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September 18, 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

SEP 18 2000

Re: TO-2000-374

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Brief of the Office of the Public Counsel**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to all counsel of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

SEP 18 2000

Missouri Public
Service Commission

In the Matter of the North American)	
Numbering Plan Administrator's Petition)	Case No. TO-2000-374
for Approval of NPA Relief Plan for the)	
314 and 816 Area Codes)	

BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

Introduction

The Office of the Public Counsel again urges the Missouri Public Service Commission to keep faith with the telecommunications consumers in the state's two major metropolitan areas by adopting area code relief plans that are consumer friendly and that promote the public policy defined in the PSC's prior area code decisions. The PSC should give little weight to the industry naysayers who give lip service to number conservation, but did not incorporate it in the "industry consensus" recommendation and dismiss it as an effective remedy in this case. The industry prefers to add area codes rather than address the root problem of the inefficient use of the public's numbering resources. For the industry, number conservation is for sometime in the future or in some other jurisdiction or when it is adopted on a national scale. Public Counsel has repeatedly asked the PSC throughout the years to consider number conservation and area code relief as a two-pronged approach to the NXX exhaust. The PSC should not give up on number conservation. The citizens have been waiting a long time for the telecommunications industry to use these resources efficiently. As the days slip away, the ability of number conservation to

significantly postpone area code relief is diminished. But that does not mean that effort to implement number conservation should be abandoned.

In the 314/636 NPAs, Public Counsel realizes that number conservation alone is not going to be the answer for NXX exhaust in 314; the PSC must adopt a back-up area code relief plan in this case. The industry's proposal for a "retroactive overlay" of 636 and 314 is a plan designed to benefit the industry rather than consumers, and at the expense of the consumers in 636. The plan is designed to nullify the PSC's last area code decision and resurrect the industry's preference in the last case. The seven-digit dialing that the PSC sought to preserve for the benefit of the consumers would be replaced by mandatory ten-digit dialing if the two separate 636/314 area codes are erased. The customers inconvenienced last time by changing area codes will once again be inconvenienced with the loss of 7-digit dialing in their code and the loss of the geographic identity for the area code.

Public Counsel urges the PSC to adopt a plan for an overlay of just the 314 area code. This relief plan addresses the NXX exhaust problem in the area where the number usage is most intense, where the problem exists. The entire mandatory MCA zone lies within the 314 code; an overlay of that NPA preserves the same local calling area. The City of St. Louis and most of St. Louis County will retain its present geographic identity as compared to the 636 outer suburban ring. The proposed retroactive recombination will shorten the projected life of 636 by 4.4 years. The new overlay of 314 will provide an additional life of 6.3 years for 314 and will not affect the exhaust date for 636 of 2007.

The FCC imposed an era of uncertainty and inaction on the PSC in the Pennsylvania case. The FCC hamstrung the state's ability to aggressively pursue number

conservation as outlined in TO-99-212. Missouri lost an opportunity to take on the NXX exhaust issue in 314 at a time to make an immediate impact on postponing area code relief. Although there still is room to reclaim and conserve numbers and begin the preliminary work for number pooling, Public Counsel urges the Commission to redirect the push for pooling from 314 to 816. Based on projections, exhaust in 816 may not occur until 4Q2002 (without number conservation). This creates a window of opportunity to use conservation to postpone another area code. Public Counsel applauds the PSC's recent order in this case directing the Staff to seek authority from the FCC for number pooling in 816 prior to a final decision to avoid delay.

The industry's recommended overlay of 816 is premature and casts the remedy too broad. Exhaust is not projected for almost 2.4 years (without number conservation). The 816 NPA is not in "jeopardy," requiring a monthly rationing of NXXs. Until the need becomes more pressing and the usage justifies implementation of immediate area code relief, the consumer should not be burdened with the cost, inconvenience, and confusion of new area code before its time. The overlay of the entire 816 area takes a broad brush to a problem that calls for a finer brush and a delicate touch to fashion the appropriate response. The significant rural profile of much of the 816 area calls for a closer scrutiny of alternatives to the total overlay. Public Counsel suggests that some type of an overlay or a geographic split maybe appropriate as dictated by telecommunications usage over the next year or so. The PSC should not rush to act to set the plan when action is not now required.

