

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of a Proposed Rulemaking to)	
Create Chapter 37 – Number Pooling and)	Case No. TX-2007-0086
Number Conservation Efforts)	

COMMENTS OF WIRELESS CARRIERS

T-Mobile Central LLC, d/b/a T-Mobile, Verizon Wireless, Cingular Wireless, and Sprint Nextel Corporation (collectively “Wireless Carriers”) by their attorneys, file these comments in response to the Notice of Finding of Necessity and Setting Local Public Hearings (“Notice”) issued by the Missouri Public Service Commission (“Commission”) on September 26, 2006. In the Notice, the Commission seeks comment on the proposed adoption of rules governing number pooling (“pooling”) and number conservation.¹

The Wireless Carriers fully support the Commission’s goal of ensuring that numbering resources are utilized as efficiently as possible throughout Missouri. However, the specific rules the Commission has proposed are not the best means to achieve its goals. Specifically, proposed rules 240-37.020(2), 030(2)-(4), 37.050, and 37.060 are problematic for several reasons: (1) the Commission lacks the jurisdiction to adopt the proposed rules; and (2) the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that would interfere with the Commission’s goals. If the Commission is merely seeking to codify in rules the grants of federal authority that it has previously received, the proposed rules need to be changed to explicitly codify these changes. The Wireless Carriers look forward to working with

¹ Proposed Rules, Missouri Register, 1758-1764 (Nov. 1, 2006).

the Commission under the existing regulatory framework to ensure that numbering resources are utilized as efficiently as possible in Missouri.

I. MISSOURI LACKS THE AUTHORITY TO ADOPT SOME OF THE PROPOSED RULES.

Several of the proposed rules exceed the limited grant of authority delegated to the Missouri Commission and should not be adopted.² In the Telecommunications Act of 1996, (the “1996 Act”), Congress explicitly granted the Federal Communications Commission (“FCC”) “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,”³ but authorized the FCC to “delegat[e] to State commissions or other entities all or any portion of such jurisdiction.”⁴ The FCC has exercised its exclusive jurisdiction by adopting a uniform nationwide federal numbering framework and by delegating specific and limited elements of numbering administration that are generally consistent with this federal numbering framework.⁵ The FCC stated, “[a]lthough we have delegated to the states certain elements of numbering administration, such as implementing area code relief, that are local in nature, numbering resource optimization policy is part of our role as guardian of the nationwide [North American Numbering Plan] resource.”⁶ The federal rules and orders also make clear that,

2 In addition, to the extent the Commission also relies on state law as a basis to impose these rules, the Commission does not have jurisdiction over wireless carriers. See 386.020 RSMo Supp. 2004.

3 47 U.S.C. § 251(e)(1).

4 Id. See also Implementation of the Telecommunications Act of 1996: Telecommunications Carrier’s Use of Customer Proprietary Network Information and other Customer Information, 14 FCC Rcd 15550, ¶130 (1999) (“Congress vested exclusive authority over the administration of numbers in this [Federal Communications] Commission, thus subjecting State regulation of numbering to Commission review.”).

5 See, e.g., Numbering Resource Optimization, 21 FCC Rcd 1833 (2006) (granting petitions for delegated authority over numbering conservation methods from the Michigan, Missouri, Nebraska, Oklahoma and West Virginia state commissions) (“2006 Delegation Order”); Numbering Resource Optimization, 16 FCC Rcd 5474 (2001) (granting petitions for delegated authority to implement number conservation methods from the Minnesota, Missouri, Oklahoma, Tennessee, Vermont and West Virginia state commissions) (“2001 Delegation Order”); Numbering Resource Optimization, 15 FCC Rcd 23371 (2000) (granting petitions for delegated authority to implement number conservation methods from the Arizona, Colorado, Georgia, Indiana, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Virginia and Washington state commissions) (“2000 Delegation Order”).

