Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

SPRINT NEXTEL CORPORATION REPLY COMMENTS

Sprint Nextel Corporation ("Sprint") submits this reply to the comments filed in response to the Fifth Further Notice of Proposed Rulemaking ("*Fifth FNPRM*"), regarding expansion of mandatory number pooling to areas outside the top 100 Metropolitan Statistical Areas ("MSAs").[1]

I. THE COMMENTS REFLECT A BROAD CONSENSUS ON THE BENEFITS OF POOLING

The comments filed, including those submitted by 15 State commissions, demonstrate that number pooling is "an enormously successful number conservation tool,"[2] and "the most effective way of administering the numbering resources in today's competitive marketplace."[3] The Florida Commission, for example, observes that pooling has saved over 13.5 million numbers in its State alone.[4] The Indiana Commission notes that mandatory pooling has saved over 4.7 million numbers in its State.[5]

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1 *See Numbering Resource Optimization*, CC Docket No. 99-200, *Fifth Further Notice of Proposed Rulemaking* (Feb. 24, 2006), *summarized in* 71 Fed. Reg. 13323 (March 15, 2006).

2 California Comments at 6.

3 Idaho Comments at 3.

4 Florida Comments at 2.

5 Indiana Comments at 4.

There is also agreement that the lack of mandatory pooling is becoming problematic as States are "experiencing an increase in the demand for numbering resources in our more rural areas":[6]

- The Florida Commission documents that number utilization in some of its fastest growing areas is less than five percent (5%) because of the absence of mandatory pooling.[7]
- The Idaho Commission notes that the small community of Homedale has been assigned 30,000 numbers to serve 2,000 customers.[8]
- The Missouri Commission notes that the lack of pooling required the assignment to one carrier of 16 NXX codes that could have been adequately served by 16 thousands blocks and that this assignment accelerated the exhaust date of one area code by nine years.[9]
- The Texas Commission notes that NXX assignments in the 254 NPA during 2005 alone caused the exhaust date of the NPA to accelerate by over two years.[10]

The Iowa Commission presents a graphic depiction of the undesirable consequences that occur when mandatory pooling is not available in more rural areas:

- Because of the absence of mandatory pooling, Harlan, Iowa has been assigned 60,000 numbers even though the town has a population of only 5,200;[11]
- One pooling-capable carrier declined to participate in the optional pool because it preferred "fresh numbers," which resulted in the assignment of five full codes (50,000 numbers) to serve towns with a population as small as 1,350;[12]

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6 Ohio Comments at 6.

7 Florida Comments at 3-4.

8 Idaho Comments at 4.

9 Missouri Comments at 4.

10 Texas Comments at 2-3.

11 Iowa Comments at 4.

12 *Id.* at 5.

- Two pooling-capable incumbent carriers, serving towns of 1,750 and 2,600 people, refused to provide thousands blocks to new entrant cable company competitors;[13]
- A regional cable company entrant recently advised the Iowa Commission that it needs numbers in 48 small, non-pooling rate centers, which could result in the assignment of 480,000 numbers when 48 thousands blocks (or 48,000 numbers) would likely suffice;[14]
- Two new CLECs will likely each require 10,000 numbers in each of the 10 non-pooling rate centers they want to serve, even though most of the towns have a population under 1,000 and the largest town has a population of 3,300; and
- One new VoIP provider has already obtained 63 full codes (630,000 numbers) because mandatory pooling is not yet implemented in the 63 small rate centers.[15]

These facts justify the Iowa Commission's conclusion that: "Left unchecked, large quantities of numbering resources will become stranded and the life of individual NPAs as well as the North American Numbering Plan (NANP) will become irreversibly shortened."[16]

There is also consensus that case-by-case delegation petitions, the current procedure for expanding mandatory pooling, are "no longer efficient."[17] The Pennsylvania Commission notes that the existing process is "cumbersome and time-consuming both for the Commission and the individual States."[18] Ohio and New York observe that some of their petitions for delegated authority remain pending although filed long ago.[19]

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13 *Id.* at 5-6.

14 *Id.* at 6.

15 *Id.* at 7.

16 *Id.* at 2.