While sympathetic to the consumers' suggestions for a technology specific overlay for wireless and nonvoice lines, Public Counsel recognizes that the time is not

ripe for such a relief plan given the FCC's recent order and attitude toward such an overlay. The issue should not be abandoned because there is some hope that the FCC may revisit that prohibition. But for a practical relief plan now in this case, it is not a feasible alternative. Still, Public Counsel believes the PSC should still petition the FCC to allow states the flexibility to pursue such an overlay if the circumstances justify it.

Area Code Relief in Missouri

To understand the present, one must understand the past. The past relief plan decisions has the pattern of this Commission's public policy woven throughout. The same priority the PSC gave the preservation of geographic identity and seven-digit dialing within an area code then are still worthy priorities in this case.

A 1995 industry recommendation for an overlay for the 314 area code was Missouri's first area code relief plan. Public Counsel opposed the overlay and recommended a geographic split as a consumer friendly alternative. At public hearings and in letters to the Commission, the public overwhelmingly opposed the overlay in favor of a split. On July 5, 1995, the PSC rejected the overlay and approved a geographic split with the St. Louis metropolitan area retaining 314 with the new NPA 573 in the remainder.

In the Report and Order (*In the Matter of the Investigation into the Exhaustion of Telephone Numbers in the 314 Numbering Plan Area, Case No. TO-95-289 (314 Exhaustion Order (1995)*), the PSC said: "The underlying fact about exhaustion is that it is a product of the way NXXs are assigned and telephone numbers utilized." 314 *Exhaustion Order (1995)*, p.7. The PSC identified the underlying issue:

"...the problem facing the 314 area code is not one of telephone number exhaustion but is the peculiar phenomenon of NXX exhaustion. This

occurs because NXXs are assigned to exchanges and cellular and paging companies some of which will never utilize the full 10,000 numbers, and because of technological limitations these unused numbers cannot be utilized in other exchanges. Of course, if the telecommunications industry, and especially the NPA administrator and Bellcore, had placed a higher priority upon resolving the issue of underutilization of telephone numbers rather than the husbanding of a finite number of NPAs the issue of NXX exhaustion might have never arisen." *314 Exhaustion Order*, p.8.

The PSC created a technical committee to consider the exhaustion issue in the 816, 417 and in the new 314 NPAs. *314 Exhaustion Order (1995)*, p. 9. This technical committee acted as the planning vehicle in the 816/660 relief plan (Case No. TO 96-1) without first having an industry meeting to obtain an industry consensus prior to placing it before the PSC. The technical committee performed the same function for the 314/636 relief plan ("*In the Matter of the Investigation into the Exhaustion of Central Office Codes in the 314 Numbering Plan Area*," Case No. TO 98-212). The committee also reviewed number conservation issues referred by the PSC. (*In the Matter of the Implementation of Number Conservation Methods in the St. Louis, Missouri Area (Number Conservation Case)*, Case No. TO-99-14) that stemmed from the 314/636 relief case.

In 1997, the technical committee recommended a geographic split for the 816 area code with the Kansas City metropolitan area retaining 816 and the remainder assigned the new code 660. The boundaries were established after public hearings and after the committee consulted with civic and governmental leaders in the communities in 816.

In June, 1998, the PSC approved plan for the 314 area code and coupled it with a new case for the technical committee to develop reports and recommendations for number conservation measures to extend the life of the new area code geographic splits.

(314 Exhaustion Order (1998) Case No. TO 98-212 and Number Conservation Case, TO-99-14).

After the 314 Exhaustion Order (1998), the Federal Communications Commission released the *Pennsylvania Numbering Order (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 and the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, NSD File No. L-97-42, CC Docket No. 96-98, FCC 98-224. (Released September 28, 1998))* The order limited the authority of state regulatory agencies to order number conservation measures. With one hand, the Commission delegated additional authority to state commissions to order NXX code rationing in conjunction with area code relief decisions, but with the other limited the alternatives and options available to the PSC. This allowed the telecommunications industry safe harbor to delay any immediate state action in favor of awaiting national conservation efforts. In view of the FCC's efforts to develop national pooling standards, it declined to delegate to state commissions the general authority to order mandatory number pooling. However, in the *Pennsylvania Numbering Order*, it encouraged state commissions to seek limited delegations of authority to implement other innovative number conservation methods prior to implementing number conservation plans.

