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Via Electronic Mail Delivery

Ms. Dorothy Attwood, Chief
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Mr. Thomas J. Sugrue, Chief
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Federal Communications Commission
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**Re: *Written Ex Parte Communication*
Connecticut Petition to Implement Specialized Overlay
*CC Docket No. 99-200***

Dear Ms. Attwood and Mr. Sugrue:

Sprint Corporation hereby responds to the Supplemental Information filing made by the Connecticut Department of Public Utility Control (“CTDPUC”) on May 9, 2002 in support of its request for authority to implement a specialized overlay (“SO”).¹ The CTDPUC still has not met the requirements the Commission imposed for consideration of a SO,² and grant of the requested relief would undermine the Commission’s important number optimization efforts.³ The CTDPUC Petition should be denied.

I. THE CTDPUC STILL HAS NOT DEMONSTRATED THAT ITS PROPOSED SPECIALIZED OVERLAY IS SUPERIOR TO AN ALL-SERVICES OVERLAY

The Commission has ruled that a state commission seeking authority to implement a specialized overlay must demonstrate how “the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay.”⁴ Sprint and others

¹ See Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology Specific Service Overlay Trial – Supplemental Information, CC Docket No. 99-200 (May 9, 2002)(“CTDPUC Supplemental Petition”).

² See *Third NRO Order*, 17 FCC Rcd 252 at ¶¶ 80-94 (Dec. 28, 2001), *appeal pending*, *Sprint v. FCC*, No. 02-1129 (D.C. Cir.).

³ Sprint expressed concern with the CTDPUC’s initial proposal for two relief codes, since this would give Connecticut over 30 million telephone numbers for a state with only 3.4 million residents. See *Sprint Opposition* at 25-26 (Feb. 26, 2002). In its Supplement, the CTDPUC states that it seeks “authority to implement a specialized overlay.” Supplemental Petition at 1. Sprint therefore assumes that the CTDPUC now agrees that its state should be eligible to receive only one relief code for the entire state.

⁴ *Third NRO Order* at ¶ 81.

demonstrated that the CTDPUc's initial petition failed to meet this requirement.⁵ The CTDPUc advances two new reasons in its Supplemental Petition why it thinks a specialized overlay is "preferable" to an all-services overlay, but neither reason has merit.

A. The CTDPUc has not demonstrated that the public "demands" a SO or that public opinion should be given determinative weight in the development of numbering policy. The CTDPUc states that "[p]erhaps the greatest factor supporting the implementation of a Connecticut SO . . . is the fact that the public has demanded such . . . an area code."⁶ The CTDPUc does not explain, however, the basis of this view. The CTDPUc did conduct six area code relief public hearings some years ago, which were attended by "31 consumers, of which 21 spoke."⁷ According to the CTDPUc, "the overwhelming comment made by members of the public [at these hearings] was that area codes should be assigned based on the use of a specific service or device."⁸ But the CTDPUc does not demonstrate that the views of the 21 people who spoke at the public hearings accurately represented the views of all 3.4 million Connecticut residents – including the views of the over 1.2 million Connecticut residents who are wireless customers.⁹

The views of the public merit consideration. But even if public opinion in Connecticut clearly favored a SO, public opinion cannot be given controlling consideration in the development of telecommunications numbering policy that is focused on the efficiency of number utilization. Sprint suspects, for example, that the 21 consumers speaking at the public hearings did not realize that the establishment of an SO would be an inefficient use of a scarce area code; an inefficient SO would accelerate the exhaust of the North American Numbering Plan ("NANP"); and the cost to replace the NANP would range from \$50 to \$150 billion.¹⁰

The Commission has an obligation to use its expertise to adopt policies that promote the public interest, both for today and tomorrow, even if those policies may appear to the public to be inconsistent with their immediate preferences. As the Commission's Chairman has acknowledged, "[r]esolving issues this complex requires tough choices . . . and which are rarely greeted with unanimous popular acclaim":

Yet, the Commission's role is not to play to its various audiences but to make these tough choices, guided by principle, the record, and our best judgment."¹¹

⁵ See, e.g., Sprint Opposition at 12-15 (Feb. 26, 2002); Verizon Wireless Comments (Feb. 26, 2002); Cingular Comments (Feb. 26, 2002); Verizon Comments (Feb. 26, 2002)

⁶ CTDPUc Supplemental Petition at 1.

