

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

In the Matter of the Application of	)	
Charter Fiberlink-Missouri, LLC to	)	
Overturn the North American Numbering	)	Case No. _____
Plan Administrator's Decision to	)	
Withhold Numbering Resources Related to the	)	
Wentzville and Pacific Exchanges	)	

**Application for Review and Reversal of NANPA/PAS Decision**

Charter Fiberlink-Missouri, LLC ("Charter"), pursuant to 4 CSR 240-2.060, 4 CSR 240-2.080(16), and 47 C.F.R. 52.15(g)(3)(iv)-(4), hereby respectfully requests that the Missouri Public Service Commission (the "Commission") overturn the denial by Nuestar, Inc. ("Nuestar"), the Pooling Administrator for the North American Numbering Plan Administrator ("NANPA"), of Charter's applications for numbering resources.

Charter had requested a block of MCA numbers in the Wentzville and Pacific exchanges, also referred to as rate centers, which requests were not granted. Charter requires these numbers in order to offer and support basic local telecommunications services on a Metropolitan Calling Area ("MCA") Plan basis.

In support of this Application, Charter states as follows:

1. Charter is a competitive provider of basic local and interexchange telecommunications services in Missouri. Charter is duly incorporated and existing under and by virtue of the laws of the State of Delaware with its principle place of business at 12405 Powerscourt Drive, St. Louis, MO 63131. Charter is authorized to do business in Missouri, having registered properly with the Missouri Secretary of State and having been granted a certificate of service to provide basic local and interexchange telecommunications services by the

Commission in Case No. TA-2001-346 on April 5, 2001. That filing and certificate remain valid and are incorporated herein by reference pursuant to 4 CSR 240-2.060(1)(G). The nature of Charter's business is the provision of telecommunications services.

2. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

Karl Zobrist  
Blackwell Sanders Peper Martin LLC  
2300 Main Street, Suite 1100  
Kansas City, MO 64108

with copy to:

Carrie L. Cox  
Director, Legal and Regulatory Affairs  
Charter Communications  
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Tel: 314-543-2567  
Fax: 314-965-6640

3. Due to the existence of the MCA Plan in St. Louis, Charter is required (as is each provider) to use segregated and dedicated NXX codes for the provision of MCA and non-MCA service. In order to offer both MCA and non-MCA service in any particular rate center, Charter must obtain two separate blocks of numbers. This is due to routing protocols that must be used by all carriers to identify MCA and non-MCA calling.<sup>1</sup>

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<sup>1</sup> The MCA Plan in St. Louis was established to provide local calling to closely situated customers. The plan essentially converts what would normally be an in-state toll call into a local call. This is accomplished by designation of NPA-NXX codes as local calling codes or non-local calling codes in the provider's switches as used within the MCA. The first company to receive a block of numbers from any 10,000 block will designate that block as either MCA or non-MCA. All providers must thereafter load numbers in that block according to the original designation (MCA or non-MCA). All other blocks assigned thereafter must carry the same designation since the NXX for all other blocks is identical to the original block. Otherwise, calls will not be properly routed as local or non-local calls.

4. To date, Charter has been unable to obtain more than one block of numbers in any rate center where there is an existing unexhausted number block.<sup>2</sup> This is due to the fact that NANPA does not recognize the MCA Plan and, as such, will not accommodate MCA Plan requirements by issuing additional numbering resources. As a result, Charter does not currently offer non-MCA service in the rate centers where it offers service in the St. Louis metropolitan area because it simply cannot obtain a second block of numbers. The inability to obtain non-MCA NXX codes creates a competitive disadvantage for competitive local exchange carriers (CLECs) like Charter.

5. Compounding the inability to obtain non-MCA NXX codes, Charter recently applied for an MCA NXX code for the Wentzville and Pacific rate centers. As stated above, NANPA does not open a new NXX until all prior blocks are exhausted and does not recognize distinctions between MCA and non-MCA blocks since such blocks are designated by routing configurations of the providers within the MCA<sup>3</sup>.

6. Upon completion of a block search for the Wentzville and Pacific rate centers, Charter determined that there are no MCA number blocks available for those exchanges (meaning that all number blocks that have availability are designated non-MCA). Charter cannot use the non-MCA number blocks because doing so would mean its customers would be required to incur toll charges for all calls within their MCA.

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<sup>2</sup> Charter submits all of its requests to NANPA via Nuestar, the Pooling Administrator for NANPA, which is the gatekeeper for all NPA NXX requests.

<sup>3</sup> This is due to necessary routing configurations. Once an NXX is loaded as either MCA or non-MCA by any provider all matching NXX blocks must be loaded under the same configuration (local or non-local routing and billing). This is due to the need to route calls using six digit identifiers (NPA-NXX). NXX code blocks cannot be mixed (as to MCA and non-MCA) within a 10,000 block. Doing so would make it impossible to determine what calls should be billed as local and what calls should be billed as long distance.

