benefits of making more numbering resources available through SOs may, in some circumstances, outweigh their potential discriminatory effect.”<sup>36</sup> While this may be accurate for some services, such as wireless services, where unremitting demand for telephone numbers and “earlier concerns raised over the potential discriminatory effects of SOs have been tempered by carriers’ concerns over the availability of numbering resources in certain areas,”<sup>37</sup> it is not correct with respect to UM service providers.

UM service providers are currently an alternative to LECs for the provision of UM.<sup>38</sup> UM service providers obtain numbers from carriers that they then assign to subscribers

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<sup>34</sup> See Ameritech Order ¶ 29.

<sup>35</sup> Id. ¶ 29.

<sup>36</sup> Order ¶ 72. The Commission also concluded that the proliferation of services that are geographically insensitive justified a departure from existing policy. See id. As explained above, UM should not have been included in that category.

<sup>37</sup> Id. ¶ 70.

<sup>38</sup> See Yankee Group, *Consumer Demand for Unified Messaging: Redefining the Service Provider Opportunity*, The Yankee Report, vol. 2, No. 15 (Nov. 15, 2001) (noting that traditional residential communications providers and cable operators “have been slow to deploy UM . . . . The residential service providers cannot afford to ignore unified messaging or other enhanced voice applications with fierce competition from the historical peer set and non-traditional companies.”).

specifically for UM services whereas LECs typically use a subscriber's existing telephone number for UM services, or provide subscribers the option of obtaining a new local telephone number for UM services. Because many subscribers prefer numbers that are associated with particular geographic areas, forcing UM service providers to use SO telephone numbers may effectively leave many subscribers with only the LECs as a source of supply.

If the decision to assign UM to SOs stands, it will have the unintended effect of lessening competition in the UM market. Subscribers who once had the option to choose between competitive UM service providers and a LEC likely will be forced to opt for the LEC-provided service to obtain a local number. If UM service providers cannot offer their subscribers geographically sensitive numbers, and carriers offering similar services can, UM service providers and their prospective customers will be harmed.<sup>39</sup> Even without UM SOs, LECs today possess a significant market advantage when offering UM services because they can add these services to a customer's existing telephone number. Thus, j2 Global and other UM service providers not only compete with some of the most dominant participants of any market, but must do so in a manner that overcomes the lock-in effect created by customers' preferences for their existing telephone numbers.<sup>40</sup> To further constrain competition by requiring customers to obtain

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<sup>39</sup> In addition to damage to competition, there are genuine monetary costs to providers and customers associated with moving UM to a SO.

<sup>40</sup> See Telephone Number Portability, CC Dkt. No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8352, ¶ 2 (1996) (“[N]umber portability will lower barriers to entry and promote competition . . . [T]he House of Representatives Committee on Commerce determined that ‘the ability to change service providers is only meaningful if a customer can retain his or her local telephone number.’”) (citations omitted) (“Number Portability Order”).

not only a new number,<sup>41</sup> but a new number in a new area code, is unreasonable and contrary to the principles of the Communications Act.<sup>42</sup>

For UM, the cost-benefit analysis which led the Commission to lift the blanket restriction on SOs is therefore inapposite: the additional cost to UM subscribers is immense while the additional benefit to NANP preservation is insignificant;<sup>43</sup> the additional artificial competitive leverage it will provide to LECs is considerable, while the ability of consumers to make use of all of the quality services offered by UM service providers without having to contend with a new area code is eliminated.

Hence, the principles which led the Commission to forbid SOs seven years ago continue to apply today with respect to UM services. Sections 202 and 251 are intended to guarantee reasonable and non-discriminatory access to numbering resources -- especially for competing services. To ensure that UM service providers are not unreasonably discriminated against and a competitive market continues to evolve, the Commission must reaffirm its prohibition on SOs for UM.

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<sup>41</sup> The Commission has stated that it would favor the use of “take-backs” for non-geographically-based numbers, but that it would likely oppose take-backs of numbers that are geographically sensitive. See Order ¶ 90. Because UM is a geographically-based service, any take-backs with respect to such services should be prohibited. Take-backs impose significant costs on consumers and could cause many UM subscribers to add such services to their existing telephone numbers rather than take a new number from a UM service provider.

<sup>42</sup> See Number Portability Order ¶ 2 (“The [Communications] Act envisions that . . . reducing economic impediments to entry will enable competitors to enter markets freely, encourage technological development, and ensure that a firm’s prowess in satisfying consumer demand will determine its success or failure in the marketplace.”).

