NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
*The Voice of Rural Telecommunications*
www.ntca.org

January 25, 2006

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

Notice of Written *Ex Parte* Presentation

Re: In the Matter of Petitions by the Michigan PSC, Missouri PSC, Nebraska PSC, New York State Department of Public Service, PUC of Ohio, Oklahoma CC, Washington UTC and West Virginia PSC for Mandatory Thousands-Block Number Pooling Outside the Top 100 MSAs, CC Docket No. 99-200.

Dear Ms. Dortch:

The National Telecommunications Cooperative Association (NTCA)[1] submits this written *ex parte* presentation to alert the Commission of the costly consequences to rural ILECs that will result if the Commission imposes mandatory thousands-block number pooling (number pooling) on all rural carriers outside the top 100 metropolitan statistical areas (MSAs), as proposed by eight state public service commissions.[2] NTCA specifically recommends that the Commission reject any proposal for a blanket

[1] NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 560 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

[2] All eight State Petitions are docketed in CC Docket No. 99-200: *Petition of the Michigan Public Service Commission for Additional Delegated Authority Over Numbering Resource Conservation Measures* (filed Apr. 7, 2005) (Michigan Petition); *Missouri Public Service Commission's Request for an Additional Delegation of Authority to Implement Number Conservation Measures* (filed Mar. 23, 2005) (Missouri Petition); *Nebraska Public Service Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures* (filed Dec. 1, 2004) (Nebraska Petition); *Petition of New York State Department of Public Service for Mandatory Number Pooling* (filed Nov. 30, 2005) (New York Petition); *Petition For Delegated Authority By The Public Utilities Commission of Ohio* (filed Aug. 17, 2005) (Ohio Petition); *Petition of the Oklahoma Corporation Commission for Expedited Decision for Delegation of Authority to Implement Additional Number Conservation Measures* (filed Oct. 20, 2004) (Oklahoma

application of number pooling and enforce its current requirements that state commissions must file number planning area (NPA)-specific petitions for additional numbering authority that reflect rural impacts.[3]

## A. Background

Eight state public service commissions (Michigan, Missouri, Nebraska, New York, Ohio, Oklahoma, Washington and West Virginia, collectively, "States") have filed petitions for additional numbering authority over the past fourteen months (collectively, "State Petitions"), and the FCC is now considering ruling on those State Petitions. Several of the States have asked the FCC to expand the number pooling mandatory status to all NPAs, regardless of rural carriers' exemptions, costs to rural carriers to upgrade their switches, or NPA exhaust dates.[4]

## B. Argument

Five issues arise from the State Petitions: 1) The States appear to seek mandatory number pooling authority over rural carriers who may not be LNP-capable and who may be exempt from mandatory number pooling; 2) The State Petitions make no showing that the States considered the upgrade costs that non-LNP capable rural carriers will incur if the Commission extends mandatory number pooling to all NPAs; 3) the States conclude without support that conserving numbers outweighs the costs to the rural carriers; 4) five States seek numbering relief for NPAs prematurely; and 5) different States seek different relief, so the Commission must tailor and clarify any relief it may grant.

The Commission should examine the economic impact each issue creates for small rural carriers as part of its responsibilities under the Regulatory Flexibility Act.[5]

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Petition); *Petition for Mandatory Number Pooling by the Washington Utilities and Transportation Commission* (filed Dec. 14, 2005) (Washington Petition); and *Petition for an Expedited Decision for Delegated Authority to Implement Additional Number Conservation Measures, filed by the West Virginia Public Service Commission* (filed Nov. 1, 2004) (West Virginia Petition).

[3] *Numbering Resource Optimization*, Third Report and Second Order on Reconsideration (rel. December 28, 2001), Par. 21.

[4] *See, e.g.,* Washington Petition at 1 ("the Washington Utilities and Transportation Commission (WUTC) submits this petition to the Federal Communications Commission (Commission) to delegate to the WUTC the additional authority to implement mandatory thousand-block number pooling in rate centers outside the top 100 Metropolitan Statistical Area's (MSAs.)"); Nebraska petition at 2-3 ("The NPSC requests delegated authority to require mandatory implementation of number pooling for rate centers in which such action will extend the life of the area code by utilizing existing resources that would otherwise remain stranded."); Michigan Petition at 2 ("The MPSC should be granted delegated authority to require optional number pooling rate centers to be mandatory pooling rate centers where there are multiple carriers or upon the entrance of a second carrier.").