7. On January 14, 2004, Charter submitted a block code request to NANPA for a new 10,000 number block in the Wentzville rate center. Since there were only non-MCA number blocks available and since a number block cannot be mixed with both MCA and non-MCA, a completely new block is required. This request was rejected by NANPA as there are currently non-MCA number blocks available in the Wentzville rate center (that is, non-MCA number blocks which cannot be used for MCA calling). This means that Charter is unable to offer hosted phone numbers in the Wentzville rate center. The only customers Charter can serve are porting customers.<sup>4</sup> This places Charter at a serious competitive disadvantage.

8. Likewise, on January 13, 2004 Charter submitted a block code request to NANPA for the Pacific rate center. NANPA assigned a non-MCA block to Charter in this rate center which was a constructive denial of Charter's request. Therefore, Charter returned this block since it cannot be used for MCA numbers. Because of the NANPA rules and the MCA Plan, Charter is essentially required to choose between offering MCA and non-MCA numbers when offering service in St. Louis.

9. The Federal Communications Commission ("FCC") has granted this Commission authority to review and overturn decisions by NANPA to withhold numbering resources where the carrier has complied with reporting and numbering resource application requirements. See 47 C.F.R. § 52.15(g)(3)(iv) and (4). The unique circumstances relating to the MCA Plan in St. Louis warrant Commission action in this case. Without a decision from this Commission that Charter has complied with the applicable requirements and that the minimum utilization and months-to-exhaust criteria should be waived, Charter will be unable to offer hosted service in these exchanges which will place Charter at a competitive disadvantage in this market.

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<sup>4</sup> Since Charter can only offer service for those customers porting a number from another carrier, Charter cannot offer service to anyone who does not desire to port a number (such as new residents).

10. Charter is a growing competitive provider in the St. Louis area. As noted above, Charter is currently able to offer only one type of calling plan (MCA *or* non-MCA) in the rate centers where MCA service is applicable. As Charter expands its footprint, it will continue to be hampered in its efforts to offer the full range of services that other carriers are able to offer. This is particularly true with regard to incumbent local exchange carriers (ILECs) that have already obtained both types of number blocks prior to implementation of MCA. This situation, in and of itself, demonstrates an existing competitive disadvantage. Further, where number blocks for MCA service are not available and number blocks for non-MCA service are available, Charter will not be able to obtain MCA number blocks absent a Commission order overturning NANPA's decisions affecting the Wentzville and Pacific exchanges.

11. Charter desires to offer its customers the full range of services available from other carriers in this market. Charter is unable to do so without adequate numbering resources. In this case, Charter is not only unable to offer non-MCA service, but is also unable to offer MCA service because it cannot offer any hosted service in the Wentzville and Pacific exchanges.

12. In order for Charter to obtain MCA numbers in the Wentzville and Pacific rate centers, Charter must obtain an order from the Commission under 47 C.F.R. § 52.15(g)(3)-(4) that overrules the NANPA decisions.

13. Section 251(e) of the Communications Act of 1934, 47 U.S.C. § 251(e), grants the FCC exclusive jurisdiction over the North American Numbering Plan and related telephone numbering issues. Section 251(e) also authorizes the FCC to delegate to the State Commissions or other entities all or any portion of that jurisdiction. The FCC has delegated to NANPA and to the Pooling Administrator the responsibility to manage numbering resources, process applications for NXX code assignments and thousand number blocks and to administer NXX

code databases. 47 C.F.R. §§ 52.15, 52.20. The FCC's delegation of authority gives NANPA and the Pooling Administrator virtually no discretion in determining whether numbers should be granted or withheld from any carrier when standard numbering rules frustrate a local calling regime. 47 CFR 52.15(g)-(h).

14. While NANPA has little or no discretion to waive the minimum utilization and months-to-exhaust rules, this Commission does under federal regulations. The FCC authorized State Commissions to entertain challenges to adverse decisions by NANPA and to overturn a "decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies." 47 CFR 52.15(g)(4). The Commission should exercise that jurisdiction here and grant Charter the necessary authority to secure MCA number blocks in the Wentzville and Pacific rate centers.

15. This Commission has acknowledged that it is a requirement for all LECs (CLECs and ILECs) to segregate NXX codes in order to distinguish between MCA and non-MCA customers, meaning that each carrier must obtain two NXX codes for each rate center. *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, Report and Order at 28 (Sept. 12, 2000).

16. The Industry Task Force formed to study the impact of the passage and implementation of the Federal Telecommunications Act on MCA service issues articulated the competitive disadvantage that CLECs such as Charter face when attempting to secure an initial or second NXX code from NANPA so that they can offer both MCA and non-MCA service.

[I]f a carrier has not used 60%<sup>5</sup> of the available numbers in an NXX code, the NANPA will not issue another code in the same exchange, as is required to satisfy the dialing requirements for Missouri's MCA service. While the Task Force notes that the 60% utilization standard applies equally to competitors and incumbents, of particular concern is the fact that only competitors are being denied the ability to serve new customers. This is because incumbents already had the required minimum of two NXX codes to serve an exchange when the 60% utilization guideline was established. Plainly stated, competitors are being denied the MCA codes necessary to provide MCA service in competition with incumbents.

