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July 27, 2000

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

FILED²
JUL 27 2000

Missouri Public
Service Commission

Re: Case No. TO-2000-374

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Comments and Supplemental Positions Regarding the FCC Numbering Resource Optimization Order**. 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

FILED²
JUL 27 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)

**OFFICE OF THE PUBLIC COUNSEL'S COMMENTS
AND SUPPLEMENTAL POSITIONS REGARDING THE
FCC NUMBERING RESOURCE OPTIMIZATION ORDER**

COMES NOW the Office of the Public Counsel and respectfully states to the Missouri Public Service Commission the following as its comments and its supplemental positions as a result of the Federal Communications Commission's Order released on July 20, 2000 in the case styled *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-2000 (DA 00-1616):

INTRODUCTION

On November 1, 1999, the Missouri Public Service Commission (PSC) requested that the Federal Communications Commission (FCC) grant it 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 Red 7574

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(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. Public Counsel's prefiled testimony in this case has addressed these number conservation methods. (Meisenheimer Direct Testimony, p. 18-25; 33-36).

In these comments and recommendations, Public Counsel will respond to the additional items addressed in the FCC's *Numbering Resource Optimization Order*, released July 20, 2000 (DA 00-1616), hereinafter referenced as *NRO Order July 20th*.

In the *NRO Order July 20th*, the FCC granted Missouri and other states some of the delegated authority they sought for number conservation. Missouri's Commission 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)

SUMMARY OF *NRO ORDER MARCH 30TH*

In this generic order, the FCC addressed some aspects of Missouri's request for authority to (1) order the return (reclaim) unused and reserved NXX codes, (2) monitor the use of numbering resources through the use of mandatory reporting requirements and number utilization forecasting, (3) require sequential number arrangements, (4) set and establish number assignments and NXX code allocation standards, including meeting carrier fee rates before obtaining additional NXXs. The FCC generally granted state commissions, including Missouri, authority to direct NANPA to reclaim unactivated or unused NXX codes. Once the Pooling Administration in state trials or national number pooling are established, states have the authority to direct these state and national pooling administrators to reclaim unactivated or unused thousands-blocks. The FCC established a national mandatory reporting and sequential number assignment framework.

SUMMARY OF THE JULY 20TH ORDER

On July 20, 2000, the FCC issued its *NRO Order July 20th* addressing Missouri's petition for additional delegated authority to implement numbering resource optimization strategies. The *NRO Order July 20th* :

- 1) Conditionally grants the PSC the authority to institute thousands-block number pooling;
- 2) Conditionally grants authority to maintain rationing procedures for 6 months following implementation of area code relief;

- 3) Conditionally grants authority to hear and address claims of carriers seeking numbering resources outside of the rationing process;
- 4) Conditionally grants the authority to implement NXX code sharing;
- 5) Conditionally grants the authority to conduct audits of carriers' use of numbering resources;
- 6) Reiterates that consolidating rate centers or rate areas is already within the PSC's present authority;
- 7) Strongly encourages states that recognize the need to consolidate rate centers to proceed as expeditiously as possible;
- 8) Requires that the states conform to the national framework articulated in the *NRO Order March 30th* for 1,000 block pooling;
- 9) Warns the states that implement number pooling should be prepared to immediately implement a back-up area code relief plan prior to exhaustion of numbering resources. This does not mean that the state must implement an NPA relief plan prior to initiating thousands-block number pooling, but rather requires the PSC to take the necessary steps to prepare an NPA relief plan that can be adopted when numbering resources are in imminent danger of exhaust.
- 10) Notes that thousands-block numbering pooling state trials can only be mandated for carriers that have implemented permanent

local number portability (LNP). Wireless carriers are not required to implement LNP until November, 2002.

11) **Thousand-Blocks Number Pooling State Trials**

1. Trials must be conducted in accordance with underlying adopted thousands-block pooling guidelines so long as not in conflict with *NRO Order March 30th*.

2. The PSC must allow adequate transition time to allow carriers to implement it in their switches and administrative systems.

3. The PSC is responsible for pooling administration, including selection of administrator to allocate blocks to carriers in trial.