6 Numbering Resource Optimization, 15 FCC Rcd 7574, 7580 ¶17 (2000) (“First Numbering Order”).

absent a specific delegation of authority from the FCC, a state commission has no authority to adopt rules regarding numbering administration, implement number conservation measures, or depart in any way from the federal numbering regulatory framework.⁷

Consistent with the federal numbering regulatory framework, this Commission has, at various times, petitioned the FCC for delegated authority to implement specific numbering conservation measures, and the FCC has granted certain of the Commission's petitions.⁸ In addition to general delegations of authority applicable to all states, the FCC has delegated to the Missouri Commission the authority:

- "to implement new area codes"⁹;
- "to order NXX code rationing only in conjunction with area code relief decisions, if the industry has been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief"¹⁰;
- "to order continuation of a rationing plan for six months following implementation of area code relief"¹¹;
- "to hear and address claims for an extraordinary need for numbering resources in an NPA subject to a rationing plan"¹²;
- "to implement thousands-block number pooling in the 314 NPA,"¹³ "a thousands-block number pooling trial in the 816 NPA"¹⁴, and mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs."¹⁵

7 *First Numbering Order* at 7651, ¶170 ("Similar to the procedure employed in our delegations of authority to implement number conservation measures, including thousands-block pooling, states seeking such authority must individually petition us for such authority.").

8 See, e.g., *2006 Delegation Order* (granting the Missouri Public Service Commission's Petition for Additional Delegated Authority to implement Number Conservation Measures in the 417, 573, 636 and 660 area codes); *2001 Delegation Order* (granting the Missouri Public Service Commission's Petition for Delegation of Authority to Implement Number Pooling in the 816 Area Code); *2000 Delegation Order* (granting the Missouri Public Service Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 314, 417, 573, 636, 660 and 816 Area Codes).

9 *Pennsylvania Order*, ¶¶7-9 ("[T]he [FCC] authorized state commissions to perform functions associated with initiating and planning area code relief as well as adopting final area code relief plans.").

10 *Id.*, ¶24.

11 *2000 Delegation Order*, ¶¶65-66.

12 *Id.*, ¶¶56-57 ("[I]f requested, the Missouri . . . Commission[] may hear and address claims of carriers stating that they do not, or in the near future will not, have any numbering resources remaining in their inventory of numbers, and will be unable to serve customers if they cannot obtain additional numbering resources, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service.").

13 *Id.*, ¶38.

14 *2001 Delegation Order*, ¶33.

15 *2006 Delegation Order*, ¶1.

Missouri does not currently have the authority to implement any measure that does not fall within the scope of the explicit and narrow delegations of authority.

Pursuant to existing FCC delegations of authority, the Commission has the authority to require implementation of thousands-block number pooling throughout Missouri¹⁶ and to establish the procedures pursuant to which the Commission will review denials by the North American Numbering Plan Administration (“NANPA”) of a carrier’s request for additional numbering resources.¹⁷ The FCC, however, has never authorized Missouri to impose additional reporting requirements or to adopt a parallel state numbering regulatory framework. Therefore, the Wireless Carriers respectfully urge the Commission not to adopt proposed rules or make changes to 37.020(2), 030(2)-(4), 37.050, and 37.060. These rules, in addition to falling outside the scope of Missouri’s delegated authority, are fundamentally inconsistent with the national numbering regulatory framework.¹⁸ The FCC has repeatedly emphasized that numbering administration is a national concern that must be addressed on the federal level by creating uniform national rules.¹⁹

II. THE PROPOSED NUMBERING RULES CONFLICT WITH FEDERAL RULES AND POLICIES, ARE UNNECESSARY AND WOULD CAUSE UNINTENDED NEGATIVE CONSEQUENCES.

The Wireless Carriers applaud the Commission’s efforts to ensure the continued availability and equitable distribution of numbering resources in Missouri. However, the Commission can achieve all of its goals under the current national numbering regulatory

¹⁶ See 4 CSR 240-37.030(1).

¹⁷ See 4 CSR 240-37.040.

¹⁸ *Second Numbering Order* at 310, ¶4 (The FCC identified two main goals it sought to fulfill when developing the national framework for numbering regulations: (i) “ensur[ing] that carriers have the numbering resources that they need to compete and bring new and innovative services to the consumer marketplace” and (ii) ensuring that numbering resources are used efficiently.).