*In the Matter of Further Investigation of the Metropolitan Calling Area Service After passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-2001-391, Final Status Report of the Industry Task Force at 21-22 (January 2002).

17. Compounding the "two NXX requirement" of the MCA plan in Missouri is the fact that Charter is unable to offer MCA calling to its customers at all.<sup>6</sup> The circumstances in this case clearly support a Commission directive to NANPA that permits Charter to obtain the MCA numbering resources it needs to provide service in Wentzville and Pacific rate centers. The FCC has made clear that "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources." *In the Matter of Numbering Resource Optimization*, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 99-200 and 96-98, FCC 00-429, at ¶ 61 (released Dec. 29, 2000). If the Commission does not overturn or waive the PA/NANPA's denial of Charter's request for an MCA number block, consumers will be precluded from receiving MCA service from Charter in those rate centers. While Charter is able

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<sup>5</sup> Pursuant to the FCC's number utilization rules, the minimum usage to qualify for a growth code has been increased to 70% as of June 30, 2003. See 47 CFR 52.15(h). In addition to the minimum usage threshold, applicants for growth codes must also show that their existing codes are within six months of exhaust. Id.

<sup>6</sup> The Wentzville and Pacific rate centers are located in areas of the metro St. Louis area where customers routinely subscribe to MCA service. Absent access to MCA numbers, Charter is unable to serve such customers.

to provide ported service, it is unable to fill service requests for service on a hosted basis (including second lines where a customer ports a primary line).

18. Charter's request for a number block in an MCA NXX code in Wentzville and in Pacific should be treated as a request for an "initial" code<sup>7</sup> due to the Commission's requirement that all carriers segregate MCA and non-MCA NXX codes. There is no question that Charter has a verifiable need for MCA numbers: Charter is unable to provide MCA service in these exchanges absent these resources. Because of the NANPA rules regarding numbering resources and the need under the MCA plan to segregate MCA and non-MCA NXXs, Charter is unable to obtain MCA number blocks for these exchanges since only non-MCA number blocks are available. Accordingly, Charter is forced to petition the Commission for a waiver of the numbering rules consistent with the FCC's direction and mandate. The Commission must not allow the unique requirements of the MCA plan in St. Louis to frustrate competitive provision of telecommunications services.

19. In accordance with 4 CSR 240-2.060(1)(K), Charter states that there are no final unsatisfied judgments or decisions against it in any state or federal agency or court which involve customer service or rates for which action, judgment or decision has occurred within three (3) years of the date of this Application.

20. Pursuant to 4 CSR 240-2.060(1)(L), Charter states that it does not have any overdue annual reports or assessment fees owed to the Missouri Public Service Commission.

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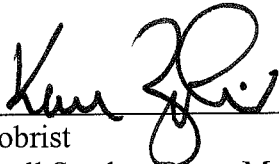
<sup>7</sup> Charter notes the criteria for obtaining an initial code: (1) the carrier is authorized to provide service in the area where numbers are being requested (Charter is authorized to provide service in Wentzville and Pacific) and (2) The carrier is capable of providing service within sixty (60) days of the numbering activation date (Charter will provide service within sixty (60) days of obtaining numbering resources for these exchanges). See 47 CFR 52.15(g)(2).



21. Charter has attached as Exhibit A a certificate of good standing from the Office of the Missouri Secretary of State indicating that it is authorized to do business in Missouri, pursuant to 4 CSR 240-2.060(1)(C).

### **Conclusion**

For the foregoing reasons, Charter respectfully requests that the Commission overturn the denial by Nuestar, Inc., the Pooling Administrator for the North American Numbering Plan Administrator, of Charter's application for numbering resources in the Wentzville and Pacific rate centers, and grant Charter a waiver of the growth code requirements to permit the Pooling Administrator to approve Charter's application for a new block of 10,000 numbers in a second NXX code in both the Wentzville and Pacific rate centers.

  
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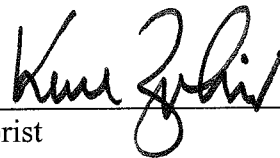
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Attorneys for Applicant Charter Fiberlink-  
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**VERIFICATION**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF JACKSON    )

I, Karl Zobrist, an attorney for Charter Fiberlink-Missouri, LLC, being duly sworn upon my oath, do hereby state that I have read the foregoing document and that the facts stated therein are true and correct to the best of my knowledge, information and belief, and that I am authorized to file such document on behalf of Charter Fiberlink-Missouri, LLC.

  
\_\_\_\_\_  
Karl Zobrist

Subscribed and sworn to before me this 9<sup>th</sup> day of September, 2004.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

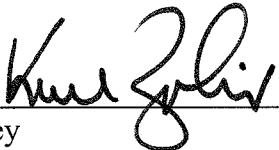
**ELIZABETH S. McGUIRE**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Bates County  
My Commission Expires: Jan. 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, postage prepaid, to the following persons this 9<sup>th</sup> day of September, 2004:

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Attorney