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OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

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July 26, 2000

To: Massachusetts LNP and Wireless Carriers

## **I. Introduction**

On January 27, 2000, pursuant to the authority delegated to the Massachusetts Department of Telecommunications and Energy ("Department") by the Federal Communications Commission ("FCC"),<sup>(1)</sup> the Department issued a Letter Order ("Letter Order") which required carriers to place all thousands-blocks in the 508, 617, 781, and 978 area codes with contamination rates<sup>(2)</sup> of less than or equal to 10 percent in a holding category, to make those blocks inaccessible to sales, marketing, or customer service personnel, and to utilize those blocks only in accordance with the fill-rate ratios described in the Letter Order (Letter Order at 2). The Letter Order also required carriers seeking growth codes in the 508, 617, 781, and 978 area codes to demonstrate compliance with a 75 percent fill-rate<sup>(3)</sup> requirement when applying for a growth code (Letter Order at 3).

## **II. Procedural Background**

On February 15, 2000, AT&T Communications of New England, Inc. ("AT&T") filed a "Motion for Partial Reconsideration of the January 27, 2000, Letter Order, to Accommodate Specific Customer Numbering Requirements" ("Motion"). In its motion, AT&T requests that the Department revise its Letter Order to provide that, in order to meet a specific customer requirement, a carrier may assign one or more telephone numbers from a minimally contaminated or an uncontaminated thousands-block of numbers, and if necessary may obtain an additional thousands-block, even if the 75 percent fill-rate requirement is not met (Motion at 1).

On February 25, 2000, the Department issued a Call for Comments on AT&T's Motion for Partial Reconsideration. Nextel Communications, Inc. ("Nextel") filed comments in support of the Motion on March 3, 2000. RCN-BecoCom, L.L.C. ("RCN") and MCIWorldCom, Inc. ("MCIW") also filed comments in support of the Motion on March 6, 2000. The Massachusetts Office of the Attorney General ("Attorney General") filed comments in opposition on March 6, 2000. On March 7, 2000, Bell Atlantic Massachusetts ("BA-MA") filed comments in support. On March 13, 2000, both AT&T and the Attorney General filed reply comments. AT&T filed a supplement to its Motion on April 5, 2000. On April 18, 2000, the Attorney General filed a rebuttal to AT&T's supplemental filing.

On April 26, 2000, the Department issued an Order determining that implementation of thousands-block number pooling ("TNP") trials would not forestall the need for new area codes, thus declining to implement TNP and directing the implementation implement of four new overlay area codes in Eastern Massachusetts.<sup>(4)</sup>

On March 31, 2000, the FCC issued its "Report and Order and Further Notice of Proposed Rulemaking" In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 00-104 ("Report and Order"). The Report and Order establishes a framework for the implementation of national TNP trials and also addresses the issues of fill-rates and utilization thresholds.

### **III. Positions of the Parties**

In its Motion, AT&T contends that without a provision to meet potential customer specific requirements, any number assignment guidelines would have the inadvertent effect of giving some carriers an unfair competitive advantage, based solely on the fact that they have

access to available numbering resources which their competitors do not (Motion at 2). Further, AT&T argues that the Delegation Order requires the Department to ensure that its fill-rate ratio requirements do not prevent carriers from meeting specific customer needs (id. at 3).<sup>(5)</sup> It is AT&T's position that local exchange carriers do not commit any abuse by meeting the legitimate needs of their customers and ensuring that customers have access to the numbering resources they require (AT&T Reply Comments at 2). According to AT&T, if a customer requires only a few numbers that must be provided out of a currently uncontaminated or minimally contaminated block, that block should still remain available for pooling (id. at 3).

Concerning the FCC's Report and Order, AT&T contends that it requires a flexible enforcement of the sequential numbering requirement, mandating that carriers first assign all available telephone numbers within an opened thousands-block before opening another thousands-block, unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request (AT&T's Supplement to the Record at 1). Furthermore, AT&T recommends adopting these national guidelines immediately, despite the fact that state commissions have until January 1, 2001 to bring their procedures into conformity with the national guidelines on sequential number assignment (id. at 2).

