

D.T.E. 98-38

Investigation by the Department of Telecommunications and Energy on its own motion to determine the need for new area codes in Eastern Massachusetts and whether measures could be implemented to conserve exchange codes within Eastern Massachusetts.

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VOTE TO OPEN ADJUDICATION

I. BACKGROUND AND PROCEDURAL HISTORY

On April 24, 1998, the Department of Telecommunications and Energy ("DTE") opened an investigation into code conservation measures to evaluate ways to delay the need to introduce new area codes in Massachusetts.

In the order opening this investigation, the Department stated that it would address (1) where and how the existing telephone numbers have been used, (2) whether measures could be implemented to conserve exchange codes within eastern Massachusetts, and (3) whether there is a need for area code relief at this time. The Department also stated that it would look at the related issues of (1) the rationing process used for assigning the remaining exchange codes in the 508 and 617 area codes, and (2) the process by which New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic") activates exchange codes in the new 781 and 978 area codes. On May 20, 1998, the Department conducted a public hearing on this matter and accepted comments from the public, acknowledged the intervention of the Attorney General for the Commonwealth ("Attorney General"), and granted intervenor status to several carriers within the telecommunication industry (collectively, "Industry Group").⁽¹⁾

During the ensuing months, the Department has investigated the issues set forth in its April 24 order. The Department held a technical conference on June 1, 1998, to discuss virtual pooling as one method of code conservation. The Department issued subpoenas duces tecum to all carriers requesting information that would allow the Department to conduct further analysis of virtual pooling and other conservation measures.

On June 3, 1998, the Attorney General filed a motion for an emergency ruling to preserve number conservation options for area codes 508, 617, 781, and 978 by imposing the use of virtual pooling beginning June 1, 1998.⁽²⁾ On June 5, 8, and 12, 1998, members of the Industry Group filed comments and oppositions to the Attorney General's motion. On June 15 and 16, 1998, members of the Industry Group also filed comments on the virtual pooling method as proposed by Lockheed. On June 16, 1998, the Attorney General filed comments on virtual pooling, along with a reply to the Industry Group's comments on his motion for emergency ruling.

On July 14, 1998, the Industry Group⁽³⁾ filed a proposal ("Industry Proposal") with the Department, which was intended to preserve numbering resources through voluntary industry compliance should thousands block telephone number pooling be implemented. On July 23, 1998, the Attorney General presented his comments on the Industry Proposal and submitted a revised proposal. The Department also issued discovery to the Industry Group regarding its proposal. The Industry Group filed responses to discovery on September 23, 1998.

On September 28, 1998, the Federal Communications Commission ("FCC") issued a Memorandum Opinion and Order in which it outlined state commission authority to order the implementation of exchange code conservation methods. In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the

Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 98-224, NSD File No. L-97-42 (published November 16, 1998, Fed. Reg.) ("Pennsylvania Ruling"). The FCC held that a state commission must decide on a specific form of area code relief and establish an implementation date for that relief before it can impose an exchange code rationing plan (Pennsylvania Ruling at par. 54). The FCC stated that the Telecommunications Act of 1996 ("Act") gave the FCC "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." 47 U.S.C. § 251(e)(1). The FCC may delegate some part of this authority to a state commission, but the Pennsylvania Ruling made clear that without such delegated authority, a state commission cannot regulate exchange code allocation or assignment (Pennsylvania Ruling at par. 54).⁽⁴⁾ Until the FCC issued this decision, the Department had been investigating several types of code conservation measures, including virtual pooling and rate center consolidation, as ways to delay implementation of new area codes in eastern Massachusetts. The FCC's order in the Pennsylvania Ruling altered the Department's code conservation efforts and required the Department to refocus on rate center consolidation in an adjudicatory framework.

On January 11, 1999, the Department opened an investigation, docketed as D.T.E. 99-11, to review alternative area code relief plans proposed by Lockheed, the North American Numbering Plan Area Code Administrator, for the 508, 617, 781, and 978 area codes in Eastern Massachusetts. This docket was opened in response to the approaching exhaust dates for these area codes. The Department will conduct several public hearings on the proposed relief plans. The date of implementation of the appropriate relief plans will depend in part on the Department's success in code conservation measures such as rate center consolidation.

II. VOTE TO OPEN ADJUDICATION

The Department recognizes the restrictions placed on its jurisdiction by § 251(e)(1) of the Act. While this section and the FCC's decision on delegation may limit the Department's ability to order the implementation of certain code conservation measures, rate center consolidation remains within the Department's jurisdiction.⁽⁵⁾ At this time, given the jeopardy status in each of the four area codes in Eastern Massachusetts, the impending exhaust dates for these four area codes, and the FCC's restrictions on code conservation measures, the Department will further investigate rate center consolidation in an adjudicatory framework.

We interpret the Pennsylvania Ruling as allowing voluntary implementation of measures to prolong the life of area codes in Eastern Massachusetts, as has already been accomplished through implementation of the Industry Group's Proposal. Such voluntary measures will also be investigated in this docket.

The Department will conduct a public hearing and procedural conference at its offices at 100 Cambridge Street, Boston, Massachusetts, on **Friday, February 12, 1999, at 10:00 a.m.** A procedural schedule will be established following the procedural conference. This

investigation will be conducted as an adjudication. Parties to D.T.E. 98-38 will be accorded full party status in the adjudication without further need to intervene. Other interested parties may intervene pursuant to the procedures in the attached legal notice.

Accordingly, the Department

VOTES: To open an adjudicatory proceeding to investigate rate center consolidation and voluntary conservation measures, and it is hereby

ORDERED: That the Hearing Officer in this investigation shall publish the attached

Legal Notice and schedule a public hearing and procedural conference pursuant to the schedule set forth in the Notice.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. The intervenors include Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS"), Bell Atlantic Mobile, MCI Telecommunications Corporation, now MCI WorldCom ("MCI"), Bell Atlantic, AT&T Communications of New England, Inc., ("AT&T") and Wireless PCS, Inc., a wholly-owned subsidiary of AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services ("AT&T Wireless"), Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One ("Cellular One"), SAS Security Systems, Nextel Communications of the Mid-Atlantic, Inc. ("Nextel"), Omnipoint Communications MB Operations, LLC ("Omnipoint"), RCN-BecoCom, L.L.C. ("RCN"), Teleport Communications, SNET Cellular, Inc. ("SNET Cellular"), Teligent, Inc. ("Teligent"), MediaOne Telecommunications of Massachusetts, Inc. ("MediaOne"), Sprint, New England Cable Television Association, Inc. ("NECTA"), and XCOM Technologies, Inc. ("XCOM").
2. Currently, the Numbering Plan Area Code Administrator, Lockheed Martin IMS ("Lockheed"), assigns telephone numbers in blocks of 10,000 for each rate center in which a carrier wishes to conduct business, regardless of the actual numbers needed. Under the virtual pooling approach, numbers would be assigned to carriers in blocks of 1,000, rather than 10,000.
3. RCN-BecoCom and XCOM did not join in the Industry Proposal. Omnipoint, Teligent, and Teleport later joined in the Industry Proposal.
4. On December 1, 1998, the FCC granted the California Public Utilities Commission temporary authority, as authorized in the Pennsylvania Ruling, to continue to conserve exchange codes through a monthly lottery process before adoption of an area code relief plan.
5. The Department is petitioning the FCC for a waiver from the FCC's delegation restrictions to increase the number of code conservation options available to the Department.