<sup>43</sup> See discussion infra Parts III(B), IV.

**B. UM SOs Will Provide No Measurable Relief To Area Code Exhaustion While Thwarting The Commission's Number Conservation Efforts.**

The purpose of the Numbering Optimization proceeding was to establish mechanisms for the efficient use of numbering resources and to resolve the crisis that inefficient usage created. Permitting states to adopt SOs for UM service providers, however, promotes further inefficient utilization. Notwithstanding the Order's suggestion that UM SOs that cross wide geographic areas would be ideal, the fact of the matter is that there are not enough UM subscribers to justify the creation of any specialized NPA codes.<sup>44</sup> As the Commission intuited several years ago, SOs “decrease, rather than increase, the efficiency with which numbering resources are used.”<sup>45</sup>

Allowing states to adopt permanent SOs would almost certainly lead to an increase in the amount of stranded telephone numbers and the pace at which area codes are exhausted. While the Commission clearly understands this in general, it may not grasp the full scope of its decision with respect to UM. Each NPA code contains seven million telephone numbers. Thus, even if segregable, combining all UM subscribers nationwide may not even fill one area code. Were the Commission to continue to permit states, even several states working in tandem, to adopt SOs for UM services, that decision would result in the stranding of tens of millions of telephone numbers.<sup>46</sup> Such a massive stranding of numbers directly contradicts the express purposes of the

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<sup>44</sup> The Order failed to offer any guidance as to how a single UM area code covering multiple states could be implemented in a manner that does not lead to the implementation of toll charges for UM.

<sup>45</sup> Numbering Optimization Notice ¶ 259.

<sup>46</sup> See Comments of Cingular Wireless LLC in Numbering Resource Optimization, CC Dkt. No. 99-200, at 8-11 (filed Feb. 14, 2001) (explaining that SOs, such as those for UM, would be administratively burdensome and “would be unwise, given the increasing demands placed on the NANP”). Also, if forced to relocate their UM services to a separate area code, some UM subscribers may opt to add an additional local line simply

Numbering Optimization proceeding to “make more efficient use of numbering resources” and to “delay exhaust of the NANP.”<sup>47</sup>

New York City's 917 area code provides a prime example of the inefficiencies that SOs produce. The Commission suggests that results of the overlay plan adopted in 1992 “prolonged for six years” the life of the 212 NPA.<sup>48</sup> While it is true that removing wireless subscribers from the 212 NPA extended the life of the code, the New York Public Service Commission (“NYPSC”) later recognized the inefficiencies of SOs. When it elected to create the 646 NPA -- in a further attempt to alleviate New York City's number shortage -- the NYPSC adopted a service transparent overlay available to all New York City service providers.<sup>49</sup> Furthermore, the NYPSC ultimately opened the 917 NPA to all wireline carriers as an additional means of efficiently using the assigned NPAs.<sup>50</sup> Rather than demonstrate the merits of SOs, events in New York reveal that the most efficient use of already scarce numbering resources mandated the desegregation of the 917 code and all future codes. By allowing any carrier to request numbers

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for the purpose of maintaining a local presence -- further imposing unnecessary demands on the NANP.

<sup>47</sup> See Numbering Optimization Notice ¶ 21.

<sup>48</sup> Order ¶ 76.

<sup>49</sup> See New York Public Service Commission, Proceeding on Motion of the Commission, Pursuant to Section 97(2) of the Public Service Law, to Evaluate the Options for Making Additional Central Office and/or Area Codes Available in the 212 and 917 Area Codes of New York City, Opinion and Order (Dec. 10, 1997) (“1997 Order”).

<sup>50</sup> See id.; see also New York Public Service Commission, Joint Petition of Nextel Communications of Mid-Atlantic, Inc., Celco Partnership d/b/a Bell Atlantic Mobile, Omnipoint Communications, Inc., Cellular Systems, Inc. d/b/a AT&T Wireless Services and AT&T Communications of New York, Inc. to Amend the Commission's Orders Issued July 1, 1991 in Case 90-C-0347 and December 10, 1997 in Case 96-C-1158, Order, 1999 N.Y. PUC LEXIS 73 (Feb. 3, 1999) (noting that the 1997 Order granted wireline providers access to the 917 NPA).

from any of the three New York City area codes, the NYPS&C better utilized the 212, 718 and 917 NPA&s prior to implementing the new, service-transparent 646 area code.

