STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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May 15, 2006

Hon. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, D.C. 20554

Re: Comments of the New York State Department of Public Service in the Matter of Numbering Resource Optimization; CC Docket No. 99-200.

Dear Secretary Dortch:

Enclosed please find the reply comments of the New York State Department of Public Service in response to the Commission's Notice, released on February 24, 2006, in the above-referenced proceeding.

Should you have any questions concerning this filing, please call me at (518) 474-4536.

Very truly yours,

Dakin D. Lecakes
Assistant Counsel
(518) 474-4536

Enc.

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

COMMENTS OF THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

Dated: May 15, 2006
Albany, New York

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**

COMMENTS OF THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION & SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Federal Communications Commission's (Commission) Order and Fifth Further Notice of Proposed Rulemaking (Fifth FNPRM) released February 24, 2006 in the above-captioned docket. The Commission's Fifth FNPRM requests comment as to whether the Commission should delegate to the States the authority to require thousands-block number pooling in their respective jurisdictions. Currently, thousands-block number pooling is mandatory in all of the country's 100 largest Metropolitan Statistical Areas. Specifically, the Fifth FNPRM seeks comment on whether the Commission should extend the current mandatory pooling by allowing the States to implement mandatory thousands-block number pooling at their discretion for other numbering plan areas (NPAs).

The NYDPS urges the Commission to delegate such pooling authority to the States as it will allow the states to more efficiently assign existing numbering resources, resulting in conservation of such resources and delaying the need to create new area codes. Delegated authority will also conserve Commission administrative resources that are associated with the case-by-case approach currently in use.

DISCUSSION

New York has had a long-standing interest in numbering matters as is reflected in its current Petition before the Commission[1] seeking recognition of a previous New York

[1] In the Matter of Petition for Order Marking All Rate Centers in New York Mandatory for Number Pooling, Petition of the New York State Department of Public Service For Mandatory Number Pooling, Docket No. 99 - 0200 (dated August 26, 2005), available on the Commission's web site at <http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518185900>. See Fifth FNPRM n.20.

Public Service Commission (PSC) Order of March 17, 2000, that required state-wide number pooling for all rate centers in New York.[2] The PSC's March 17, 2000 Order was a follow up to a PSC Order of April 29, 1999, wherein the PSC directed a geographic split for the Long Island area code, and also determined that two other area codes in the State were in jeopardy.[3] Thereafter, the PSC worked toward solving the number scarcity in New York by issuing both the March 17, 2000 Order, and an Order issued December 13, 2000, in which the PSC established procedures for reclaiming numbering resources which have not been activated.[4]

Section 251(e)(1) of the Communications Act of 1934, as amended specifically allows the Commission to delegate to the States jurisdiction over numbering administration.[5] Accordingly, there is no legal bar preventing the Commission from delegating mandatory number pooling authority as it has proposed in the Fifth FNPRM.

In general, States are in the best position to determine when thousands-block number pooling should be implemented within their borders. Because of their knowledge of local conditions and any unique characteristics of a given NPA, States can best weigh the costs and benefits of requiring pooling for their local carriers. The current process already recognizes that the States must play an important role because it requires the States to initiate the petition at the Commission. Delegation would streamline the process by removing the additional layer of Commission action and allow the States to resolve the issue in the first instance as it becomes apparent to a State that action promoting conservation of numbers is necessary in a given NPA. Because the States are in the best

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[2] Case 98-C-0689 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Order Instituting State-Wide Number Pooling and Number Assignment and Reclamation Procedures (issued March 17, 2000).

[3] Case 98-C-0689 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Opinion and Order Directing Geographic Split of the 516 NPA (issued April 29, 1999).

[4] Case 98-C-0689 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Order Adopting Procedures and Standards For Reclamation of Central Office Codes (issued December 13, 2000).

[5] 47 U.S.C. § 251(e)(1).

position to judge when such relief is warranted within their respective borders, the Commission should delegate to them number pooling authority.

Should the Commission delegate number pooling authority, the NYDPS does not believe that the Commission should mandate three years as an exhaust criterion for allowing a state to implement number pooling.[6] Although a three year exhaust date may often be a good indication that pooling relief is necessary, the Commission should not preclude states from acting sooner because the three year exhaust is only a forecast that is subject to change with the next VoIP application or other technological innovation.

In the event that the Commission does not delegate number pooling authority to the states, it should not continue to review individual state petitions on a case-by-case basis.[7] Considering the rapid development of the competitive market for telecommunications and related applications using NANP numbers, the Commission is likely to see an increase in the number of petitions filed seeking permission to require number pooling in different NPAs. As more state petitions are filed, the Commission runs the risk of delay in providing relief to those states. By their very nature, time is of the essence for such petitions, however, and a delay of a few months can make the difference between extending the life of the available numbers in an NPA, or having to implement a new area code.[8]

Accordingly, if the Commission does not delegate pooling authority to the States, the NYDPS is not opposed to the Commission's alternative proposal of the Commission ordering mandatory pooling in all the country's NPAs using a phased implementation schedule.[9] Considering the proven success of mandatory pooling as a conservation measure,[10] the NYDPS supports requiring all NPAs to employ thousands-block pooling to wean carriers away from having access to 10,000 blocks of numbers at any given time. Should the Commission choose such an option, the NYDPS also is not opposed to allowing the current rural carrier exemption to continue.[11]

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[6] See Fifth FNPRM at ¶17.

[7] See id.

[8] Although the Commission's Order and Fifth FNPRM granted the petitions of certain states seeking similar relief, the Commission took no action on New York's petition. Thus, mandatory pooling still does not exist in portions of New York State despite the State's Public Service Commission having ordered such pooling state-wide more than six years ago.

[9] See id.

[10] See Fifth FNPRM at ¶ 3.

[11] Currently, rural ILECs are specifically exempted from pooling until they have received an LNP request. See In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of

CONCLUSION

For all the foregoing reasons, the Commission should delegate to the States the authority to require thousands-block number pooling for all numbering plan areas at their discretion. Alternatively, the Commission should release its own Order mandating thousands-block number pooling on a phased implementation schedule for all NPAs not currently required to pool.

Respectfully submitted,

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of the State of New York
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Dated: May 15, 2006

Fourth Report And Order and Fourth Further Notice Of Proposed Rulemaking (Released June 18, 2003).