⁷ See DPUC Review of Management of Telephone Numbering Resources in Connecticut, Docket No. 96-11-10, Order, at 5 (Feb. 18, 1998).

⁸ *Id.*

⁹ According to the most recent FCC data, there were 1,277,123 mobile customers in December 2000. See Industry Analysis Division, *Trends in Telephone Service*, at 12-3, Table 12.1 (Aug. 2001).

¹⁰ See *Second NRO Order*, 16 FCC Rcd 306, 374 ¶ 166 (2000); *First NRO Order*, 15 FCC Rcd 7574, 7580 n.10 (2000).

¹¹ Separate Statement of Chairman Michael K. Powell, *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, at 3 (Oct. 11, 2001).

Congress has entrusted the Commission with exclusive jurisdiction to manage this country's valuable numbering plan.¹² The Commission has correctly determined that numbering policies should be based upon conservation and efficiency so as "to prolong the life of the North American Numbering Plan."¹³ The Commission would abdicate its important responsibilities in this area if it based its numbering policies on the "preferences" of the public at a given moment of time. In this instance, moreover, the CTDPUC has not demonstrated that a majority of Connecticut residents favor a SO over other, nondiscriminatory relief methods.

B. Delaying the exhaust date of existing area codes is insufficient justification to activate a new relief code. The CTDPUC additionally asserts that a SO is "preferable to an all services overlay because exhaust of the underlying area code would be delayed."¹⁴ Introducing a new NPA code (*i.e.*, a SO) so as to delay exhaust of an existing NPA code does not promote number optimization. In fact, the premature assignment of a new NPA code undermines the Commission's optimization efforts.

The overriding purpose of all number optimization efforts is to "reduce the need to introduce new area codes, which can help prevent premature exhaust of the existing NANP."¹⁵ The number of unused NPA codes available in reserve is limited. Activation of one of these scarce codes when the code would not be used efficiently would undermine the Commission's entire optimization measures, because such a use would accelerate the premature exhaust of the NANP. The Commission should, therefore, authorize the assignment of a new NPA code only when needed, because the existing NPA code is facing exhaustion.¹⁶

In summary, the CTDPUC still has not shown that "the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay."¹⁷

II. THE CTDPUC STILL HAS NOT IDENTIFIED THE SPECIFIC TECHNOLOGIES AND SERVICES THAT WOULD BE PLACED IN THE PROPOSED SO

The Commission has ruled that state commissions must provide "specific information on which technologies and services will be placed in any proposed SO."¹⁸ The CTDPUC states that its proposed SO would include "wireless and certain wireline services," which it proposes to

¹² See 47 U.S.C. § 251(e)(1).

¹³ *NRO NPRM*, 14 FCC Rcd 10322, 10324 ¶ 1, 10325-26 ¶ 5 (1999) ("Because the estimated cost of expanding the NANP is enormous, and the time to effect such an expansion is estimated to be on the order of ten years, the need to extend the life of the current NANP through effective consideration and efficient utilization of numbering resources is apparent and immediate.").

¹⁴ CTDPUC Supplemental Petition at 2.

¹⁵ *NRO NPRM*, 14 FCC Rcd at 10423 ¶ 241.

¹⁶ If an existing area code is facing exhaust such that relief is inevitable, all-services overlays should be implemented from the outset to minimize confusion to the public (*e.g.*, avoid confusion by introducing an SO and then transitioning from a SO to an all-services overlay).

¹⁷ *Third NRO Order* at ¶ 81.

