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February 14, 2000

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
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FILED

FEB 14 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 14 copies of the **Office of the Public Counsel's Comments and Recommendations**. 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

FILED

FEB 14 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the North American)
Numbering Plan Administrator's Petition)
for Approval of NPA Relief Plan for the)
314 and 816 Area Codes)

Case No. TO-2000-374

OFFICE OF THE PUBLIC COUNSEL'S COMMENTS AND
RECOMMENDATIONS

COMES NOW the Office of the Public Counsel and respectfully submits the following comments and recommendations to the Missouri Public Service Commission regarding the North American Numbering Plan Administrator's (NeuStar's) Petition for Approval of NPA Relief Plans for the 314 and 816 Area Codes:

INTRODUCTION

On December 17, 1999 NeuStar petitioned the Commission for approval of industry plans for future relief for the 314 and 816 area codes in Missouri. The petition proposes to extend 636 into the existing 314 NPA (as of February 26, 2000) as an overlay. In addition, the proposal calls for another overlay of the entire 636 and 636/314 area in approximately two years. The petition also requests approval of an overlay NPA for 816. These recommendations were formulated at an industry meeting on November 9, 1999. The petition lacks sufficient detail and information on which the Commission can make an informed and reasoned decision. The meeting minutes do not provide enough information on the relevant and material facts and the assumptions used to

develop the alternatives, to evaluate the options, and to recommend the most appropriate option. The Commission would be hard pressed to make its decision solely on the petition. An evidentiary hearing and input from a technical committee can flesh out the facts and assumptions so the Commission can have a factual record to provide public confidence in its decision.

Based on the information contained in the meeting minutes and obtained by Public Counsel through data requests, Public Counsel has serious concerns about the facts and the assumptions that form the basis for these recommendations. The information may have been incomplete or inaccurate. The six industry members present at the meeting did not have the complete status of code usage in the 314 area. The projected exhaust dates for the various scenarios presented apparently do not reflect the impact of future number conservation efforts by this Commission. While complete information may not have altered the industry group's recommendation, it is an essential factor that the Commission must consider in adopting a comprehensive plan for area code relief. Public Counsel requests that the Commission schedule public hearings and an evidentiary hearing for each area code to allow a full and fair opportunity to develop a proper factual record and offer alternative recommendations that best serve the consumers of Missouri.

OVERVIEW OF COMMENTS

The Office of the Public Counsel cautions the Public Service Commission that it should take a close look at the proposed area code relief plans offered by NeuStar, the Numbering Code Administrator, as the "industry consensus." Public Counsel believes

that the recommendations lack sufficient information for the Commission to act without first holding evidentiary hearings to provide the relevant and operative facts so the Commission can have a full picture of the status of NXX exhaust, whether relief action is warranted now, and the appropriate remedy and timetable.

Based on the information now before the Commission, it would be unreasonable to make any decision regarding area code relief. NeuStar's petition and the accompanying exhibits of meeting announcements, agendas, minutes and maps give the Commission little factual information whereby it can make an informed decision on area code relief in 314 and in 816. The information provided is long on conclusions, but is woefully short on facts needed by the PSC to determine the true status of NXX exhaust and the viable options available for relief. The information contains many details of the organization of the industry's November 9, 1999 planning meeting and how it was conducted, but lacks any substantive information on the underlying facts that a decisionmaker would need to evaluate the industry's recommendations and to determine which option would best serve the consumers and address the exhaust issue.

Public Counsel also advises the Commission that it is skeptical of some of the assumptions and data used for exhaust estimates and suggests further investigation of code usage, the status of CLEC entry and wireless use, and assumptions about exhaust projections that do not include conservation measures or unaccounted or stockpiled NXXs. Public Counsel is concerned that the data used to develop the industry recommendations was not complete or was inaccurate or was based on unreasonable assumptions that has skewed the outcome. Public Counsel has commenced discovery to

independently obtain information so the Commission can have the results of that investigation for its consideration.

Public Counsel also questions some of the reasons offered for the rejection of the alternative relief options. Unbalanced lives of resulting NPAs, split of local calling areas, and customer confusion because of a mix of 7 digit dialing in the NPA and 10 digit dialing between NPAs have not been given much weight by this Commission in prior relief plans. The Commission gave greater weight to consumers, public sentiment and community needs and interests. Public Counsel is also skeptical of the new obstacle of "time consuming upgrades of 911 and E-911 systems." Public Counsel intends to investigate this claim and will consult experts in 911 technology and operations to advise it and the Commission of the validity of that claim.

Public Counsel is also concerned about the process that lead to the filing of this case. The industry abandoned the process used for the evaluation of code exhaust in Missouri established by the Commission in TO-95-289. The Commission assigned this task to a technical committee of the industry, the Staff, Public Counsel and any party interested in the area code relief problem, such as municipalities and counties. This process was used within the last 3 years for 636/314 and 816 relief plans, number conservation evaluation (TO-99-14), and for unprotecting the codes in 816/913 to postpone exhaust in those NPAs.

