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COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy to conduct mandatory thousands-block number pooling trials pursuant to the authority delegated by the Federal Communications Commission.

D. T. E. 99-99

EMERGENCY PETITION BY AT&T WIRELESS SERVICES
FOR CLARIFICATION OR WAIVER OF THE DEPARTMENT'S
75 PERCENT FILL RATE REQUIREMENT

and

REQUEST THAT NEUSTAR BE DIRECTED TO GRANT

AT&T WIRELESS' APPLICATION TO CHANGE THE RATE CENTER DESIGNATION FOR CODE 617/794
FROM CAMBRIDGE TO BOSTON

AT&T Wireless Services ("AWS") - the formal name of which is Wireless PCS, Inc., a wholly-owned subsidiary of AT&T Wireless Services, Inc. - needs to transfer one of its existing 617-NXX codes from one rate center to another. Specifically, AWS needs to transfer the 617-794 code from the Cambridge rate center to the Boston rate center. Doing so will not in any way reduce the numbering resources available to other carriers, but it will ensure that AWS does not run out of numbers in the near future in the Boston rate center.

To make this transfer possible, AWS respectfully requests that the Department either: (i) clarify that its current NXX code fill rate requirements do not apply where a carrier is not seeking additional numbering resources, and that when seeking additional numbering resources this fill rate requirement will apply to the carrier's average NXX code utilization within a rate center rather than apply separately to each NXX code in that rate center; or, alternatively, (ii) waive the fill requirements in this instance. Either way, AWS respectfully requests that the Department direct NeuStar to permit the transfer of the 617-794 NXX code from the Cambridge to the Boston rate center.

Procedural and Factual Background.

On January 26, 2000, the Department issued a Letter Order containing certain directives concerning pooling eligible blocks and fill-rate ratios. ("the January

Untitled

26th Letter Order") The Department ruled that to obtain new NXX codes carriers would first have to reach a 75% utilization rate, and must also demonstrate that they are within 6 months to exhaust. The Department adopted a waiver provision for carriers that could not meet both the 75% fill-rate ratio and the six months to exhaust requirements and acquire sufficient numbering resources to meet projected demand.

On or about April 16, 2000, AWS submitted a Central Office code (NXX) Assignment Request to the North American Numbering Plan Administrator (NANPA) requesting that the code administrator change the rate center designation of one of the codes already held by AWS, 617/794, from Cambridge to Boston. At the direction of NANPA, AWS also submitted a copy of its request together with a months to exhaust calculation and a utilization report to the Department. On April 25, 2000, NANPA denied AWS' request to change the rate center designation based on the Department's review. Upon further discussion with the Department staff, AWS learned that the reason its rate center change request was denied was that its utilization in one of its Boston rate center codes was not yet at 75% -- even though AWS' overall utilization for the Boston rate center is well in excess of 75% and its numbering resources in that rate center will exhaust in considerably less time than six months. See the accompanying Affidavit of Terry Elison, which contains proprietary and confidential information.

Argument.

I. The Department Should Clarify That Its Letter Order of January 26 Does Not Apply In These Circumstances.

A. The Department Should Clarify that its 75% Fill-Rate Ratio Does not Apply to Numbering Resources Already Held by a Carrier.

As an initial matter, AWS does not believe that the Department's NXX code fill rate-ratios should apply to situations such as the instant one, where there is no request for an additional code. The fact that the fill rate requirement was intended to apply only those instances where the carrier is requesting additional resources is made clear in the Department's January 26th Letter Order. In describing the utilization requirement that Letter Order states:

"[T]he FCC granted the Department the authority to require network numbering exhaust ("NXX") code applicants to demonstrate that they have met certain fill-rate ratios before obtaining additional numbering resources."

"The Department adopts a 75% fill-rate ratio requirement for all carriers in order to obtain growth codes."

"Only upon reaching an overall utilization rate of 75% for the NXX a carrier may request from NANPA an additional NXX for that rate center."

Letter Order of 1/26/2000 (emphasis added). In addition, it is clear that the Department's authority from the FCC to establish fill-rate requirements extends only to situations where the carrier is requesting a new code from NANPA. In this regard the FCC's order states that: "[s]ubject to the conditions set forth below, we hereby delegate authority to the Department to require NXX code applicants to demonstrate that they have met certain fill rates prior to obtaining additional numbering resources, even in non-jeopardy NPAs." (1)

In this instance AWS has not asked NANPA for any more codes; it is not seeking to acquire any additional numbering resources. Instead AWS is simply trying to use its existing NXX codes more efficiently by moving one of the codes assigned to it to a rate center where it is needed more critically. Accordingly, AWS first asks that the

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Department confirm that its Letter Order was not meant to extend to situations where carriers are not requesting additional code resources.