¹⁸ *Third NRO Order* at ¶ 82.

identify at a later time after “conduct[ing] workshops . . . to identify the applicable [wireline] services.”¹⁹

Sprint is confused by the CTDPUc’s statements that its proposed SO would include wireless carriers.²⁰ This is because the CTDPUc also states that under its proposed SO plan, wireless carriers would nonetheless be able to take numbers from the existing area codes :

[P]articipating Connecticut SO carriers will have the opportunity to pool numbering resources in the underlying NPAs just as they would if the Connecticut SO was not implemented.²¹

Sprint agrees with the CTDPUc that wireless carriers should obtain numbers from the existing number pools. Sprint and other wireless carriers are spending millions of dollars to become pooling-capable. Moreover, there are hundreds of thousands blocks available in the existing NPAs that wireless carriers could access – the equivalent of over two million telephone numbers – and it would be foolhardy to open a scarce NPA code when so many unused numbers are available in the existing NPA codes.²² Because it is unlikely that a SO could be implemented prior to pooling, wireless carriers will be obtaining their numbers from the existing number pools rather than the SO.

It therefore appears that the SO the CTDPUc is proposing would be limited to “certain wireline services,” such as ATM lines and unified messaging services.²³ Assignment of a new NPA code solely for ATM lines and unified messaging services would be grossly inefficient and would directly undermine the Commission’s optimization efforts. A new NPA code contains 7.9 million telephone numbers.²⁴ In a state with 3.4 million residents, it is doubtful that ATM lines and unified messaging services would even use 10% the numbers available with a new NPA code – or 790,000 numbers. Sprint suspects, moreover, that given the large number of rate centers in Connecticut, the utilization rate of NXX codes dedicated to ATM lines and unified messaging services would be very low.²⁵

¹⁹ CTDPUc Supplemental Petition at 3-4.

²⁰ *See id.* at 1, 2 and 3.

²¹ *Id.* at 5.

²² According to the Pooling Administrator, as of May 18, 2002, there were 676 thousands blocks available in the 203 NPA and 1,421 thousands blocks available in the 860 NPA. *See* www.nationalpooling.com.

²³ CTDPUc Supplemental Petition at 3.

²⁴ *See FCC News*, FCC Releases Telephone Numbering Resource Utilization Report, at 2 (Nov. 13, 2001).

²⁵ ATM machines are presumably located throughout the state. Even if carriers serving ATM machines are pooling capable, a separate NXX code would need to be opened in each of Connecticut’s 86 rate centers to support ATM machines – which would result in the immediate assignment of 86 NXX codes. Sprint suspects that there are few rate centers in Connecticut that contain more than 1,000 ATM machines – which would result in utilization rates of less than 10 percent for those NXX codes.

The purpose of number optimization is to prolong the life of the NANP. “[R]educ[ing] the need to introduce new area codes . . . can help prevent premature exhaust of the NANP.”²⁶ On the other hand, activating scarce NPA codes held in reserve when it is known that the relief code would be grossly underutilized undermines the Commission’s entire optimization effort.

III. THE REQUEST FOR A ONE-YEAR WAIVER OF THE TEN-DIGIT DIALING RULE IS UNJUSTIFIED AND UNEXPLAINED

The Commission adopted its 10-digit mandatory dialing rule both to “maximize numbering resource optimization” and to “minimize anti-competitive effects due to dialing disparities, which, in turn, avoids customer confusion.”²⁷ Courts have affirmed this rule, noting that allowing “seven digit local dialing would have anti-competitive effects by favoring the incumbent LECs.”²⁸ The Commission has entertained requests for temporary waivers of the 10-digit dialing rule under its “good cause” waiver standard,²⁹ but to receive a temporary waiver, states must demonstrate “special circumstances” because “postponing ten-digit dialing creates potential harm to competition.”³⁰

The CTDPUc seeks a 12-month waiver of the mandatory dialing rule so it can implement a consumer education program for any overlay it may adopt.³¹ Customer education programs are certainly important, but the 12-month period sought by the CTDPUc is excessive.