The process used to formulate the industry recommendations reflect a narrow based industry view of only 6 companies of the 87 telecommunications companies invited to participate in the process. (SWBT, Sprint, Sprint PCS, Aerial Communications, Frontier, and Primary Network) This is hardly representative of the industry given the

absence of major carriers in Missouri such as AT&T, MCIWorldCom, Birch Telecom, SWB Wireless, GTE Midwest, McLeod, and other CLECs, wireless carriers and interexchange carriers.

The technical committee process provided input not just from the industry, but also from the Staff, other interested parties and the Office of Public Counsel with each participant having equal status and an equal voice in the recommendation to the PSC, as well as the ability to file separate dissenting views. Public Counsel anticipates that it will be criticized for not attending the industry planning meeting or in the telephone conference to review the meeting minutes. However, Public Counsel did not have a vote and was consigned to the status of an observer with no substantial role. Review and correction of minutes of a past meeting seemed a pointless exercise. Rather than legitimize this return to the industry developed process criticized by the PSC in the Report and Order in TO-95-289, p. 6-9, Public Counsel chose to let the industry make its recommendation and then submit it to a process where Public Counsel had equal standing in the decisionmaking process. In a motion filed December 29, 1999, Public Counsel has asked the Commission to broaden the base of participation in the relief process by giving notice of NeuStar's petition to the public, governmental and community leaders, industry representatives and interested parties, to convene a technical committee to review the relevant facts and make recommendations, to hold public hearings at a meaningful time in the process to permit consumer and community comment on proposals and alternatives, and an evidentiary hearing so that the Commission can have a full and complete evidentiary record as the basis of its decision.

Public Counsel is very concerned that the petition and the "industry consensus" fails to address the vital issue of number conservation by the PSC. In TO-98-212, the 636/314 NPA case, the Commission recognized and the parties agreed that number conservation was a major factor in the success of an area code relief plan since it could extend the exhaust date and postpone the need for further relief. Public Counsel believes that number conservation must be addressed in the relief planning and as an alternative to immediately implementing NPA relief.

This case also needs to consider the looming critical problem of area code exhaust, once forecast for 2015 and now predicted for 2007, and how the Commission can factor that issue into Missouri's NPA relief plans.

COMMENTS

The Industry Group's Proposal Does Not Represent A Consensus Among All Stakeholders.

The "industry consensus" recommendations were developed and approved by a very small segment of the telecommunications industry. Eighty-seven telecommunications companies were on the meeting notice and invitation list, but only six companies attended. Important players such as AT&T, MCIWorldcom, Birch Telecom, SWB Wireless, and GTE Midwest did not participate in the November 9, 1999 meeting. Only Southwestern Bell Telephone, Sprint, Sprint PCS, Aerial Communications, Frontier, and Primary Network were the "consensus of the industry" that heard, discussed and adopted the plans recommended to the Commission. The

obvious question is whether these recommendations are in fact a "consensus of the industry."

Even if all the affected carriers concurred in these recommendations, there still is not sufficient justification to adopt the industry proposals. There is an inherent friction between the number exhaust solutions that best suit the business interests of these telecommunication firms and those alternatives that minimize the inconvenience, frustration, confusion, and social and economic costs experienced by the customers they serve. This was evident in the last two 314 NPA relief cases where the industry supported an overlay, but consumers supported a geographic split; the Commission in both cases felt the public sentiment for a geographic split overcame any perceived benefit of an overlay. The Commission should not limit its consideration to the industry group's final recommendations or the other alternatives developed for the industry meeting.

Public Counsel believes that the "industry consensus" process is inadequate to formulate broad based alternatives and make decisions on issues so vital to the social and economic well being of Missourians. The industry developed the NPA relief guidelines for itself. However, the process is for the industry and does not allow for full and open debate of issues and alternatives by outsiders. Nor does it allow for adequate discovery or fair argument on issues before the Commission. The process that led to NeuStar's recommendation denied the public an independent voice in a matter in which consumers will ultimately bear the inconvenience and cost.

Public Counsel Seeks Investigation into Relevant and Material Facts

Public Counsel has issued data requests to all code holders in 314, 816 and 636 in order to obtain detailed information on code usage. These requests seek an update of the information voluntarily submitted to the Staff by the companies in TO-98-212. The responses should provide information on code usage and demand at the thousand-block level. This information together with the information previously compiled will allow Public Counsel to independently evaluate actual usage rates and NeuStar's exhaust projections. It should also provide an indication of the rate at which companies contaminate open blocks. In conservation efforts, it is critical to identify uncontaminated blocks and evaluate actual needs in response to requests for additional codes. In addition to requesting company specific information, Public Counsel recently received data request responses from NeuStar on code assignments and usage. This will allow Public Counsel to evaluate NeuStar's projections for CO code usage and the potential for reclaiming idle CO codes. Public Counsel needs to verify whether NeuStar has an accurate inventory of code usage since Public Counsel has questions about the data.