17 New Jersey Comments at 2.

18 Pennsylvania Comments at 7.

19 *See* Ohio Comments at 2-4; New York Comments at 4 n.8. *See also* Kentucky Comments at 2 ("[T]he KPSC's petition was never addressed by the FCC.").

The delays inherent in the existing process also undermine the Commission's optimization goals. The Pennsylvania Commission notes that "as the FCC is reviewing various petitions on an individual basis, the time lag may result in area codes exhausting prematurely."[20] The Ohio Commission similarly notes:

> During the wait, NXX codes are wastefully assigned, especially in optional pooling areas where the blocks of numbers may never be donated to the pool.[21]

And, the Indiana Commission makes a key point: NXX codes assigned during the pendency of State delegation petitions "cannot be recovered once thousand-block pooling is later implemented."[22]

II. A FEDERAL, NATIONWIDE POOLING SCHEDULE WOULD BEST PRESERVE THE NANP AND THEREBY BEST PROTECT CONSUMERS

There is broad consensus that (a) number pooling is a highly effective numbering optimization tool; (b) pooling should be deployed more extensively throughout the country; and (c) the current case-be-case delegation petition process is inefficient. The real question for the Commission, therefore, is which of two alternative procedures – delegation of discretionary authority to the States or a federally-imposed pooling schedule – would best achieve the objectives the Commission has established for this docket.

The life of the NANP cannot be maximized until mandatory pooling is implemented in every rate center throughout the country. Experience has proven that the benefits of pooling are maximized the sooner pooling is implemented and when pooling participation is extensive.[23] As the Indiana Commission observes, any delay in implementing mandatory pooling pollutes "NXX

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[20] Pennsylvania Comments at 7-8.

[21] Ohio Comments at 8.

[22] Indiana Comments at 7.

[23] *See* California Comments at 8 ("The more service providers participate in pooling, the more effective a number conservation tool it is.").

codes, which cannot be recovered once thousand-block pooling is later implemented, needlessly pushing the area code closer toward exhaust."[24] The Missouri Commission similarly notes that pooling is "more effective when implemented early and when allowed an opportunity to work."[25]

Under the discretionary delegation proposal advocated by the States, some States will choose not to implement mandatory pooling because, for example, an area code is not projected to exhaust for some time. From the perspective of a single state this may be a logical conclusion. From a national perspective, however, such decisions would shorten the overall life of the NANP.[26]

There are a variety of ways that pooling can be deployed ubiquitously. Sprint favors a 20-month deadline by which all carriers in all rate centers would begin participating in number pooling.[27] The Commission should ensure that rate centers nearest to exhaust are prioritized within the schedule. The Commission should adopt a shorter deadline for the many carriers that are pooling-capable today but which are not participating in pooling because they are eligible to claim one of the Commission's current exemptions from mandatory pooling. Given the enormous cost to consumers of NANP replacement, Sprint submits that these automatic exemptions can no longer be justified.

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[24] Indiana Comments at 7.

[25] Missouri Comments at 1-2. *See also* NASUCA Comments at 2 ("Requiring pooling earlier rather than later is thus an efficient management practice for this scarce resource.").

[26] For example, implementing mandatory pooling in 2010 might extend the life of a NPA by several years (say from 2013 to 2016). But if mandatory pooling in this NPA was ordered in 2006, the life of the NPA potentially could be extended even further (perhaps to 2025 or later). Further extending the life of an NPA necessarily extends the life of the NANP, because remaining unassigned NPAs would then be available to areas with a greater need. The inaction by even one State can harm consumers throughout the nation.

[27] *See* Sprint Comments at 7.

In the end, the details of the pooling schedule are less important than a Commission order specifying that by a date certain, all carriers in all rate centers will participate in pooling (subject to the waiver procedure discussed below).