4. The PSC must develop its own cost recovery mechanisms for joint and carrier specific costs of implementing and administering pooling with the state. This system must transition to the national system when it is implemented. Costs of number pooling must be recovered in a competitive neutral manner that does not exclude any class of carrier.

12) **Conditions for Thousand-Blocks Number Pooling**

1. NPA is in jeopardy.

2. NPA has an estimated remaining life span of at least one year.

3. NPA is in one of the larger MSAs.

4. "Special conditions" may exist where pooling may be beneficial even though it does not meet the first three criteria.

PUBLIC COUNSEL'S COMMENTS AND RECOMMENDATIONS

Pooling Authority

In its original petition filed on November 1, 1999, the PSC requested authority to conduct state trials. In compliance with the *NRO Order March 31st*, the Commission submitted supplemental evidence on April 27, 2000 to show that the 314 NPA met the three specific criteria. The FCC grant of authority on July 20th was specific to the 314 code and to any subsequent relief code assigned in 314. The FCC said that the Commission had demonstrated that: (1) the 314 NPA is in jeopardy; (2) the 314 NPA has a remaining life span of at least a year; and (3) the 314 NPA encompasses the City of St. Louis, one of the largest 100 MSAs. Because of the lapse of time since the PSC's original request in November, 1999, coupled with the FCC's limitation of Missouri's pooling authority to the 314 NPA, the PSC's practical ability to postpone NPA exhaust in 314 and 816 is diminished.

To address that problem, Public Counsel recommends that the PSC immediately request expedited authority to conduct pooling trial in 816 prior to a trial in 314. This should be done now since time is of the essence. Public Counsel urges the PSC not to postpone this action until it makes its final decision in this case. The last request for authority took over eight months to process, a delay that Missouri cannot suffer again and still be able to effectively respond to the numbering problem.

In support of that request, the PSC should advise the FCC that the 816 NPA at present meets two of the three criteria to qualify for pooling trials. The 816 NPA services the Kansas City metropolitan area, part of Kansas City Kansas MSA, the 28th largest MSA. The 816 NPA has a remaining lifespan of more than one year.

The PSC should advise the FCC that special circumstances exist to allow pooling in 816 even though it does not currently meet the third criteria of jeopardy. Although the 816 NPA is not yet in jeopardy, the evidence shows that 816's numbering resources are limited. Pooling could substantially reduce the rate at which these resources are depleted. If the goal of pooling is the efficient use of numbering resources to postpone the cost, inconvenience, and confusion caused by area code relief, then 816 seems an appropriate NPA to conduct a pooling trial. This pooling could make a substantial impact on NXX exhaust and NPA relief. Assuming NANPA's current estimated exhaust dates, pooling in 816 is more likely to provide beneficial relief in a Missouri metropolitan area than in 314. The lack of an NPA in jeopardy is not a totally disqualifying factor for number pooling. The FCC granted authority to Washington, Nebraska, Oregon, and Utah to conduct trials in an NPA not currently in jeopardy.

Back up area code relief plan

Public Counsel's recommendation to establish a back-up relief plan is consistent with the *NRO Order July 20th*. Public Counsel recognized that number conservation is not a substitute for appropriate NPA relief. While Public Counsel has been 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 initially recommended establishing a back-up NPA relief plan. Public Counsel

suggested implementing the plans when the code usage and remaining available codes hit a predetermined threshold level. The goal was to establish the plans, but reap the benefit of any extended life for an NPA that number conservation could provide. Public Counsel has offered a proposal that complies with the *NRO Order July 20th*.

The FCC noted in its *NRO Order July 20th*:

We grant this authority subject to the conditions and safeguards similar to those enumerated by the FCC in the *Pennsylvania Numbering Order*, granting thousands-block number pooling authority to Illinois, and the *Numbering Resource Optimization Order*, which set forth the national thousands-block number pooling framework. Thus, we require that the state commissions must take all necessary steps to prepare an NPA relief plan that may be adopted by the state commission when numbering resources in the NPA are in imminent danger of being exhausted. This criterion is not intended to require the state commissions to implement an NPA relief plan prior to initiating thousands-block number pooling. Rather, we require that the state commission be prepared to implement immediately a "back-up" NPA relief plan prior to the exhaustion of numbering resources. Carriers should never be in the position of being unable to provide service to prospective customers because that carrier does not have access to numbering resources. This criterion attempts to ensure that carriers continue to have numbering resources available to them in the event that the pooling trial does not stave off the need for area code relief. (Paragraph 17)

Cost recovery for state pooling

The Commission needs to establish a mechanism for pooling cost recovery. The FCC requires states to establish cost recovery mechanisms for joint and carrier specific costs of implementing and administering pooling in the state. These costs must be recovered in a competitively neutral manner and then must be able to transition to the national system when it is implemented. Public Counsel strongly opposes any surcharge to the end user for the costs of implementing or administering number pooling.