In support of AT&T's Motion, BA-MA argues that by imposing a fill-rate, the

Department has asserted control over the method by which carriers assign and administer telephone numbers within the NXXs or thousands-blocks already allocated to them (BA-MA Comments at 2). BA-MA contends that such action is not only unduly restrictive for carriers, but may also expand the scope of the Department's interim authority to consider a carrier's fill rate in relation to growth codes (*id.*). BA-MA agrees that using fill-rate ratios may unnecessarily impede a carrier's ability to manage its numbering resources to adequately meet its customers' needs, and that the sequential use of thousands-blocks may restrict a carrier's ability to fulfill customer requests for a particular number or series of numbers that already reside in a carrier's inventory (*id.* at 3). MCIW argues that the Letter Order fails to adequately address those instances in which a consumer's carrier preference conflicts with that carrier's obligations under the Letter Order, and therefore does not adequately protect consumers (MCIW Comments at 1). Furthermore, MCIW states that state-specific guidelines are not an adequate solution to the country's number shortage problem (*id.* at 2). Nextel contends that the number assignment parameters set forth in the Letter Order do not provide the flexibility necessary for carriers to accommodate special customer's numbering needs (Nextel Comments at 2). RCN contends that the competitive impact of imposing fill rates and utilization thresholds on carriers across the board is detrimental to new market entrants given the current state of the marketplace (RCN Comments at 3,4).

In opposition to the Motion, the Attorney General states that the Department's current fill-rate and waiver requirements ensure the prudent allocation of number resources while providing carriers with needed numbers upon proper request (Attorney General's Comments at 2; Reply Comments at 3). Furthermore, the Attorney General contends that a waiver is available for carriers whose numbering resources will not meet projected demand, and that carriers will still have a mechanism to secure adequate resources for justified requests (Attorney General's Comments at 3). The Attorney General is concerned that, if granted, the Motion would encourage abuse of numbering resources and eliminate the oversight which currently discourages carriers from contaminating thousands-blocks (*id.* at 3,4). The Attorney General states that if the waiver requirement is removed, carriers will be able to request and open a new NXX code or thousands-block at will and then contaminate the block, making the block unavailable for pooling to other carriers (*id.* at 4). In rebuttal to AT&T's Supplement to the Record, the Attorney General states that granting the Motion would eliminate the Department's existing waiver procedures and allow AT&T and all other carriers to contaminate entire thousands-blocks to satisfy customer-specific number requests without demonstrating to the Department a legitimate need to open new blocks (Attorney General's Rebuttal at 2,3).

#### **IV. Analysis and Findings**

#### A. Specific Customer Requests/Sequential Number Assignment

The Department's Letter Order requires carriers to achieve a 75 percent fill-rate in each contaminated thousands-block before assigning numbers from another contaminated thousands-block; carriers may then begin assigning numbers from minimally contaminated thousands-blocks, until achieving a 75 percent fill-rate in each minimally-contaminated thousands-block (Letter Order at 3). Only after achieving a 75 percent fill-rate in the contaminated and minimally-contaminated blocks may carriers begin assigning numbers from uncontaminated thousands-blocks (id.). The Letter Order contains a waiver provision enabling carriers to assert that they could not meet both the fill-rate requirement and the months-to-exhaust requirement and continue to meet customer demand for numbers (id.).

AT&T seeks to change this sequential number assignment procedure through its Motion. AT&T argues that the Department's current sequential numbering procedure has an inadvertent anti-competitive effect, and that in any case the Department's interim authority has been superseded by the FCC's Report and Order, which provides for the accommodation of specific customer requests in the sequential numbering process (AT&T Motion at 2; AT&T Supplement to the Record at 1).

AT&T is correct that the FCC's treatment of the sequential number assignment issue in the Report and Order supersedes the FCC's interim delegation of authority to the Department. Although states are given until January 1, 2001, to bring their sequential numbering assignment policies and procedures into conformity with the procedures in the Report and Order,<sup>(6)</sup> the Department finds no reason to delay. Once the FCC has superseded interim delegations of state authority, there is no justification for states to maintain a patchwork of expiring state-level policies; the Department finds that prompt compliance with the FCC's directives furthers the goal of increased competition by accelerating the realization of a consistent, nationwide numbering resource optimization framework. Effective as of the date of this Order, the Department adopts the sequential number assignment rules contained in the Report and Order. From now on, carriers shall "...assign all available telephone numbers within an open thousands-block before opening another thousands-block, *unless the available numbers in the opened thousands-block are not sufficient to meet a customer request.*" (Emphasis added) (Report and Order at ¶ 244).

The FCC's procedures provide increased flexibility for carriers by allowing them to accommodate a specific customer request without going through the formal Department waiver process. However, the FCC rules also require carriers to assign "...*all* available telephone numbers..." (emphasis added) in an open thousands-block before opening another thousands-block. Because the FCC found that sequential number assignment "...may improve carrier efficiency in utilizing numbering resources, regardless of whether pooling is implemented,"<sup>(7)</sup> the Department's April 25, 2000 Order declining to implement number pooling in Eastern Massachusetts does not negate the Department's existing requirement for sequential number assignment.