III. ALTHOUGH A FEDERAL REGIME IS NECESSARY, THE COMMISSION SHOULD DELEGATE AUTHORITY TO THE STATES TO ENTERTAIN WAIVER REQUESTS FOR SPECIAL CIRCUMSTANCES

Sprint, while favoring a federal deadline by which mandatory pooling would be implemented throughout the country, believes that States can play a critical role in implementing this federal requirement. Specifically, Sprint recommends that the Commission delegate to States the authority to entertain waiver requests from whatever pooling schedule the Commission establishes.[28] State commissions are well-suited to entertain individual carrier waiver requests in this area.[29]

The Commission should also provide guidance regarding the standards that States should utilize in analyzing waivers of the federal pooling deadline. Among other things, the Commission should clarify that a waiver is appropriate only if compliance would impose a significant adverse impact on consumers in the area served by the applicant. The fact that other, competing carriers serving the same area are pooling compliant would in most cases confirm that consumers would not be harmed. Moreover, it would be unfair and would undermine competitive neutrality for one competitor to be exempt from the obligations and costs incurred by other competitors in

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[28] Ordinarily, federal agencies do not have the authority to delegate their functions to the States. *See, e.g.*, *USTA* v. *FCC*, 359 F.3d 554, 565-68 (D.C. Cir. 2004). In this case, however, Congress in Section 251(e)(1) of the Act explicitly gave the Commission authority to "delegat[e] to State Commissions or other entities all or any portion of such [numbering] jurisdiction."

[29] *See* Ohio Commission Comments at 6. *See also* Kentucky Comments at 4; Missouri Comments at 4; New Jersey Comments at 5; New York Comments at 3. The Commission can always address such waiver requests if a State declines to assume this function. *Compare* 47 U.S.C. § 252(e)(5).

the same market.[30] The Commission should also limit the amount of time such waivers could grant a carrier.

In addition, the Commission should provide guidance regarding one situation where there appears to be no consensus among the States. Some States appear to believe that a carrier should be exempt from becoming pooling compliant when it is the only carrier serving a rate center, under the theory that the benefits of pooling would be marginal and therefore the costs of becoming pooling compliant would be unnecessary. Sprint must respectfully disagree, and it submits that such reasoning is shortsighted. As the Iowa Commission recognizes, new entry and demand for numbers in rural areas is strong, regulators cannot predict when and where this entry will occur, and when new entry does occur, the entrant "typically needs numbering resources sooner than the independent ILEC can become pooling capable."[31] In other words, the grant of an automatic exemption to a small incumbent would likely entail the assignment of a second (or third or fourth) NXX code.[32] Sprint submits that it makes no sense to assign 20,000 (or more) numbers to rate center that may have a population of only 1,000 or 2,000.[33]

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[30] Although some rural carriers express concerns they will incur some costs in becoming pooling-complaint, these same carriers neglect to mention that many of their competitors have already incurred such costs. More fundamentally, these carriers ignore the fact that "[e]xpanding number pooling will . . . conserve numbering resources and will prevent or delay the adoption of other, possibly more burdensome measures" such as NANP replacement. Initial Regulatory Flexibility Analysis at ¶ 14.

[31] Iowa Comments at 4. The Iowa Commission provides several concrete examples where in multiple rates centers with populations under 1,000, entire NXX codes had to be assigned to the new entrants because the incumbent is not pooling capable. *Id.* at 6-7. On the other hand, the Missouri Commission demonstrates how implementation of pooling prevented the needless assignment of 20,000 numbers in each rate center in the 573 NPA. *See* Missouri Comments at 4.

[32] *See* Iowa Comments at 4 (Harlan, Iowa, with a population of 5,200, has 60,000 numbers assigned to it.

[33] For the reasons explained by the Iowa Commission and other State commission comments, Sprint cannot agree with Verizon that pooling produces "no gains if the rate center is served by only one carrier." Verizon Comments at 2.

IV. A BRIEF RESPONSE TO CERTAIN RURAL CARRIER ARGUMENTS

Some rural carriers, including the Nebraska Rural Independent Companies, recognize that the current process is not working and that the public interest would be better served if the Commission were to "extend pooling to all rate centers."[34] Other rural interests, however, take the opposite approach. Specifically, both NTCA and OPASTCO want the Commission to maintain the current, inefficient case-by-case State delegation procedure. And, they seek an exemption so rural carriers can avoid participating in pooling unless they receive a number portability ("LNP") request – even though many rural LECs are pooling-capable today, or could be with minimal effort.[35]

