

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

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

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ hereby responds to the Federal Communications Commission’s (FCC or Commission) Notice of Pleading Cycle (Notice)² seeking comment on the New Mexico Public Regulation Commission (NMPRC) May 4, 2006 Petition (Petition) to extend thousands block number pooling (number pooling) in New Mexico rural rate centers outside the top 100 metropolitan statistical areas (MSAs) that are local number portability (LNP) capable.³ The Commission should either deny the Petition for failing to include rural carrier financial impact data or require that any grant of number pooling authority will not jeopardize rural carriers’ LNP exemption.⁴

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 570 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 *Numbering Resource Optimization*, Notice of Pleading Cycle for New Mexico Public Regulation Commission’s Petition for Delegated Authority to Implement Additional Number Conservation Measures, CC Docket No. 99-200, DA 06-1542 (rel. July 28, 2006) (Notice).

³ *New Mexico Public Regulation Commission’s Comments and Petition to the FCC’s February 17, 2006 Order and Fifth Further Notice of Proposed Rulemaking*, CC Docket No. 99-200 (filed May 4, 2006) (NM Petition), p. 7.

⁴ See NTCA initial comments of May 15, 2006 and reply comments of June 13, 2006 filed in this docket.

I. INTRODUCTION

On May 4, 2006, the NMPRC filed combined comments and a Petition for delegated number pooling authority in response to the Commission's February 24, 2006, 5th NPRM that sought comment on extending the number pooling authority to all MSAs outside the top 100 MSAs.⁵ The NMPRC specifically sought authority to implement number pooling in New Mexico's 505 number plan area (NPA), which has 163 rate centers and encompasses the entire state of New Mexico.⁶ According to the NMPRC, only 15 of the 163 rate centers have mandatory pooling; the remaining 148 rate centers are optional or excluded from pooling.⁷ The 505 NPA has 50 code holders,⁸ many of whom may be rural carriers that are currently exempt from LNP requirements in some or all of the rate centers due to lack of competition or other reasons.

While the NMPRC appears to have engaged in area code relief procedures, the NM Petition does not reveal whether the NMPRC examined the costs of implementing number pooling to rural carriers, especially rural ILECs, or whether mandatory number pooling will jeopardize rural carriers' LNP exemption.⁹ The Commission, in the 5th NPRM, recognized that some rural carriers should be exempt from LNP¹⁰ and asserted that "rural carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of the delegation of authority set forth herein."¹¹ The Commission also required state commissions, in

⁵ *Numbering Resource Optimization*, Fifth Further Notice of Proposed Rulemaking, CC Docket No. 99-200 (rel. February 17, 2006) (5th NPRM), ¶ 16.

⁶ NM Petition, pp. 3-4.

⁷ *Id.* at 4.

⁸ NM Petition, p. 4.

⁹ *Id.* at 5-6.

¹⁰ 5th NPRM, ¶ 5.

¹¹ *Id.*, ¶ 11.

exercising delegated number pooling authority, to implement this delegation consistent with the exemption for the above rural, Tier III CMRS and sole service providers.¹²

II. ARGUMENT

The Commission should either deny the NM Petition for failure to include rural carrier financial impact data or, at a minimum, require that any grant of number pooling authority does not jeopardize rural carriers' LNP exemption. The NM Petition fails to reference any consideration of the financial impacts that mandatory number pooling will have on affected rural carriers, or that number pooling will not risk LNP exemptions. NTCA affirms its position, stated in its initial and reply comments to the 5th NPRM, that the Commission should not grant any petition that fails to examine rural impacts. These petitions should reflect rural impact criteria, including:

- a) The number of non-LNP-capable wireline carriers in the target NPA, and the number of those carriers that are rural ILECs;
- b) Data (not merely summary conclusions) demonstrating that the state commission has weighed the costs to non-LNP capable rural carriers of implementing number pooling;
- c) 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
- d) Explanations, where appropriate, of why mandatory number pooling should be extended to NPAs that are not in jeopardy.¹³

The Commission must examine the economic impact that number pooling creates for small rural carriers as part of its responsibilities under the Regulatory Flexibility Act (RFA).¹⁴

The RFA¹⁵ mandates that the Commission examine the possible significant economic impact on

¹² *Ibid.*

¹³ NTCA Initial comments, filed May 15, 2006, p. 7; NTCA reply comments, filed June 13, 2006, pp. 3-4.

¹⁴ *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).

¹⁵ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

small entities by the policies and rules proposed in the 5th NPRM. Without state-specific data, the Commission cannot reasonably conclude that number pooling should be implemented in the 505 NPA for New Mexico.

Some rural telephone companies are exempt from the FCC's number pooling requirement because they have not received a request to provide LNP.¹⁶ Also exempt from number pooling are rural carriers that are the only service provider receiving numbering resources in a given rate center.¹⁷ Rural carriers may also be exempt because they are under a state suspension or modification of the number pooling requirements as a result of the D.C. Circuit's Intermodal LNP Remand Order.¹⁸ The Commission has recognized the validity of these exemptions in its 5th NPRM¹⁹ and should remind the NMPRC to respect the LNP exemptions due to the costs to rural carriers of upgrading their systems to implement number pooling where competition does not exist.²⁰

III. CONCLUSION

The NMPRC is, understandably, concerned about costs to consumers due to stranded numbers but must also recognize that mandatory number pooling may increase the costs to rural carriers, especially rural ILECs who will be forced to pass those costs to customers and, consequently, will have less capital to invest in their infrastructure. For these reasons, the

¹⁶ *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, CC Docket No. 99-200 and 95-116, and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 03-126, (rel. June 18, 2003), ¶ 18.

¹⁷ 5th NPRM, ¶ 19.

¹⁸ *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) (Intermodal LNP Remand Order).

¹⁹ 5th NPRM, ¶ 11.

²⁰ Upgrading a switch to be LNP-capable could be 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 rural ILEC's switch to be LNP-capable is between \$100,000 and \$200,000. *Telephone Number Portability*, CC Docket No. 99-200, NTCA reply comments (filed Sept. 4, 2003), p. 3.

Commission should either deny the NM Petition for failing to include the rural carrier financial impact data or require the NMPRC to confirm that number pooling will not violate rural carriers' LNP exemptions.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS
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August 14, 2006

CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 99-200, DA 06-1542, was served on this 14th day of August 2006 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons.

/s/ Gail Malloy

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