¹⁹ See, e.g. *First Numbering Order* at 7578, ¶3; *Pennsylvania Order*, ¶¶10, 33-34 (“If each state commission were to implement its own NXX code administration measures without any national uniformity or standards, it would hamper the NANPA’s efforts to carry out its duties as the centralized NXX code administrator.”)

framework. For example, the Commission already has the authority to review applications for additional numbering resources and FCC Form 502 Reports. The proposed requirements will: (i) result in duplicative reporting; (ii) create additional burdens; and (iii) impose unnecessary costs for both the Commission and the carriers — all without adding any value. The following paragraphs demonstrate how the Commission’s proposed numbering rules conflict with federal rules and policies, are unnecessary and would cause negative consequences.

A. CARRIER DEFINITION

The proposed rules would apply to “all carriers operating in the state of Missouri and requesting numbering resources directly from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator regardless of whether such carriers operate under the jurisdiction of the Public Service Commission.”²⁰ The proposed rules in turn define the term “carrier” as “any entity that is assigned or has requested numbering resources from the Pooling Administrator for its use.”²¹

The proposed definition of carrier makes it unclear whether an entity that obtains numbering resources directly from the NANPA, rather than a Pooling Administrator, would be subject to the proposed rules. To the extent the entity is not subject to the proposed rules because it does not meet the definition of “carrier,” the proposed rules are unreasonably discriminatory because they apply to some entities using numbering resources within Missouri and not others.

B. NEW REPORTING BURDENS

State commissions have direct access to the utilization and forecast information which carriers submit to the NANPA as required by the FCC. The FCC requires only that carriers file,

²⁰ 4 CSR 240-37.010(1).

²¹ 4 CSR 240-37.020(3).

semi-annually, a forecast and utilization report regarding the carrier's utilization of its numbering resources and anticipated need for additional resources.²² The FCC intended this report, which is filed with the NANPA utilizing the Numbering Resource Utilization Forecast form (the "NRUF"), to be the sole mechanism for reporting such information.²³ The FCC explicitly granted state commissions access to the NRUF database to ensure that the commissions have "the ability to access data on a more timely basis, and access to the data in a format that allows manipulation of the data and the creation of customized reports."²⁴ The FCC's goal was to reduce reporting obligations to the greatest extent possible rather than permit states to impose additional, state-by-state reporting obligations. For example, FCC rules permit state commissions to *reduce* the frequency of some reports, such as forecasts and utilization, but only after the state notifies and coordinates with the FCC and NANPA.²⁵ State commissions are not permitted to *increase* the frequency of reporting requirement.²⁶ The FCC intended the semi-annual NRUF filing to be the primary means for both the FCC and the state commissions to monitor compliance with the national numbering regulatory framework without unnecessarily burdening service providers.²⁷

Further, in the *First Numbering Order* the FCC explicitly limited the reporting that states could require by rejecting the North Carolina Utilities Commission's assertion that states had

²² 47 C.F.R. §52.15(f)(6).

²³ First Numbering Order at 7598, ¶52. (noting that "the NANPA shall continue to serve as the single point of contact for collection of forecast and utilization data.").

²⁴ Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, 17 FCC Rcd 252, ¶135 (2001) ("Third Numbering Order").

²⁵ 47 C.F.R. §52.15(f)(6).

²⁶ See 47 C.F.R. §§52.1 et seq.

²⁷ First Numbering Order at 7593-7609.

authority to collect utilization and forecast information in addition to the information carriers reported to the NANPA.²⁸ In rejecting this assertion, the FCC found that:

Such independent authority would undermine the purpose of establishing regularly scheduled federal reporting requirements, namely a uniform standard that all carriers could use in their record keeping and reporting activities. . . . Therefore, in granting states access to the federally ordered reports, we are eliminating the need for states to require carriers to report utilization and forecast data on a regular basis. Thus, we supersede the authority specifically delegated to some states to require such reporting.²⁹

The additional reporting requirements imposed by proposed rules 240-37.030(4)(A) and 240-37.060 are duplicative and burdensome.³⁰ For example, proposed rule 240-37.030(4)(A) requires carriers to file reports with the Missouri Commission within ten days after a carrier opens an uncontaminated thousands-block before assigning all numbers from a previously-opened thousands-block.³¹ The FCC does not require submission of any such reports and has not delegated authority to the Missouri Commission to request reports from carriers. The Missouri Commission can monitor compliance with sequential numbering by reviewing the FCC Form 502 reports of carriers.