The New York City numbering crisis teaches a valuable lesson: limiting NPAs to one specific service or technology -- unless there is enormous demand for the service or technology - carries a significant danger of stranding numbers in such NPAs while other area codes may continue to exhaust at a rapid rate.<sup>51</sup> By abandoning consideration of SOs for UM service providers, the Commission would be promoting efficient utilization of one area code at a time, in contrast to a plan that would allow states to create new NPAs where millions of numbers would languish in SOs.

**IV. CHANGED CIRCUMSTANCES SHOULD CAUSE THE COMMISSION TO RECONSIDER ITS DECISION AND PROHIBIT SPECIFIC OVERLAYS FOR UNIFIED MESSAGING.**

It is well-settled that the Commission is obliged to review its policies and rules where the facts underlying a decision may have changed.<sup>52</sup> As the D.C. Circuit has made clear, "changes in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy or explain its failure to do so. In the rulemaking context, for example, it is settled law that an agency may be forced to reexamine its approach 'if a significant factual predicate of a prior decision has been removed.'"<sup>53</sup> In this instance, the factual predicate underlying the

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<sup>51</sup> See Comments of WorldCom, Inc. in Numbering Resource Optimization, CC Dkt. No. 99-200, at 5 (filed Feb. 14, 2001) ("Such [UM] service-specific NPAs are more likely to strand numbers than to improve the efficiency with which numbers are utilized."); Reply Comments of VoiceStream Wireless Corporation in Numbering Resource Optimization, CC Dkt. No. 99-200, at 3 (filed Mar. 7, 2001) (detailing the inefficiencies of SOs).

<sup>52</sup> See Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979); WWHT, Inc. v. FCC, 656 F.2d 807, 819 (D.C. Cir. 1981).

<sup>53</sup> Bechtel v. FCC, 957 F.2d 873, 881 (D.C. Cir. 1992) (citations omitted).

Commission's decision to lift the prohibition on SOs -- the imminent exhaust of the NANP -- has significantly diminished. Considering the cost-benefit analysis which weighs heavily against the imposition of SOs for UM service providers, and the dramatically changed circumstances since the Commission first considered lifting the SO restriction, the Commission should reconsider its final decision.

When the Commission initiated the Numbering Optimization proceeding, an incredible and unforeseen increase in demand for numbering resources threatened to exhaust the NANP by 2006.<sup>54</sup> Since that time, the Commission has implemented many measures to stem the inefficient use of numbering resources, including better accounting of number utilization and number pooling -- measures designed to more efficiently distribute numbers based on actual demand. Furthermore, the tide of new services that rely upon numbering resources has clearly receded in the last several years, partially as a result of the rapid contraction and consolidation in the number of CLEC and ISP providers. When the Commission began to review its numbering administration policies, there were strong suggestions that the NANP was in danger of exhaust, largely as a result of the deployment of new services which depend upon telephone numbers (e.g. CLECs and ISPs) and the explosive growth of existing services (e.g. cellular, paging, remote services, etc.).

Recent events suggest, however, that these elements, which contributed heavily to threatened NANP exhaust, have significantly subsided. The growth in the number of telecommunications service providers of the mid-1990s has given way to significant

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<sup>54</sup> See Numbering Optimization Notice ¶¶ 3-7.

consolidation.<sup>55</sup> Even the aggregate demand for new services has slowed in comparison to previous growth rates.<sup>56</sup> As a result of the slowing economy, consolidation within several service industries, and an increasing number of services being combined into single devices,<sup>57</sup> the demand for more telephone numbers will likely decrease.

The slowing growth of new services and the effects of efficient numbering resource allocation are apparent in the continued reduction of code assignments by NANPA. Whereas Central Office code assignments averaged more than 1,300 per month in the first half of 2000, monthly code assignments averaged less than 1,100 per month in the latter half of the year.<sup>58</sup> This downward trend continued into 2001, where code assignments averaged less than 700 per

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<sup>55</sup> See John Sullivan, *Be Careful About Losing Spectrum Caps*, WIRELESS INSIDER, vol. 2, issue 43, Nov. 12, 2001 (comparing the high growth of telecommunications in the middle 1990s to the consolidation and down-turned economy prevalent currently); Simon Romero, *FCC Is Expected to Lift Airwave Spectrum Cap*, N.Y. TIMES, Nov. 8, 2001, at C6 (noting that further consolidation in the telecommunications industry is likely in a market already characterized by rapid consolidation).