Information was provided by NeuStar to Public Counsel that NeuStar developed information on code usage prior to the November 9, 1999 industry meeting, but did not present it because, as stated by a NeuStar representative in a memo, "it raises more questions than it answers." This raises concerns about the status of current code usage and availability. Reviewing the other information provided by NeuStar in responses to OPC's data requests does not give Public Counsel comfort about the accuracy of the reports on the current status of NXX codes in the 314 area. Public Counsel is pursuing this issue and requested additional information from NeuStar.

Public Counsel's investigation to date raises concerns that the code demand was overestimated and thus the forecasted exhaust of the existing codes is inaccurate and premature. According to the minutes from the industry meeting, NeuStar utilized an expected rate of code usage of 128 per year for 314 in developing projected exhaust dates for the alternatives presented at the industry meeting. However, the historic rate of code assignment from February through October was only 42 codes for 9 months which indicates 4.2 codes per month. The current CLEC entry growth factor for 314 is zero. The actual rate together with zero entry by CLECs would suggest an actual code demand of less than half of that which NeuStar used for the exhaust projections. Public Counsel has requested additional information on these projections and the basis for them.

A Retroactive Overlay For 314

The industry recommendation for a "retroactive overlay" needs clarification. In the minutes of the November 9, 1999 meeting (NeuStar petition, Ex A.p. 2) describes the overlay as "Current 636 NPA extended to encompass the existing 314 NPA." It also calls for an additional overlay in two years to cover the entire 636/314 NPAs. However, in the body of the petition, at page 6, the resulting NPAs are described as "All three NPAs would cover the same geographic area." But 314 will not cover that portion of 636 which was split from it in TO-98-212. It is difficult to harmonize this comment in the petition.

THE 911 ISSUE

The industry recommendation for a retroactive overlay of 314 is in part based on the assumption that implementation of a new NPA might jeopardize 911 and E911

systems. Apparently, a key consideration relating to this 911 issue that persuaded the industry group to recommend a retroactive overlay of 636 onto 314 was that it would allow the St. Louis PSAPs an opportunity to complete "time consuming upgrades of the 911 and E911 systems" to accommodate a 5 area code environment. This concern is expressed in footnote 8 on page 5 of the Petition:

Earlier this year, the 636 NPA was created as the result of a geographic split of the 314 NPA. St. Louis area 911 and E911 systems currently include the 636 NPA as one of the four NPAs they currently support. The introduction of a fifth NPA will necessitate time-consuming upgrades of the 911 and E911 systems. Due to technical constraints, the current 911 systems in St. Louis are at their capacity of four NPAs (314, 636, 573 and 618). Adding a fifth NPA in the area will necessitate time consuming upgrades of the 911 systems. As such, the Industry requests that the Commission order the 636 NPA to be extended to overlay the 314 NPA in order to provide immediate relief without endangering the St. Louis area 911 and E911 operations.

Footnote 9 on page 5 suggests that the same 5 area code problems will exist with respect to the Kansas City Area.

As with the St. Louis 911 systems, the 911 systems in Kansas City are also at their capacity of four NPAs (816, 913, 660 and 785). Adding a fifth NPA in the area will necessitate time consuming upgrades of the 911 systems.

In the case of Kansas City, the industry is proposing a mandatory dialing date for 816 relief plan to be implemented by early next year; they must not expect this 911 problem, if it materializes, to take more than a year to fix. If that is true and assuming the historic rate of code usage (or even NeuStar's projection of usage), it seems there would be time to fix the problem in the St. Louis area without resorting to a retroactive overlay.

This Office has reviewed the minutes from the November 9, 1999 industry meeting and discussed it with parties who attended. These sources could not quantify the severity, scope, time necessary to correct for or the cost associated with this potential problem. Public Counsel is certainly concerned with the continued reliability of our 911 systems. However, based on our investigation thus far it does not appear that there is an insurmountable problem with adopting relief alternatives other than a retroactive overlay. Public Counsel has contacted a consultant for 911 systems and operations to advise this office on this issue.

Past Mo PSC Action

The reasons given for rejecting alternatives, especially the geographic splits for 314 and for 816 are nothing more than rehashes of the reasons considered and rejected by the Commission in TO-95-289 and TO-98-212. The claim of unbalanced lives of resulting NPAs, the division of local calling areas, the mix of 7 digit dialing within the NPA and 10 digit dialing between NPAs as a cause of consumer confusion and the difficulty of future splits into smaller regions have been factored into prior decisions. The Commission found those factors unconvincing and not significant enough to approve an overlay. The Commission followed public sentiment and consumer convenience and approved splits.