Because of the FCC's *Pennsylvania Numbering Order*, the PSC's technical committee filed its reports on number pooling and sequential number assignments with a caveat that the FCC had ruled that it had exclusive jurisdiction in this matter and not the state regulatory commissions. *Number Conservation Order (1999)*, p. 9-10. The

committee recognized that the PSC had jurisdiction to order rate center consolidations and presented alternatives to the PSC. The PSC reviewed the reports and ordered one of the alternatives for rate center consolidation in Southwestern Bell Telephone Company exchanges in 314 reducing the centers from 14 to 7. *Number Conservation Order (1999)*, p. 9-10.

After the FCC granted interim authority to California, New York, Massachusetts, Maine, and Florida, the Office of the Public Counsel filed a motion on September 27, 1999, requesting that the PSC petition the FCC for authority to implement number conservation methods. In its September 30, 1999 Report and Order in *Number Conservation Order (1999)*, the PSC directed its Staff to file such a petition; it was filed on November 1, 1999.

The request was for broad authority to implement number conservation methods in Missouri. (Missouri Public Service Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 314, 417, 573, 636, 660 and 816 Area Codes, NSD File No. L-99-90). The PSC supplemented this petition with additional information relating to the 314 NPA on April 27, 2000.

On March 31, 2000, the FCC released its *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000), herein referenced as *NRO Order March 30th*. In that order, the FCC imposed mandatory requirements on carriers and gave generic state authority for a number of the conservation methods sought by the PSC. The approved methods addressed in that order include authority to order the return of unused and reserved NXX codes and to monitor

the use of numbering resources through mandatory reporting requirements and number utilization forecasting. It also required carriers to sequentially assign numbers, to prove facilities readiness prior to obtaining initial numbering resources in an area, and to request and receive codes according to number assignment and NXX code allocation standards. The *NRO Order March 30th* reiterated that rate center consolidation is already within the scope of a state's authority

In the *NRO Order July 20th*, the FCC granted Missouri and other states some of the delegated authority they sought for number conservation. Missouri' requested authority to institute thousands-block number pooling, to maintain rationing procedures for six months following implementation of area code relief, to hear and address claims of carriers seeking numbering resources outside of the rationing process, to implement NXX code sharing and to conduct audits of carriers' use of numbering resources. (Missouri Commission Petition, p. 3-4)

ARGUMENT

Public Counsel asks the PSC to reject the proposals made by the telecommunications industry in Neustar's Petition. The recommendations are flawed and amount to an incomplete package. (Meisenheimer Direct, Ex. 3, p. 4). The industry's recommendation ignores number conservation as any part of its analysis. (Ex 3, p. 4) The industry formulated a plan that it wanted while once again requiring the consumers to shoulder the cost, inconvenience, and confusion of the inefficient assignment and use of public numbering resources. (Ex. 3, p. 4)

The key focus of area code relief must include number conservation. With almost 8 million telephone numbers in an NPA, the request for new area codes is met with the obvious questions from consumers: "Where are all our numbers?" "Who is using all these numbers?" The PSC needs to answer these questions and assure the public that this resource is properly used.

The retroactive overlay proposed in the 636/314 is a thinly veiled attempt to resurrect the overlay plan the industry supported in the last area code case. The benefits of a retroactive overlay are for the industry, not the consumer. The alleged benefits for the consumer with the retro overlay are not different from the effects of an overlay of just 314. (Meisenheimer Rebuttal, Ex. 4, p. 6) The retroactive overlay shortens the life of 636 and does not provide as many years of relief for 314 as an overlay of only 314. (Ex. 4, p.6-7; Ex. 3, p. 28-31; Tr. 189-194). It works a hardship on the 636 customers who just recently forfeited their 314 area code to retain 7 digit local dialing and geographic identity. (Tr. 156; 159)