[5] *C.f. U.S. Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005) (Court of Appeals stayed enforcement of the FCC's Intermodal LNP Order for failure to consider impacts on two percent carriers and failure to initiate rulemaking proceeding).

### 1. Rural carriers who are not LNP-capable or exempt should remain exempt from number pooling.

Some rural telephone companies are exempt from the FCC's number pooling requirements because they have not received a request to provide LNP.[6] Also exempt from number pooling are rural carriers that are the only service provider receiving numbering resources in a given rate center.[7] Rural carriers may be exempt because they are under a state suspension or modification of the number pooling requirements. Hence, a blanket approach to number pooling in all NPAs outside the top 100 MSAs, advocated by the States, is inappropriate and the Commission should continue to require NPA-specific requests.

The public interest, which includes the interests of rural carriers and their subscribers, is best served when sufficient numbering resources are available and used efficiently. When the pool of available numbers is too small to handle carriers' forecasts, then state commissions, carriers and customers are faced with the prospect of area code relief measures.[8] State commissions are able to extend the life of area codes by facilitating voluntary number pooling and rate center consolidation.[9] State commissions, understandably, are concerned about costs to consumers due to stranded numbers but must also recognize that mandatory number pooling will increase the costs to rural ILECs who are not LNP-capable. Rural ILECS will be forced to pass those costs to customers and will have less capital to invest in their infrastructure.

### 2. Number pooling outside the top 100 MSAs will cost rural carriers hundreds of thousands of dollars.

If the Commission grants the States complete discretion to require number pooling without making the requisite demonstration of need, then rural ILECs will have to upgrade their switches to permit number pooling and will incur substantial expense without sufficient justification. Upgrading a switch to permit number pooling is extremely expensive, especially for rural ILECs who have small subscriber customer bases. As NTCA has previously pointed out in this docket, the fixed cost to upgrade a

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[6] *In the Matter of Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Telephone Number Portability*, Fourth Report and Order in CC Docket No. 99-200 and 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 03-126, (rel. June 18, 2003) (FNPRM) at Par. 18. New York asserts in its petition that "all carriers in the State are now LNP-capable." New York Petition at iii.

[7] FNPRM, Par. 19.

[8] See, e.g., *Numbering Resource Optimization, South Bay Cities Council of Governments, et. al. Petition for Emergency Relief of the California Public Utilities Commission's Decision to Implement an All Services Area Code Overlay in the 310 Area Code petition for Emergency Relief*, CC Docket No. 99-200.

[9] Missouri Petition at 3, 5; Nebraska Petition at 3-4, 7.

rural ILEC's switch to be LNP-capable is between $100,000 and $200,000.[10] Depending on the size of the rural ILEC and the area served, each rural carrier will incur the additional cost of their staff spending time, money and resources to implement, test, monitor and ensure that the systems work properly. This added cost can double or triple the actual cost to provide number pooling services to $200,000 to $600,000 per switch.

Imposing these number pooling costs on rural carriers operating in a given rate center that have no numbers to donate and take from the pool would only lead to increased carrier costs, higher access charges to recover these costs and a failure to provide consumers with any benefits of pooling.[11] Number pooling should only be in those rate centers where pooling will provide substantial numbering optimization benefits.

### 3. The State Petitions do not discuss the economic impacts that rural carriers will experience under mandatory number pooling.

None of the States have adequately demonstrated in their Petitions that they have considered number pooling's economic impact on rural carriers whose service territories lie outside the top 100 MSAs. Several of the States acknowledged the presence of rural carriers who would be subject to number pooling, but do not describe the financial impact that the rural carriers will experience or acknowledge that the state commission has specifically examined and considered that impact.[12] The States have identified the new sources for increase demand from new competitors – wireless, VoIP, and cable.[13]

Based on the State Petitions, however, it does not appear that rural ILECs are causing the increased demand for numbers described in the State Petitions. The States have not demonstrated that participation by exempted small carriers in pooling will further the Commission's numbering resource optimization goals, so the Commission should not include small carriers in any relief granted.[14] The Commission, in preparing its regulatory flexibility analysis, will find useful (if not necessary) information from the

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[10] *Telephone Number* Portability, CC Docket No. 99-200, NTCA reply comments (filed Sept. 4, 2003), at 3.