The Commission must realize at the outset that NTCA's claim – namely, rural carrier participation in pooling would "jeopardize" and "violate [their] exemption from LNP-capability"[36] – is baseless. An LNP request has little relevance to number pooling since, as the Commission has observed, "full LNP capability is not necessary for participation in pooling,"[37] and one's participation in pooling is "not . . . linked" to one's ability to provide LNP.[38]

NTCA and OPASTCO point to the Commission's *Fourth NRO Order* in support of their position, but they misstate that *Order* and, more importantly, neglect to recognize subsequent

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[34] Nebraska Companies' Comments at 3. The Nebraska Companies would limit ubiquitous mandatory pooling to NPAs that are within three years of exhaust. *See id.* at 4.

[35] *See, e.g.,* Kansas Staff Comments at 3 ("Many of Kansas's rural rate centers have already deployed these switching features" needed for pooling.).

[36] *See* NTCA Comments at 2 and 3.

[37] Order at ¶ 4.

[38] *See Fourth NRO Order,* 18 FCC Rcd 12472, 12477 ¶ 14 (2003). The Commission also can draw no conclusions by the absence of LNP requests since, as a result of a court remand, rural carriers can ignore such requests until the Commission completes the remand proceeding. *See USTA* v. *FCC,* 400 F.3d 29 (D.C. Cir. 2005). In addition, NTCA does not provide a single fact in support of its request that the Commission "revisit" its determination that carriers can support pooling with LRN technology. *See* NTCA Comments at 5-6. This unsupported request is nothing more than an attempt to delay rural carrier participation in number conservation.

market changes. The Commission in that *Order* did not, as these associations claim, rule that the benefits of rural carrier pooling "do not outweigh" the costs of participating in pooling.[39] To the contrary, the Commission has stated that the "costs of implementing pooling for rural carriers are unknown at this time."[40]

The Commission instead developed a pooling exemption for rural carriers because it accepted at face value their claim that they do "not operate in competitive markets" and thus the benefits of their pooling would be marginal.[41] But regardless of the validity of that assumption years ago, it is certainly not accurate today. The record evidence submitted by State commissions confirms that rural markets are competitive and that the absence of pooling in rural areas is leading to inefficient number underutilization. The Commission's own evidence confirms that (a) competition in rural areas is robust,[42] and (b) rural carriers on average use less than 15 percent of the numbers assigned to them.[43]

NTCA concedes that wireless carriers are "now direct competitors of rural carriers."[44] NTCA and OPASTCO appear to seek to thwart this new competition by any means possible, including delaying rural carrier provision of intermodal LNP. But the issue here is preserving a scarce public resource (NANP numbers) and the facts are undisputed that rural carriers are not using over 80 percent of the numbers assigned to them. The Commission should not accept the

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39 *See* OPASTCO Comments at 2.

40 *Fourth NRO Order*, 18 FCC Rcd at 12479 ¶ 18.

41 *See id.* at 12478 ¶ 17. The Commission explicitly relied on Iowa Telecom's assertion that Iowa is "currently not subject to numbering resource shortages." *Id.* The Iowa Commission's comments in this docket confirm that this assertion is not accurate today.

42 *See Tenth Annual CMRS Competition Report*, 20 FCC Rcd 15908, 15944 ¶ 94 (2005) (Rural markets average 3.7 wireless competitors).

43 *See Numbering Resource Utilization in the United States as of June 30, 2005*, at Table 3 (May 2006).

44 NTCA Comments at 5.

rural LEC opposition to competition as a basis to excuse them from participating in the same, effective conservation measures followed by all other carriers.[45]

V. CONCLUSION

For the foregoing reasons, Sprint Nextel Corporation urges the Commission to adopt an aggressive schedule to extend mandatory thousands-block number pooling to all NPAs and rate centers outside the top 100 MSAs. Additionally, the Commission should delegate to the States the authority to grant waivers to carriers in special circumstances, consistent with waiver guidelines that the Commission should adopt in its order.

Respectfully submitted,

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[45] Sprint's proposed State waiver process addresses NTCA concerns over compliance with the Regulatory Flexibility Act. *See* NTCA Comments at 6. Besides, if any rural carrier believes that this State waiver process might be inadequate, that carrier always has the option to seek relief directly from the Commission.