<sup>56</sup> See, e.g., *KMI Corp. Report Forecasts North American Fiber Demand to Begin Slow Rise in 2004*, FIBER OPTICS WEEKLY UPDATE, Sept. 7, 2001 (KMI's study indicated that economic slowdown will cause industry consolidation over the next few years, resulting in the deployment of fewer applications and less network development); see also *A Clash of Online Titans*, N.Y. TIMES, Dec. 22, 2001, at A32 (noting that major industry players are interested in positioning themselves through consolidation for distribution of a multitude of services (e.g. internet access, television and local phone service) to customers through a single pipeline instead of the continued development of multiple access points).

<sup>57</sup> See Ian Austen, *'Call Me When You Get This': A Pager Turns Into a Cellphone*, N.Y. Times, Mar. 7, 2002 (describing the convergence of pagers, organizers and cellphones into one product).

<sup>58</sup> See Central Office Codes 2000 Activity Report, available at [www.nanpa.com](http://www.nanpa.com) (showing total assignments for each month in 2000).

month in the second half of the year.<sup>59</sup> In fact, the most recent months' code assignment reports indicate this steady reduction trend is continuing into 2002: in November 2001 there were 616 code assignments; in December 2001 there were 602 code assignments; and in January 2002 there were only 494 code assignments.<sup>60</sup> This trend has led NANPA to revise its exhaust analyses. In April, 1999, NANPA predicted NANP exhaustion to occur between 2006 and 2012,<sup>61</sup> current NANPA predictions indicate NANP exhaustion will not occur until as late as 2034.<sup>62</sup>

While the numbering crisis is not over, the apex of the crisis has probably been reached. The Commission's efforts to more efficiently distribute numbers, along with significant changes in the marketplace for services which rely on telephone numbers, has demonstrably led to a reduction in the demand for new telephone numbers. These significantly changed circumstances should lead the Commission to reconsider its decision to lift the ban on SOs for UM services.

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<sup>59</sup> See Central Office Codes Dec. 2001 Activity Report, available at [www.nanpa.com](http://www.nanpa.com) (showing total assignments for each month).

<sup>60</sup> See id.; see also Central Office Codes Jan. 2002 Activity Report, available at [www.nanpa.com](http://www.nanpa.com).

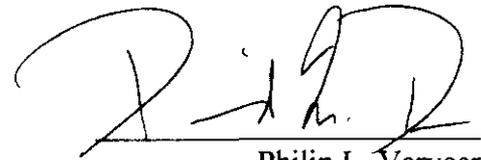
<sup>61</sup> *North American Numbering Plan Exhaust Study*, by the North American Numbering Plan Administration (NANPA), Lockheed Martin CIS, at 2.9-10 (Apr. 22, 1999) available at [http://www.nanpa.com/pdf/NANP\\_Exhaust\\_Study.pdf](http://www.nanpa.com/pdf/NANP_Exhaust_Study.pdf) ("NANP Exhaust Study"). These numbers were also cited by the Commission in both the Numbering Resource Optimization Notice and Report and Order and Further Notice of Proposed Rulemaking. See Numbering Optimization Notice ¶ 32 and Numbering Optimization Further Notice n.9 (stating that these numbers compared favorably to other industry working group projections).

<sup>62</sup> See *2001 NANP Exhaust Analysis Available*, NANPA NUMBERING NEWS, Sept./Oct. 2001, at 1, available at [http://docs.nanpa.com/pdf/newsletters/nanpa\\_sept\\_oct.pdf](http://docs.nanpa.com/pdf/newsletters/nanpa_sept_oct.pdf). Based on the continuing trends in the latter half of 2001, it seems that the projected exhaustion in 2034 is more likely than earlier predictions.

**V. CONCLUSION**

For the foregoing reasons, j2 Global respectfully request the Commission reconsider its decision to lift the blanket restriction on SOs with respect to UM services.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'P. L. Verveer', written over a horizontal line.

Philip L. Verveer  
David M. Don  
Stephanie L. Poday

**WILLKIE FARR & GALLAGHER**  
1155 21<sup>st</sup> Street  
Suite 600  
Washington, DC 20036  
(202) 328-8000

Attorneys for  
j2 Global Communications, Inc.