The greater Denver metropolitan area was one of the first areas in the country to implement an all services overlay (303/720). The Colorado PUC adopted a four-month permissive dialing period (before 10-digit dialing became mandatory), although it later extended that date by three months because the alarm industry was not ready due to a shortage of memory chips and because the existing 303 NPA was not going to exhaust during this three month period.³² The Colorado PUC reported that “[w]eeks after implementation [of the overlay], the Commission had received only three phone calls from customers complaining or having problems” with 10-digit

²⁶ *NRO NPRM*, 14 FCC Rcd 10322, 10423 ¶ 241 (1999).

²⁷ *Third NRO Order* at ¶ 92. See also 47 C.F.R. § 52.19(c)(3)(ii); *Illinois Citizens Utility Board Order*, 17 FCC Rcd 215, 217 ¶ 8 (2001) (“[T]he the Commission has repeatedly stated that area code overlays without ten-digit dialing are anticompetitive because they create local dialing disparity, which we find to be against the public interest.”).

²⁸ *New York v. FCC*, 267 F.3d 91, 106 (2d Cir. 2001)(Court affirms denial of waiver to 10-digit dialing rule to the New York Commission).

²⁹ See 47 C.F.R. § 1.3.

³⁰ *Florida Ten-Digit Dialing Waiver Order*, 17 FCC Rcd 146, at ¶¶ 7 and 8 (Dec. 28, 2001)(Temporary waiver granted because Florida demonstrated “an unforeseeable special circumstance”).

³¹ See CTDPUc Supplemental Petition at 6-7.

³² See *Final Recommendation of the Numbering Plan Administrator for Relief of the 303 Area Code*, Docket No. 97A-103T, Decision No. C98-605 (June 24, 1998); NANPA Planning Letter, PL-NANP-117 (March 24, 1998).

dialing.³³ There are over 2.5 million residents in the Denver-Boulder MSA.³⁴ There is no reason to believe that residents of Connecticut are less adaptable than the residents of Denver or would require additional time for customer education.³⁵ In fact, the CTDPUC has reported that “10-digit dialing is currently in effect for 45% of local calls in Connecticut,” so the potential for customer confusion would seem already to be minimized.³⁶

Customer education should commence as soon as a state commission adopts a relief order. Thus, customer education can begin while industry makes necessary network modifications to implement the relief plan. An additional four-month permissive dialing period gives the public time to adjust to the new area code and any dialing changes associated with the relief plan. The Commission should therefore rule that if and when the CTDPUC decides that area code relief becomes necessary, the permissive dialing period should be no longer than four months. If the CTDPUC believes that additional time is needed for customer education, it can adopt its relief plan sooner, so as to provide whatever length of time it believes is necessary for customer education.

* * *

Because the CTDPUC has not met the criteria that the Commission has established for states to implement a specialized overlay, Sprint opposes the CTDPUC request.³⁷

³³ Colorado Commission Comments, Docket No. 99-200, at 12 (July 29, 1999).

³⁴ See *Third NRO Order*, Appendix D.

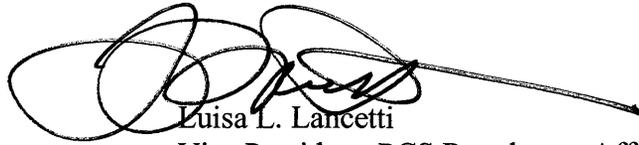
³⁵ See generally *New York Ten-Digit Dialing Waiver Order*, 17 FCC Rcd 1 (2002)(FCC grants eight-month waiver rather than the 14 months requested); *Pennsylvania Ten-Digit Dialing Waiver Order*, 13 FCC Rcd 3783 (1997)(Seven-month temporary waiver granted).

³⁶ See CTDPUC for Authority to Conduct a Transitional Service Technology Specific Service Overlay Trial, CC Docket No. 99-200, at 8 (Jan. 18, 2002).

³⁷ Sprint believes that any specialized overlay is unjust, unreasonable and discriminatory under the Communications Act. The Commission has rejected Sprint’s arguments, so it will not repeat them. See *Sprint v. FCC*, No. 02-1129 (D.C. Cir.).

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed with the Secretary's office for filing in CC Docket No. 99-200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Luisa L. Lancetti', with a long horizontal stroke extending to the right.

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