Number Conservation

The Commission has repeatedly expressed a preference for pursuing number conservation as opposed to frequent area code changes. (TO-95-289, p. 7-9, 15-16; TO-98-212, p.37-38). However, the industry proposals do not reflect any commitment to

pursue conservation. In fact, the recommendations appear to ignore number conservation and do not even consider that as a factor in its analysis and recommendation. Instead the industry group has devised a scheme that will increase the number of central office codes to at least 3 times the current number in as little as three years. This would create over 23,000,000 potential telephone numbers to serve the St. Louis area. This proliferation of numbering resources proposed by industry group should allow every man, woman, child, cat and dog to have a landline phone, a cell phone and a pager with plenty of numbers to spare. Adopting this proposal might be preferable to the industry group because it sidesteps the real underlying issue of number conservation and rewards the footdragging that has thus far thwarted the Commission's efforts to achieve meaningful number conservation efforts coupled with NPA relief.

An even more distressing absence is any consideration of the interrelationship between NPA relief, number conservation and the impending exhaustion of area codes as early as 2007. Estimates are that transition to 11 or 12-digit dialing in North America would take \$50 to \$150 Billion and decades to implement. The industry ignores this prospect and fails to offer any conservation of numbers to reduce the need for another round of NPAs in Missouri. The plan in 314 contemplates requesting another NPA in two years.

Alarm Companies And Other Affected Interests

Another reason cited in the minutes of the November 9,1999 industry meeting for proposing a retroactive overlay of 636 over 314 is that alarm companies will not have undo anything that they have done in preparation of the current 314/636 split.

While this may be true for the alarm industry, Public Counsel is not confident that it will not create a need for other types of businesses and organizations to modify their systems.

The Retroactive Overlay Proposal Should Not Receive Serious Consideration

Based on the information currently available, the industry cannot justify or reasonably explain the industry retroactive overlay at this time. The information regarding code assignments, usage and projections is questionable. The potential threat to 911 and E911 systems is unquantified and unsubstantiated. The analysis of benefits and detriments to specific interest groups is incomplete. A customer from the St. Louis area that had read about the proposal in the paper thought the proposal sounded like "sour grapes." Based on the information so far, Public Counsel agrees.

Public Counsel has in the past opposed overlays, but will keep an open mind in this proceeding regarding 314. However, it is in the best interest of the consumers for the Commission to examine all relevant and material facts and hear all the arguments pro and con under the present facts and the prospects for the near future. To that end, Public Counsel will continue to let the interests of the public serve as our focus.

Future Relief of 314 and 816

Public Counsel supports the Commission moving forward with relief planning for the 314 and 816 area codes. The Commission should move forward with the same process that was employed in TO-98-212, TO-95-289, and in TO-96-1. The Technical Committee process would allow the parties to explore alternatives to the proposals currently before the Commission and perhaps generate a single factual base for the Commission. At a minimum, public hearings and evidentiary hearings should be held to

present information and alternative proposals and to receive public and community comments.

RECOMMENDATIONS

To address the concerns and shortcomings identified, Public Counsel makes the following recommendations:

1. Public Counsel asks the Commission to establish a technical committee in this case to review the key data and, to the extent possible, try to reach an agreement on material and relevant facts that could reduce litigation of issues and hearing time and present the Commission with a clear delineation of disputed facts. It could provide focus on the issues and the key points for resolution. The process has successfully avoided litigation in the 816/660 relief plan, helped narrow the disputed issues for the number conservation reports to avoid an evidentiary hearing, and provided considerable consumer and community outreach and education prior to the 636/314 hearing.
2. The Commission should hold public hearings in the 816 and 314/636 area codes to obtain public and community comment on the proposed relief plans. These hearings should come in April or May prior to the evidentiary hearing and after the filing of direct testimony so the public will have options to comment on and the Commission and the parties will have the benefit of that input for their positions and decisionmaking.
3. The Commission should hold an evidentiary hearing for each NPA relief action so the issues in 314/636 are not mixed in with the 816 relief plan. The evidentiary hearing will provide a full record for decisionmaking. It offers parties with an opportunity to

be heard and test the evidence; it presents the disputed facts for Commission resolution.

4. The Commission should direct the technical committee to include number conservation as an option in any scenario developed for NPA relief. It is anticipated that the FCC will issue an order granting Missouri and other states authority to implement number conservation measures under FCC guidelines.
5. The Commission should factor into any decision the potential for area code exhaust in 2007 since this could affect whether an NPA is available or whether restrictions on the request for NPAs are imposed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been faxed, mailed, or hand-delivered to the following counsel of record on this 14th day of February, 2000:

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