[11] Because number pooling has been mandated as a national numbering resource optimization strategy, the Commission permits the recovery of the extraordinary costs of number pooling in access charges. FNPRM Order at Par. 25.

[12] Michigan Petition at 2 ("the 989 NPA consists of 134 rate centers with only nine rural rate centers); Oklahoma Petition at 3 ("The 580 NPA encompasses 42 rural counties … 18 Independent Telephone Companies provide local service in the 256 rate centers within the 580 NPA"); Washington Petition at 6 ("The 509 NPA is the most rural in Washington, with some optional pooling and rate centers labeled as excluded from pooling").

[13] Missouri Petition at 4; New York Petition at ii; Oklahoma Petition at 4; Washington Petition at 3.

[14] FNPRM Order at Par. 18.

States regarding the economic burden that mandatory number pooling will create on small rural carriers.[15]

### 4. States are seeking numbering authority for NPAs that are not in jeopardy.

Five of the States are seeking mandatory number pooling for NPAs prematurely because the NPAs are not in jeopardy at the time the petition was filed.[16] While there may be some administrative efficiency for the States to file all-inclusive, pre-emptive petitions, imposing number pooling outside the top 100 MSAs without a demonstration of need is inefficient from the rural carriers' viewpoint and not in the public interest.

The States should not ignore the unintended consequences that blanket number pooling will create for rural ILECs. States who seek to extend the number pooling requirement beyond the top 100 MSAs without a detailed showing of need and without specific consideration of the impacts on rural carriers' amounts to an overbroad, overly burdensome approach that contradicts the Commission's orders. Furthermore, an all-inclusive approach is not in the public interest as rural carriers may need to pass the costs of number pooling implementation to their small subscriber base. State commission should base their requests for numbering authority on state-specific investigations that included serious consideration of financial impacts on rural ILECs, and the Commission should not grant a petition that fails to examine rural impacts.

As a best-practices guide to filing numbering authority petitions, state commissions should include: 1) the number of non-LNP-capable wireline carriers in the target NPA, and the number of those carriers that are rural ILECs; 2) data (not merely summary conclusions) demonstrating that the state commission has weighed the costs to non-LNP capable rural carriers of implementing number pooling; 3) the number and percent of rate centers in the target NPA that do not have mandatory number pooling or are excluded from such pooling; and 4) explanations, where appropriate, of why mandatory number pooling should be extended to NPAs that are not in jeopardy. In addition to demonstrating that the state commissions considered rural impacts, the Commission will be able to use this information as part of its regulatory flexibility analysis. The Commission should look for these showings in all future number pooling authority requests.

### 5. The Commission should clarify the extent of any relief it may grant.

The Commission should clarify that where a state commission seeks number pooling authority for rate centers outside the top 100 MSAs that are local number portability

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[15] NTCA and other commenters have previously noted the economic burdens that Intermodal LNP will place on small carriers and their subscribers. *Telephone Number Portability – Initial Regulatory Flexibility Analysis*, CC Docket No. 95-116, NTCA/OPASTCO Reply Comments (filed Sept. 6, 2005), pp. 6-7.

[16] Nebraska Petition at 3, 6; Missouri Petition at 4-5; Ohio Petition at 5-6; Oklahoma Petition at 3; Washington Petition at 6.

(LNP) capable, that any delegated authority the Commission may give does not affect rate centers, or the rural ILECs who service those rate centers, that are not LNP-capable.[17] Furthermore, the Commission should not expand that request to include rural ILECS or rate centers that are non-LNP capable, or whose state commissions have not filed NPA-specific petitions.

## C. Conclusion

The Commission should not extend mandatory thousand block number pooling across all NPAs as the States appear to request because doing so would not reflect consideration of rural carriers' expenses and, therefore, is not in the public interest. Furthermore, the Commission should review carefully every state petition for additional numbering authority to ensure that the state commission has considered the impact on rural carriers and that the petition is not premature. Finally, the Commission should continue to require state commissions to continue to file NPA-specific petitions that delineate in detail the special circumstances and the economic impacts on rural carriers that the state commissions believe warrant extension over non-LNP-capable carriers.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016.

Sincerely,

/s/ Daniel Mitchell
Daniel Mitchell
Jill Canfield
Karlen J. Reed

Its Attorneys

cc: Kevin Martin, FCC Chairman
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[17] Michigan Petition at 3-4; New York Petition at ii; Oklahoma Petition at 5.