The industry is pushing area code relief in 816 when there is no immediate need for such action. The industry again serves itself before the consumer by forcing the PSC to address both area codes in one proceeding so the industry can avoid the cost and inconvenience coming back to this commission and having another hearing when the time is more appropriate. It is willing to put the consumer through this ordeal now before a more realistic time. The 816 NPA is not projected to exhaust until the first quarter of 2002. (Ex. 4, Sch. BAM-R9; Tr. 76) **This assumes no number conservation efforts.** (Tr. 73-85) An effective number conservation program featuring at a minimum reclaiming unused NXXs and possibly number pooling, can extend that exhaust date

many months The Kansas City metropolitan area is the source of significant number usage. But an overlay of such a large area, including such areas as Clinton, Caldwell, Dekalb, Andrew and Nodaway counties, casts the net too broad. Public officials from that area indicate opposition to an overlay and just want to be left alone and not burdened by Kansas City's appetite for more and more NXXs. (St. Joseph Public Hearing, Vol. 6, p.24-26; 42-46)

314 Area Code Relief Plan and Number Conservation Recommendations

Public Counsel believes that the PSC should order relief through an all service overlay of the existing 314 NPA with a new area code as this is the best relief measure available under the circumstances. (Meisenheimer Direct, Ex. 3, p.6, 30-31). However, the plan need not be immediately implemented or implemented on a fixed schedule. Public Counsel believes it is reasonable and in the public interest to delay a new area code as long as feasible. If number conservation efforts such as reclamation of unused NXXs gives more life to 314, the costs, inconvenience, and confusion for the consumer can be pushed back. The overlay becomes a "back up" relief plan in aid of number conservation.

Public Counsel proposes that the overlay plan be implemented when the available supply of NXXs in 314 reaches 90 codes. The benefits to the public are significant. It provides the PSC an opportunity to postpone the turmoil of area code relief by sound conservation measures. It also allows the consumer in 314 to retain 7-digit dialing within the local NPA (in 314, the entire mandatory MCA) for as long as possible. (Ex. 3, p29). Preservation of 7-digit dialing has been a keystone of the PSC's prior decisions in response to public sentiment. (Tr.151; 156; 191; 193; 196-197; 392-395; 400) Public

Counsel witness Meisenheimer notes that "retaining seven-digit dialing for as long as possible is truly in the public interest," citing the convenience to typical callers and the benefits to those with difficulty remembering or dialing 10 digits. She also notes the tendency of 10-digit dialing to desensitize callers to the distinction between toll and local calls, adding to consumer confusion. (Ex. 3, p. 26-27) With the relief plan keyed to the availability of codes, it encourages conservation efforts rather than make those efforts secondary to area code relief. (Ex.3, p. 6)

Under the jeopardy status, the industry has decided that the monthly allocation may not exceed 14 code assignments. (Tr. 118; 133) The data indicates that based on the actual rate of code usage in 314, an assignment of codes at a rate of 10 codes per month is a reasonable forecast. (Ex. 3, p. 30; Tr. 344; 328-329) When the number of assignable central office codes in 314 falls below 90, the plan should be initiated. (Meisenheimer Direct, p. 30 Tr.181-182) This allows a nine-month implementation period which is the standard. period the industry needs to make the technical changes. (Tr.330; 142-145) That nine months also includes the standard 6-month period for permissive dialing and consumer education. (Tr. 142-143).

Public Counsel opposes the retroactive overlay as unnecessary and bad public policy. (Meisenheimer Direct, Ex. 3, p.28-31; Tr.189-191; 202; 200; 196; 156) This overlay sets aside this commission's prior ruling creating the 636 and new 314 NPAs and the public policy consideration that supported it. It erases the lines drawn by this commission and removes the boundaries between 636 and 314 and combines them into one geographic area. (Bell Direct, p. 5) It mandates 10-digit dialing for all local calls and ends optional 7-digit dialing in 636. (Tr. 46) The industry touts the retroactive

overlay as a more efficient utilization of numbers and postpones the need to go to the NANPA for another NPA. (Bell Direct p. 5) The benefits are nothing but an illusion.