March 14, 2001

**DECLARATION OF SCOTT JARUS**

I, Scott Jarus, do hereby declare as follows:

1. My name is Scott Jarus. My business address is 6922 Hollywood Blvd., Suite 800, Los Angeles, CA 90028. I am President of j2 Global Communications, Inc. ("j2 Global"), having served in my current role since July 2001.
2. The purpose of this declaration is to inform the Federal Communications Commission about j2 Global's provision of unified messaging services ("UM") and the UM market in general.
3. UM services are primarily supplied by carriers and UM service providers. There is no consensus definition of UM; it is a combination of messaging services and enhanced features which vary, depending on the provider and the package ordered. As one might expect in an industry combining telecommunications and the Internet, the technology and available features are constantly changing. UM service may integrate e-mail, faxes, voice-mail, conference calling, contact lists, and virtual planners into one service, or a combination of services, that can be accessed by telephone, e-mail or wireless device. Beyond the integration of messaging services, some providers also offer enhanced features such as voice recognition, text-to-speech and find-me/follow-me services.
4. j2 Global is an Internet-based outsource provider of value-added messaging and communications services to individuals and businesses throughout the world. j2 Global was established in 1995 and today its network covers more than 600 cities in 18 countries on five continents.

5. j2 Global offers multiple subscription services under two basic brands, jConnect and eFax. Both brands provide subscribers with the ability to send and receive faxes and, in some cases voice-mail, via an e-mail account, and may include conference calling service. jConnect Premier and eFax Plus, both of which are paid subscription services, include an assigned local or toll-free number. jConnect Free and eFax Free, both of which are free services, include an assigned non-local telephone number.
6. The availability of local telephone numbers is a key component of our business plan, as it is important to our customers to have the option to use local numbers for UM services. The vast majority of j2 Global's paid UM service subscribers are small local businesses that would prefer a local number. Small businesses clearly find value in having a local number for UM, evidenced by the fact that hundreds of thousands are willing to pay for a local number, as opposed to subscribing to one of our "free" services and taking a non-local number randomly assigned by j2 Global. It is important for these businesses to eliminate any barriers to communication with their customers, such as the cost of a long distance toll call to their fax or voice mail machine or service.
7. Current area codes contain an inherent "geographic identification." This is evidenced by the fact that consumers and businesses continue to seek, as an example, 212 area code telephone numbers in the New York City area. The 212 area code is not a "vanity number," but is a perceived identifier of geographic origin to the calling party. Over time, this will become less and less important to consumers and businesses as the 917, 646 and other New York City area codes become more universally understood as "New York City area codes." The same holds true for providing geographic identity to UM telephone numbers. Consumers and businesses want their customers to know that they

are located in XYZ city – it provides a local identity and the elimination of any barrier to the caller due to concerns about incurring long distance charges.

8. j2 Global's retail pricing is extremely sensitive to cost. Current prices are at a level that small business can easily afford and accept the cost/value proposition. In fact, the j2 Premier service enables a subscriber to enjoy a specific number for faxing and voice messaging that is less expensive than obtaining a second line from a local telephone company for a stand-alone fax machine. Any increase in our costs, as a result of regulatory obligations, for instance, could force us to increase our retail rates and make our services less attractive to small businesses and consumers.
9. j2 Global provides UM services that compete with enhanced services offered by local or long distance telephone carriers. Since only local telephone companies can offer UM services over a customer's existing telephone number, UM service providers must assign a new number to their subscribers. As a result, local telephone companies possess a marketing advantage which can partially be overcome by the provisioning of new local telephone numbers to our customers. In my opinion, subjecting non-carrier UM service providers to a SO would further disadvantage UM service providers and their subscribers by eliminating the ability for subscribers to opt for a local telephone number for UM use.
10. j2 Global has devoted considerable resources toward its efficient utilization of telephone numbers. To this end, j2 has developed its Life Cycle Management ("LCM") program and can report a 95% utilization level for all local telephone numbers assigned to it. The LCM program identifies subscribers who no longer use their assigned number. The users identified by LCM are then notified that their service is being terminated, and the

numbers are reassigned to other users after a brief aging period. Using this system, j2  
Global maintains about a 60-day inventory of unassigned numbers.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 13,  
2002.

A handwritten signature in black ink, appearing to read "Scott Jarus", is written over a horizontal line. The signature is stylized and cursive.

Scott Jarus  
President of j2 Global Communications, Inc.