



CTIA

Building The Wireless Future™

Cellular Telecommunications & Internet Association

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Senior Vice President for
Policy and Administration and
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June 2, 2003

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: *Ex Parte*
CC Docket No. 99-200 -- CTIA Petition for Forbearance from Further
Increases in the Numbering Utilization Threshold

Dear Ms. Dortch:

On June 28, 2002, the Cellular Telecommunications & Internet Association (“CTIA”) filed a petition under section 10 of the Communications Act of 1934, as amended (the “Act”), seeking forbearance from further increases in the FCC’s numbering utilization threshold. In its *Petition*, CTIA explained that the numbering “crisis” that had formed the predicate for further increases in the utilization threshold is over, and it is not necessary to go beyond the existing utilization threshold to ensure the careful management of numbering resources for decades to come.

CTIA has not requested a ‘reversal’ or ‘abandonment’ of the numbering threshold or numbering administration policies, only that the Commission freeze the current utilization threshold level (which would preserve the authority previously granted six states to use a higher utilization threshold), and forbear from further increases until such time that the benefits of a higher threshold outweigh the very real costs carriers incur managing numbering resources to these tighter utilization levels. Pursuant to the legal standard Congress established to govern forbearance requests, further increases in the numbering utilization threshold are unnecessary to ensure just and reasonable and nondiscriminatory charges and practices, unnecessary for the protection of consumers, and unnecessary to protect the public interest.

Importantly, there is no dispute among any of the parties that the Commission’s policies, at the current utilization level, have effectively delayed the exhaust of the North American Numbering Plan (“NANP”) for decades. With agreement among all parties that there is no longer a numbering crisis, and understanding that the *Petition* is not a request to roll-back any of the advances made in numbering administration, the opposition completely fails to consider section 10, which requires the Commission to



forbear from enforcing rules that are no longer necessary and the enforcement of which is not in the public interest.

The states fail to explain why a 75 percent utilization level is necessary. Instead, they attempt to shift the burden to the Commission and to CTIA by showing that a 75 percent utilization level has been workable within their own borders and that they have received few, if any, complaints. The fact remains, however, that the 65 percent number utilization threshold (and the previously granted waivers) are sufficient and further increases in the utilization threshold are unnecessary and would serve no public interest benefit.

Since the *Petition* was filed last June, the Commission has expressed a preference for policies that take into account the current state of the telecommunications sector in making public interest evaluations. The Commission must focus on additional means of reducing unnecessary costs that its regulations may be imposing. While it is impossible to quantify the administrative costs carriers will incur from managing numbers at higher utilization levels, it is clear that wireless carriers incur very real costs managing numbering resources in the states with a 75% utilization threshold.

Number resource management is extremely labor intensive for wireless carriers due to the multiple distribution channels they must support seven days a week. Raising the utilization level is particularly burdensome in rate centers where a carrier has a small amount of numbers, especially with the introduction of number pooling which assigns blocks of 1,000 numbers (or less, if the block is contaminated). In these rate centers, it is very difficult to reach the utilization requirement in order to qualify to obtain additional numbering resources prior to running out of numbers.¹

When a carrier is unable to qualify for growth numbers in a rate center, it can utilize the "safety valve process", which does not have a utilization requirement, but the carrier must be three months from exhaust. While each state has a different safety valve process, they all are similarly labor intensive, they all delay the number assignment process, and they all burden carriers with unnecessary costs. Sometimes the delay is long enough that the carrier will reach the utilization level requirement for normal application through the National Pooling Administrator. Either way, the delays mean the numbers arrive late, and when the carrier has no numbers in its inventory, it cannot provide service to new customers in the rate center.²

¹ In addition to the six months from exhaust requirement, carriers must be at 75% utilization to apply for additional resources.

² Alternatively, carriers may apply for an initial block in a neighboring rate center. This process avoids the problems associated with the safety valve process. However the

While most acute at the higher utilization levels, this problem can occur even in situations when the utilization level is lower than 70%. One CTIA member currently is having a problem in a New Jersey rate center where the utilization level is at 65%. The carrier has run out of numbers in the rate center. As the carrier began the internal process to prepare for a safety valve submission, the process took so long that they reached 65% utilization for the NPA. The carrier can now qualify for numbers through the National Pooling Administrator. However, because of the 28 days implementation interval before the blocks can be assigned, they cannot sell service in the rate center to new customers. This is needlessly abusive to customers in a competitive market, needlessly costly to wireless carriers, and unnecessary for number conservation since there no longer is a numbering crisis.

Any utilization level in and of itself increases the possibility that carriers will not have sufficient numbering resources available to them to meet consumer demand at certain times. When weighed against the cost of NANP exhaust, however, and with the addition of the "safety valve," a utilization threshold which began at 60 percent was warranted in 2001. It continues to be a valuable administrative tool at this time at 65 percent. The issue in the *Petition*, however, is whether further increases are necessary in light of the administrative burdens and risk to competition that accompany such increases. As the D.C. Circuit has made clear, "a regulation perfectly reasonable and appropriate in the face of a given problem may be highly capricious if that problem does not exist."³ Implicit in the court's conclusion is the recognition that a detailed analysis of cost is unnecessary where it is clear that there will be little or no benefit from a proposed regulation. In light of the vastly extended projections of NANP exhaust, further increases in the utilization level are no longer justified because the higher the utilization threshold, the greater the likelihood a carrier will have insufficient numbers available to it at any given time.

It is not in the public interest to impose any additional costs on carriers when there is no benefit associated with meeting the higher utilization levels. Further increases in the threshold are unnecessary to protect consumers, and are harmful to the public interest because they increase the likelihood that a sufficient cache of numbers will be unavailable to a particular carrier when needed to provide service to new customers.

numbers are not in the rate center the carrier wants to do business in and forces the carrier (and perhaps the customer) to incur additional expense to route and trunk calls.

³ *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (citation omitted).

Ms. Marlene H. Dortch
June 2, 2003
Page 4

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being electronically filed with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "Michael Altschul". The signature is written in a cursive style with a large, looping "M" and "A".

Michael Altschul

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein
Bryan Tramont
Christopher Libertelli
Matthew Brill
Jennifer Manner
Paul Margie
Jessica Rosenworcel
Daniel Gonzalez
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