The short time to postpone asking for a NPA does not justify the inconvenience and frustration it would cause 636 customers. (Ex. 4, p. 5; Tr. 197)

PSC Staff witness Bayak testified that the public interest underlying retention of 7 digit dialing in 636 is more important than trying to preserve one NPA. (Tr. 400) The recombination of 314 and 636 suggests not only are 636 NXXs available in 314, but 314 NXXs are technically available in 636. (Tr.201; 282; 132) This is certain to cause some frustration and consumer anger over the loss of the 314 number and may lead to requests to reclaim the old 314 area code number. (Tr. 132)

Public Counsel believes that number conservation should be used to extend the life of 314 as long as possible. Just because a state pooling trial may not be feasible in 314, the PSC should not abandon any other efforts to postpone exhaustion. Number conservation is not a substitute for NPA relief, but is an additional tool that can assist the PSC fashion a suitable remedy and avoid yet another area code on the heels of the last one in February, 2000. Number conservation in 314 must come quickly and be executed with near perfection in order for number conservation to significantly postpone NPA relief. Given that premise, the PSC should concentrate its pooling efforts in 816 since there is more likelihood those efforts will have a greater benefit than in 314. However, the PSC must direct the industry to plan for pooling in 314 using the same framework planned for the national pooling roll out so Missouri can demonstrate that 314 is ready for pooling when the priority NPAs are selected. (Ex. 3, p. 36)

In summary, Public Counsel recommends the following action for 314:

1. reject the retroactive overlay proposal.
2. adopt an all services overlay of the present 314 NPA and petition NANPA for the issuance of a new NPA.
3. order that that the industry begin plans for the implementation of the new NPA when there are 90 available codes left in 314.
4. commence a program for the voluntary and mandatory reclamation of unused codes and develop a firm grasp of the NXX supply so codes and blocks of 1,000 numbers are assigned only as necessary; the PSC should be aggressive in reclaiming unneeded codes.
 - a) this includes directing Neustar to provide an update of its efforts to reclaim unused codes and the results of its efforts. Neustar should be required to file semi-annual reports of the status of the NXX assignment.
 - b) code holders should be ordered to provide the PSC with a list of any uncontaminated codes and the dates codes were assigned so that the PSC can identify codes that could be reclaimed. The Part 4 form should be made available to the PSC for monitoring NPA code assignment and use activity.
 - c) order an inventory of uncontaminated blocks of 1,000 to prepare for pooling.
5. create a technical working group for 314 to implement the plan and coordinate on conservation measures.

816 Area Code Relief Plan and Number Conservation Recommendations

Public Counsel recommends that the PSC postpone the final decision on the specific relief plan until the number of assignable codes falls below 100. (Meisenheimer Direct, Ex. 3, p. 31-32). There is a much greater chance of extending the initial life of 816 given the projection of the life of 816 until the first quarter of 2002 (Tr. 76), the demand for codes of 7 per month and the supply of 174 available codes (Tr. 116; 113) and code reclamation efforts to date. (Meisenheimer Direct, Ex. 3, p. 32; Rebuttal Ex. 4, p.9; 12-13).

Public Counsel is hesitant to recommend a specific relief plan at this time since the need for relief may be 2.4 years away and number conservation methods are in their infancy. Either a geographic split along the Missouri River or an overlay of some type may be reasonable options, but it is too early to tell at this time. The PSC should leave the question open now, leave this portion of the case open and refer it to a technical working group. Later the group can make detailed recommendations and the PSC can revisit the issue within the year to see how conservation measures have worked, review the code usage status and consider detailed alternatives. (Meisenheimer Direct, Ex. 3, p 7; 31-32)

The PSC should focus its efforts to conduct a number pooling trial in 816 rather than 314. The Commission already has taken the first step by authorizing the Staff to seek authority from the FCC for 816 as it has in 314. Public Counsel urges the PSC to continue to pursue that effort. The PSC should continue other efforts for number conservation in 816, including an aggressive program for identifying assigned, but unused NXXs, reclaiming unused codes, identification of uncontaminated codes and

blocks of 1,000 as a step toward number pooling reassignment, and investigation into possible rate center consolidations. (Meisenheimer Direct, Ex. 3, p 35). As suggested in 314, Public Counsel believes the PSC should obtain and review data in both NPAs on a regular basis to fulfill its role that submissions for codes are accurate and that codes and blocks are only assigned as necessary. (Ex. 3, p. 34)