Proposed rule 240-37.060 is similarly inefficient and unnecessary as it exceeds the FCC's reporting requirements, and would provide no useful information with respect to whether numbering resources are being utilized efficiently or in accordance with the federal regulatory framework. The mere fact that a carrier has provided numbers to another entity on an intermediate basis cannot help the Commission determine anything with respect to compliance. Moreover, this reporting requirement is likely to overwhelm the Commission with the sheer volume of reports it is likely to receive, not to mention the unnecessary burdens this places on

²⁸ First Numbering Order at 7606, ¶76.

²⁹ Id.

³⁰ 4 CSR 240-37.060(1)(A)-(B).

³¹ 4 CSR 240-37.030(4)(A).

the reporting carriers. The Commission's interests are far better served by using its resources to review FCC Form 502 reports, which contain the type of information the Commission can use to better monitor compliance with the federal numbering utilization requirements.

Lastly, the Commission's proposed rule 240-37.030(3)(B) regarding growth numbering resources similarly is unnecessary and unduly burdensome, as it requires carriers to submit more information to the Commission than they must submit to the Pooling Administrator.³² The Commission can obtain a copy of the carrier's application for growth number resources and compare that to the carrier's most recent FCC Form 502.

C. RECLAMATION

Proposed rule 240.37-050 differs from the FCC's number reclamation rules creating unnecessary confusion. Proposed rule 240-37.050(2) requires carriers to donate thousand-blocks that are less than ten percent contaminated³³ and prohibits carriers from maintaining more than a six-month inventory in the rate centers in which the carrier provides service.³⁴ The FCC rules explicitly address this exact issue. The structure and wording of the proposed rule differs from the FCC's rules,³⁵ which unnecessarily creates the potential for inconsistencies and conflict between the federal and state rules.

D. AUDITS

The Commission's proposed rule 240-37.060(2) describing the Commission's right to audit carriers also conflicts with the audit authority granted to the Commission by the FCC. Specifically, the proposed rule permits the Commission to collect from carriers, at any time,

³² 4 CSR 240-37.030(3). Compare with 47 C.F.R. §52.15(g)(3).

³³ 4 CSR 240-37.050(2).

³⁴ 4 CSR 240-37.050(2)(B).

³⁵ 47 C.F.R. §52.15(g)(3)(iii) ("All service providers shall maintain no more than a six-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.") and 47 C.F.R. §52.20(c) (requiring service providers to donate thousands-blocks with ten percent or less contamination).

several categories of information including number utilization, number utilization forecasts and historical trend information.³⁶ As discussed above, states cannot require carriers to engage in additional reporting beyond the NRUF report. Although the FCC acknowledged that state commissions may at times need to obtain additional information in order to audit specific carriers, the FCC noted that audits would be permissible only if they were not implemented as regular reporting requirements.³⁷

III. CONCLUSION

For the reasons set forth above, the Wireless Carriers respectfully request that the Commission not adopt the proposed rules. The Wireless Carriers urge the Commission instead to work with carriers to expand number pooling in the NPAs of 417, 573, 636 and 660 as directed by the FCC's recent expansion of number pooling authority, and continue the existing national numbering regulatory framework to ensure that numbering resources are used as efficiently as possible in Missouri.

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³⁶ 4 CSR 240-37.060(2).

³⁷ First Numbering Order at 7606, ¶76.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of December 2006, a copy of the above and foregoing Comments of Wireless Carriers was served via U.S. Mail, postage paid and or email/facsimile to each of the following parties:

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