Although AT&T's Motion concerned only the sequential numbering issue, the Department takes this opportunity to examine all of those aspects of its delegated authority which have been affected by the FCC's Report and Order.

#### B. Growth Codes

The FCC delegated to the Department the authority to impose a fill-rate requirement on carriers seeking growth codes (Delegation Order at 35). The INC Central Office Code (NXX) Assignment Guidelines<sup>(8)</sup> define an additional code for growth as:

A code assigned to a switching entity or point of interconnection subsequent to the assignment of the first code (See: Initial Code), for the same purpose as a code that was previously assigned to the same switching point or point of interconnection. A "Growth Code" is requested when the line numbers available for assignment in a previously assigned NXX code will not meet expected demand.

## CO Code Assignment Guidelines at § 13.0.

According to this definition, an NXX from within a carrier's existing inventory which is moved by the carrier from one rate center to another, or from one switch to another switch within the same rate center, may be considered a growth code in the new switch. The FCC's Delegation Order did not distinguish between growth codes which represent the assignment of new numbering resources and growth codes which represent a carrier's re-allocation of existing inventory; therefore, the Department has been reviewing all applications for growth codes and applying the fill-rate requirement to carriers' re-allocations of pre-existing numbering resources as well as carriers' requests for additional numbering resources.

The FCC's Report and Order, however, makes a distinction between the two different types of growth codes by referring repeatedly to "additional numbering resources" when discussing growth codes<sup>(9)</sup>. The Department interprets the Report and Order to impose a fill-rate requirement *only* on those growth codes which represent applications for new numbering resources, not on growth codes which represent a re-allocation of a carrier's existing resources.

The FCC's delegation of authority to the Department was made on an interim basis, subject to future decisions in the FCC's Numbering Resource Optimization proceeding (Delegation Order at ¶ 1). Therefore, the Department takes this opportunity to bring its fill-rate regime into compliance with the policy expressed in the Report and Order. Hereafter, the Department will not apply the fill-rate requirement to those growth codes which are the result of a carrier's re-allocation of pre-existing numbering resources. The Department will only apply the fill-rate requirement to those growth code applications in which the carrier seeks the assignment of a new NXX from NANPA.

The goal of number resource conservation is to provide carriers with the tools and the incentives to use their resources more efficiently. This decision is consistent with the

policy expressed by the FCC, and encourages efficient number usage by allowing carriers to transfer existing numbering resources to areas of greater consumer demand.

The Department concludes that the vigorous enforcement of existing NXX reclamation procedures will provide an adequate safeguard against carriers' stockpiling of inventory. However, the Department reserves the right to re-examine this decision if the Department obtains evidence of carriers repeatedly re-rating NXXs from switch to switch in order to maintain a "shadow inventory" of numbers.

### C. Fill-Rate Requirement

The Department's Letter Order requires carriers to achieve a 75 percent fill-rate in every NXX in the relevant rate center before they may apply for a growth code in that rate center (Letter Order at 3). The FCC's Report and Order determined that a carrier's utilization level should be calculated by "...dividing all *assigned numbers* (numerator) by total numbering resources assigned to that carrier in the appropriate geographic region (denominator), and multiplying the result by 100." (Report and Order at ¶ 109). The FCC's procedure thus differs from the procedure currently employed by the Department by looking at the average utilization across the entire rate center, rather than requiring that a specific fill-rate be achieved in each individual NXX. The FCC's delegation of authority to the Department was made on an interim basis, subject to future decisions in the FCC's Numbering Resource Optimization proceeding (Delegation Order at ¶ 1). The Department therefore holds that the fill-rates of all future growth code requests (as well as any growth code requests pending before the Department as of the date of this Order), shall be determined on a rate center-wide basis for all carriers, including wireless carriers, instead of on the level of each individual NXX code within the rate center or NPA.