The industry's recommendation of an overlay for 816 is premature. With the current estimates that the life of 816 will extend to 1Q2002 (Tr. 76) and since 816 is not in jeopardy (Tr. 110), selection and implementation of an area code relief plan is not critical. Public Counsel recommends a wait and see position so the best approach can be selected to respond to the numbering status at that time. (Tr. 229-232) There is nothing wrong with having the PSC revisit the relief code alternatives again when the time is more appropriate. (Tr. 186)

When a relief plan is considered, the PSC should give serious consideration to the use of geographic boundaries, such as the Missouri River, as an NPA line to readily identify the area codes. The 816 area code covers a large geographic area and includes considerable rural and suburban ring communities. At the public hearing in St. Joseph, community leaders from the Clinton, Caldwell, DeKalb, Andrew and Nodaway counties expressed concerns and reservations about an overlay. (St. Joseph Public Hearing, Tr. 24-25; 25-26; 42-46) The outlying areas do not feel they should be burdened with the cost, inconvenience and confusion of an overlay because of the demand for numbers and the inefficient assignment of NXXs in the metropolitan areas.

Whenever the form of the plan is determined, the implementation of the plan should be set not by the calendar, but by the actual demand for NXXs. Public Counsel's

review of the usage data indicates that the assignment of 7 codes per month is a reasonable projection. With a current supply of 174 available codes, it is reasonable to use 100 available codes as the trigger for the implementation of the relief plan. (Tr. 113; 116; 147; 148-150; 344; Ex. 3, p.6; 31-33) This would allow the standard six to nine months for industry implementation, including the six months for consumer education and permissive dialing. (Tr. 143-145).

In summary, the Public Counsel makes the following recommendations for 816:

1. At this time reject going forward with an all services overlay of all of 816 as proposed by the industry.
2. establish a technical working group to consider the alternatives for code relief within the next year after the effects of number conservation measures.
3. take an aggressive stance on the identification and reclamation of assigned, but unused codes and require Neustar to report on its efforts in 816 reclamation similar to that outlined in the 314 recommendations.
4. continue to pursue authority from the FCC for 816 state pooling trials and take an aggressive posture to obtain an early decision from the FCC.
5. commence preliminary groundwork for state pooling trials in accordance with FCC orders and guidelines.

DISCUSSION OF OTHER ISSUES RAISED IN THIS PROCEEDING

Back up area code relief plan

Public Counsel's recommendation in both 314 and in 816 to establish a back-up relief plan is consistent with the *NRO Order July 20th*. Public Counsel recognizes that

number conservation is not a substitute for appropriate NPA relief. While Public Counsel is adamant that number conservation should proceed to avoid premature exhaust and area code relief plans that burden the consumer with added costs, inconvenience, and confusion, this Office realizes that in 314 it is vital to select a back-up NPA relief plan now; it encourages the PSC to leave the record open for the 816 relief effort and proceed with planning. Public Counsel suggests implementing the plans when the code usage and remaining available codes hit a predetermined threshold level. Public Counsel's goal was to have the plans, but yet reap the benefit of any extended life for an NPA that number conservation could provide. This is proper public policy and a wise use of resources. Public Counsel's proposal complies with the *NRO Order July 20th*.

Opposes end user surcharge for state pooling cost recovery

Public Counsel strongly opposes any type of end user surcharge for cost recovery of pooling costs. (Ex 4, p. 10) Although the Commission needs to establish a mechanism for recovery for joint and carrier specific costs of implementing and administering pooling in the state, it is unreasonable for the customer to pay for a portion of the costs of implementing or administering number pooling by a surcharge. As always, the customer will pay. The carriers will be able to recover some, if not all, of its costs by incorporating their costs in rates. (Tr. 194-195) A direct charge to customers penalizes the consumer for the industry's inefficiency in managing the public's numbering resources. In addition, Public Counsel witness Meisenheimer points out that the surcharge paid by consumers "eliminates some of the incentive for them [carriers] to be efficient in terms of the numbers that they request, how they utilize them." (Tr. 195)