B. The Department Should Clarify that its 75% Fill-Rate Ratio Was Not Meant to Apply to Each NXX in a Rate Center

In addition, AWS requests that the Department clarify that its January 26th Letter Order was not meant to require carriers to reach a 75% utilization rate ratio in each of its codes in a rate center, but rather to require carriers to reach an overall 75% average utilization rate across all of the codes in the rate center. Although the Department's letter order could be read to require a 75% utilization rate in every code, it seems unlikely that the Department intended such a result, since it would encourage extremely inefficient utilization of numbers and would result in large number of waiver petitions to the Department.

AWS assigns telephone numbers so as to use NXX codes as completely and efficiently as possible. AWS attempts to use up as many numbers as it can (not just 75%) in one open NXX before it goes to the next. (2) The following chart depicts a typical utilization pattern for an AWS rate center:

NXX	A	B	C	D	E	F	G	H	I	J	Total
Assigned Numbers	8551	9786	9128	9887	8968	9450	9221	9732	277	0	75,000
%	86%	98%	91%	99%	90%	95%	92%	97%	3%	0%	75%

If the Department were to require that carriers achieve a 75% utilization in each of its NXXs before it could apply for additional numbering resources, AWS would have an incentive to instead use its numbers in the following manner:

Block	A	B	C	D	E	F	G	H	I	J	Total
Assigned Numbers	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	75,000
% Utilization	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%

This is not a desirable result because it would require carriers to use their numbers in an inefficient manner, and it could reduce the number of whole NXXs available for reclamation and possibly the number of uncontaminated or lightly contaminated 1000 blocks ultimately available for pooling. Moreover, because carriers historically have not used their numbers in this manner, the application of the utilization rate to each NXX will undoubtedly increase the number of waiver petitions carriers will need file at the Department - even in those circumstances such as AWS' where there need for additional numbering resources is unquestionable.

Moreover, if the Department were to interpret its Letter Order to require utilization in each NXX in a rate center to reach 75%, such an interpretation would be inconsistent with the FCC's recent Numbering Resource Optimization order which clearly requires utilization rate to be calculated on a rate center basis. (3) Accordingly AWS also respectfully asks the Department to clarify that its utilization rate criteria (and months to exhaust criteria) apply on a rate center, not NXX, basis.

II. In the Alternative, the Department Should Grant AWS a Waiver from the 75 % Fill-Rate Ratio Requirement.

In the alternative, AWS requests that the Commission grant AWS a waiver of the 75% fill rate ratio requirement. As explained below, and in the confidential Affidavit of Terry Elison filed herewith, AWS' overall utilization rate for all of its codes in the Boston rate center far exceeds 75%. In addition AWS reasonably expects to run out of assignable telephone numbers in the Boston rate center in less than two months.

Because a change in rate center designation takes 45 days, AWS is already perilously close to running out of numbers in the Boston rate center even if the Commission

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grants its petition immediately. If the Department requires AWS to wait to reach a 75% utilization rate in its last code before authorizing the rate center change, AWS will undoubtedly run out of numbers to serve customers from its Boston rate center. Such a result would contravene the FCC's mandate to all state commissions "to ensure that consumers are never foreclosed from exercising their choice of carrier because that carrier does not have access to numbering resources." (4)

Conclusion.

AWS' need for additional numbering resources in the Boston rate center is without question. AWS is not asking the Department to authorize NANPA to allocate it an additional code from the dwindling supply of 617 codes. Instead, AWS is seeking to use the codes it already has been allocated in a more efficient manner.

Accordingly AWS respectfully requests that the Department:

clarify that (i) its 75% fill-rate ratio does not apply to numbering resources already held by the carrier; and (ii) its 75% fill-rate ratio (and months to exhaust) criteria were meant to apply on a rate center, not NXX, basis; or, in the alternative,

grant AWS a waiver of its 75 % fill-rate ratio request.

In addition, the Department should direct NANPA to grant AWS' application to change the rate center designation for code 617/794 from Cambridge to Boston

Respectfully submitted,

Jeffrey F. Jones

Laurie S. Gill

Kenneth W. Salinger

Palmer & Dodge LLP

One Beacon Street

Boston, MA 02108-3190

(617) 573-0100

Robert Aurigema

AT&T Communications of New England, Inc.

32 Avenue of the Americas, Room 2700

New York, NY 10013

(212) 387-5627

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Suzanne Toller
AT&T Wireless Services
795 Folsom Street, Room 670
San Francisco, CA 94107
(415) 442-5587

Dated: May ___, 2000.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on May ___, 2000.

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1. 1 Order FCC 99-246, In the Matter of Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617 781, and 978 Area Codes, CC Docket No. 96-98, ¶ 31 (released Sept. 15, 1999).
 2. 2 The Department should note though that because of the relatively high rate of "churn" in the wireless market, wireless carriers rarely will have 100% utilization in any of their NXXs.
 3. 3 In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, Report and Order No. FCC 00-104, ¶ 105 (released March 31, 2000).
 4. 4 In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, Report and Order No. FCC 00-104, ¶ 171 (released March 31, 2000).