Applying a fill-rate requirement to each NXX within a rate center rather than to the aggregate of all NXXs within a rate center creates a perverse incentive for carriers to use their numbering resources less efficiently. For example, Carrier A has 10 NXXs in a rate center, and has achieved a fill-rate of 75 percent in each NXX, thus resulting in an overall fill-rate of 75 percent for that rate center. Under the Department's old procedural regime, Carrier A would be granted a growth code. Carrier B has 10 NXXs in a rate center, and has achieved a fill-rate of 97 percent in 9 of the codes, and a fill-rate of 10 percent in the



10<sup>th</sup> NXX. Under the Department's old procedural regime, Carrier B would be denied a growth code because it had not achieved a fill-rate of 75 percent in the 10<sup>th</sup> NXX, despite the fact that Carrier B's overall fill-rate for the rate center was 88 percent, higher than Carrier A's fill-rate. Calculating fill-rates based on the aggregate data for the entire rate center rather than by each individual NXX advances the Department's goal of more efficient number usage by eliminating the unintended incentive for the inefficient use of numbering resources.

The FCC's Report and Order requires carriers seeking growth numbering resources to report their utilization level as a percentage (Report and Order at 104). The Department's Letter Order requires carriers seeking growth numbering resources to do more than report an unsupported percentage; carriers must provide current utilization data broken down at the thousands-block level, and the Department calculates the fill-rate from the data provided by the carriers (Letter Order at 3).

The Department has considered its more comprehensive data requirement in light of the FCC's decision to allow carriers to self-certify their utilization rates. The Department has determined that our more comprehensive data requirement is consistent with FCC policy as expressed in the Report and Order and furthers the goal of efficient number usage, and therefore will be retained. Although the FCC permits carriers to report their utilization levels as a percentage, apparently without supporting documentation, the FCC later notes that any carrier not following the Report and Order's strict sequential numbering rules must be prepared to submit supporting documentation to the state commission (Report and Order at

¶ 245). Because the comprehensive utilization data currently required by the Department is the best means to verify that carriers are indeed abiding by the FCC's strict sequential number assignment rules, and because sequential number assignment rules are a valuable tool in the battle for efficient number usage, the Department will continue to require carriers seeking additional growth numbering resources to provide utilization data at the thousands-block level.

Finally, the Report and Order established the procedures for the application of a uniform national fill-rate, but left the precise fill-rate percentage open to further comment. According to the FCC, every party that chose to recommend a specific utilization threshold recommended a threshold between 60 percent and 90 percent.<sup>(10)</sup> The Department's 75 percent fill-rate falls in the middle of the range suggested by the commenters; therefore, until further notice from the FCC, the Department will continue to enforce a 75 percent fill-rate.

#### **D. Holding Categories**

In order to ensure that the greatest possible number of thousands-blocks would be available for TNP, the Letter Order required carriers to place uncontaminated and minimally-contaminated thousands-blocks in a holding category (Letter Order at 2). Because the Department determined in its Area Code Order that the area codes in Eastern Massachusetts were too depleted for TNP to be feasible, the Department hereby rescinds the requirement that carriers place uncontaminated and minimally-contaminated thousands-blocks in holding categories. Carriers are reminded, however, that the sequential numbering and fill-rate requirements still apply.

#### **V. Order**

Therefore, AT&T's Motion for Partial Reconsideration is granted to the extent discussed above, and all Massachusetts LNP and Wireless carriers are directed to bring their procedures into compliance with the directives contained in this Order.

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

1. 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, FCC 99-246, NSD File No. L-99-19 (September 15, 1999) ("Delegation Order").

2. A contaminated block is an NXX code with as few as one number assigned. Under the Industry Numbering Committee's ("INC") guidelines, the Department may reclaim any thousands-blocks with ten percent or less contamination (i.e., less than 100 numbers assigned in a block of 1000 NXX numbers) for the purposes of number pooling.

3. A "fill-rate" measures how efficiently a carrier is using its numbering resources by comparing the total sum of telephone numbers in a carrier's inventory to the sum of that carrier's telephone numbers actually assigned to customers. Fill-rates slow the need for new area codes by requiring carriers to demonstrate prudent use of their numbering resources before applying for growth codes.

4. Petition of Lockheed Martin IMS, the North American Numbering Plan Administrator, for area code relief for the 508, 617, 781, and 978 area codes in Eastern Massachusetts, D.T.E. 99-11; 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 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, FCC 99-246, NSD File No. L-99-19 (September 15, 1999), D.T.E. 99-99 (April 25, 2000).

5. Paragraph 9 of the Delegation Order states:

Under no circumstances should the consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources.

6. Report and Order at ¶ 246.

7. Report and Order at ¶ 245.

8. The Central Office Code (NXX) Assignment Guidelines are available at [www.atis.org](http://www.atis.org).

9. Report and Order ¶¶ 101 - 105, 112

10. Report and Order at ¶ 115.