The industry is already collecting a surcharge for Local Number Portability cost

recovery. Pooling cannot occur without the LNP infrastructure in place. Consumers should not again be subjected to a surcharge to pay for these costs. (Tr. 276-277)

Supports aggressive action to identify and reclaim unused codes

Public Counsel believes that action in this area is critical to gauging Missouri's present status and the direction it should go to conserve numbers. This Office proposes that the Commission initially request and obtain specific information from carriers and from NANPA on the current status of code assignments and usage. Without this information, the PSC will be unable to (1) verify that unavailable codes are not sitting idle, (2) anticipate the number of uncontaminated and minimally contaminated blocks that can be recovered to stock the initial numbering pools or (3) assure that area code relief is actually necessary before it is implemented. The PSC must have an independent avenue to obtain initial information about code usage. This need is heightened by the possibility that the utilization and forecasting information that NANPA receives from carriers and provides to the PSC may not be accessible for months because there is no electronic mechanism to compile the data from the carrier submissions. Public Counsel recommends that the PSC should actively monitor the carriers' use of numbering resources in accordance with FCC's grant of authority to maximize number conservation.

The seven and ten digit local dialing controversy

This controversy has been a battleground on the choice between overlays and geographic split options. This time it becomes part of the retroactive overlay proposal. In reality, this is just another attempt by the industry to turn back the clock and invalidate this Commission's decision in the last area code case. The industry is bent on

extinguishing the consumer's ability to dial seven digit local calls with an NPA. The industry trots out the same arguments which boil down to 'its inevitable' and 'they will get used to it.' These are insufficient reasons. The PSC has repeatedly affirmed its determination that the preservation of 7-digit dialing for local calls for as long as possible is in the public interest. That position is valid today as it was when 636/314 was split. It is even more so since the customers in 636 forfeited their 314 area code to keep 7-digit dialing in the 636 area and maintain some geographic identity. Public Counsel opposes the retroactive overlay since it breaks faith with those 636 customers by depriving them of the option of dialing 7 digit local calls in 636. (Tr. 156-176).

The rationalization that "they will get used to it" reeks of arrogance and indifference to the customers needs. GTE's witness Rollins is willing to sacrifice GTE's 636 customers' option to dial 7 digits in order to save a NPA that could be used in some other part of the country. (Tr.274-275). The industry always points to Dallas and Houston as fine examples of customer acceptance of 10 digit dialing. Perhaps it has become an urban legend, something "everybody knows" but there is little substance to it. Ameritech witness Dreon testified about great consumer acceptance in Texas, but upon cross-examination of his personal and actual knowledge the facts to support this "legend" he did not know any details or facts. (Tr. 249-251) "Good customer acceptance" apparently means that there was no widespread complaints called into the telephone companies. (Tr.283) That is not a true indication of satisfaction and agreement. No studies have been done, and in absence of these type of studies and based on prior opposition to 10 digit dialing by Missouri customers, the PSC should assume that it is vital to consumers to retain 7 digit local dialing. (Tr. 157-160) "People get used to

things forced on them," noted Ms. Meisenheimer. (Tr. 166) People "get used to" or come to accept illness, divorce, loss of job, death of loved ones, but they do not like it and it is not always in one's best interest to have such event visited on them. Like other things in life, telephone consumers have little choice but to accept the decision already made and mandated by the regulators and the utilities even if they do not like it or do not believe it is beneficial to them. Is it acceptance or resignation?

Retention of 7-digit dialing in the 636 area code is in the public interest. Both Public Counsel and Staff strongly support that position. (Tr. 392-395; 400) Conserving one other NPA now for use by other states is not an acceptable public policy for Missouri if it means forcing customers in 636 to give up their 7-digit local dialing. As distinctly put by Ms. Meisenheimer as her comment on the adverse impact of the retroactive overlay on the 636 customers: "let these folks alone."

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed on this 18th day of September, 2000 to the counsel of record on the attached service list.

M. J. D. Jones

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September 18, 2000

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