Carrier Audits

Public Counsel's recommendation that the PSC audit the carriers' use of numbering resources is consistent with the FCC's *NRO Order July 20th*, paragraph 60. The FCC authorized the PSC to audit the carriers' use of numbering resources until such

time as the FCC enacts national rules or policies. However, this audit authority must fall within the parameters established by the *NRO Order March 30th* and subsequent orders in that docket.

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 proposed 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.

Rationing

Public Counsel does not believe that the PSC should exercise its rationing authority at this time. The FCC authorized the PSC to order the continuation of a rationing plan for six months following implementation of area code relief. Public Counsel does not recommend that the PSC should issue such an order at this time. The need to ration codes after implementing relief may be avoided through carriers' strict

compliance with the NRO requirements and active oversight by the PSC. The FCC's *NRO Order March 30th* reduces the maximum carrier inventories. The FCC is anticipated to establish restrictions and thresholds on receiving initial and growth codes. In addition, the PSC under the July 20th order can monitor code requests and usage and reclaim unused codes. Prior to rationing, the PSC should first rely on the effectiveness of these limits for code assignment following NPA relief.

Code rationing procedures

The Commission should adopt procedures to hear and address the carriers' claims for needed codes outside of the area code rationing process. Although Public Counsel is not convinced that the need for this process will soon arise, this Office does not oppose such a process if the carriers strongly recommend it.

The FCC established a "high bar" for granting such requests under this authority:

In order to address such situations, if requested, the Missouri, North Carolina, and Virginia Commissions 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. *NRO Order July 20th, paragraph 54.* (Emphasis added)

To evaluate requests, the PSC should use its authority to request the information it deems necessary for proper consideration of a carrier's request. Public Counsel encourages the PSC to require carriers to provide the information identified by the FCC, including the carrier's business plan, customer requests for new service that the carrier has denied for lack of numbering resources, historical information on the carrier's growth rate, and information on any extraordinary steps the carrier is taking to provide service.

NRO Order July 20th, paragraph 54

If a carrier requests a hearing based on extraordinary need, the process should provide that Public Counsel should receive the carrier's complete submission and is entitled to be heard on the matter. Pursuant to its statutory authority, Public Counsel has access to such confidential information and is bound by the same statutory confidentiality requirements as the PSC Staff. This recommendation is consistent with the FCC's confidential information mandate that the information "shall not be released to any entity other than the NANPA, other state government agencies, the FCC, or the Common Carrier Bureau without the concurrence of the carrier submitting such information." *NRO Order March 30th* at 15 FCC Rcd 7605-09; *NRO Order July 20th* at paragraph 54.

Individual Telephone Number Pooling and NXX Code Sharing

Public Counsel's recommendation that the Commission not pursue Individual Telephone Number Pooling or nonvoluntary NXX Code Sharing at this time is consistent with the FCC's *NRO Order July 20th*, paragraphs 57-58; 61. The FCC declined to grant the states authority to mandate these methods. Although the FCC permits the PSC to study and to try to vindicate these methods, Public Counsel recommends that the PSC focus on the approved number conservation methods because they are most likely to produce meaningful conservation of Missouri's numbering resources in a timely manner.

CONCLUSION

Given the short period of time from the release of the *NRO Order July 20th* and the PSC's order requesting comment and additional position statements, Public Counsel reserves the right to make additional comments on the effect of the order on this proceeding at the hearing and in post-hearing briefs. Public Counsel encourages the PSC

to ask Ms. Meisenheimer, our expert witness, for her comments about aspects of the order that are of foremost interest to the PSC and allow the parties to brief those issues for the PSC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or faxed this 27th day of July, 2000 to the attached service list of the counsel of record:



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