

## **Comments of the Staff of the Missouri Public Service Commission**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and, pursuant to the Notice to Submit Comments published in the *Missouri Register* on November 1, 2006, submits the following comments:

### **COMMENTS**

On February 24, 2006, the Federal Communications Commission (FCC) issued its Order and Fifth Further Notice of Proposed Rulemaking (FCC Order) granting the Missouri Commission's petition seeking additional delegated authority to implement number conservation measures in the 417, 573, 636 and 660 area codes in Missouri. The Order became effective March 15, 2006. The proposed rulemakings were initiated to implement number pooling and other number conservation efforts statewide. In the November 1, 2006, edition of the *Missouri Register*, the Missouri Public Service Commission (Commission) published its proposed rules, 4 CSR 240-37.010 through 4 CSR 240-37.060.

#### **4 CSR 240-37.010 – General Provisions**

Pursuant to the proposed rule, all carriers operating in the state of Missouri that request numbering resources from the North American Numbering Plan Administrator or the Thousands-Block Pooling Administrator (collectively, Administrator) will be subject to the requirements of Chapter 37 within 30 days after the effective date of the rule. The requirements of the rule extend to carriers such as wireless providers and certain VoIP providers that do not typically operate under the jurisdiction of the Commission, but receive numbering resources directly from the Administrator. The FCC has exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States, but may delegate to the states any

portion of such authority.<sup>1</sup> Federal regulations are applicable to “service providers”. “Service provider” is defined as a telecommunications carrier or other entity that receives numbering resources from the North American Numbering Pool Administrator, the Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing a telecommunications service.<sup>2</sup> Since the FCC has delegated number conservation authority to this Commission, it is appropriate for the proposed rule to apply to all entities subject to the federal authority which were delegated. Staff supports the rule as proposed.

#### **4 CSR 240-37.020 – Definitions**

For the most part, the definitions in the proposed rule are representative of federal definitions contained in 47 C.F.R. 52 and various federal orders. Where variances occur, the Staff worked with the industry to develop clear, easily understandable language. Staff supports the rule as proposed. Staff will discuss a couple noteworthy definitions below.

##### *4 CSR 240-3.020(1)*

Section 1 of the proposed rule defines “bona fide”. A rural telecommunications carrier is not required to provide local number portability until it has received a “bona fide” request for number portability from a competitor. In 2004, several cases were filed<sup>3</sup> with the Commission seeking extensions or waivers of intermodal LNP requirements. As part of its research on the extension/waiver requests, Staff obtained information that indicated certain carriers did not consider requests they had received as “bona fide” because the requesting competitor spelled the company name wrong, submitted the request to the wrong ILEC employee, etc. This definition

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<sup>1</sup> 47 C.F.R. 52.3

<sup>2</sup> 47 C.F.R. 52.5(i)

<sup>3</sup> See for example: *In the Matter of the Petition of New London Telephone Company, Orchard Farm Telephone Company, and Stoutland Telephone Company for Suspension of the Federal Communications Commission Requirement to Implement Number Portability*, Case No. TO-2004-0370, et al.

is being proposed to clarify that technical deficiencies in a request, such as a misspelled name, do not negate the obligation to honor the request.

*4 CSR 240-37.020(6)*

Section 6 of the proposed rule defines “exempt carrier”, thus identifying those carriers that will not be required to participate in certain aspects of the rule. By definition, an exempt carrier is a carrier that does not have the *technical capability* to provide local number portability (LNP).

Thousands-block pooling was implemented in the 100 largest Metropolitan Statistical Areas (MSA) in March 2002. At the time, the FCC exempted from the thousands block pooling requirements, rural telephone companies and Tier III commercial mobile radio service (CMRS) providers that had not received a specific request for the provision of LNP, as well as carriers that were the only service provider receiving numbering resources in a given rate center. The FCC determined that “it is reasonable to require LNP only in areas where competition dictates its demand.”<sup>4</sup> However, in its Order and Fifth Further Notice of Proposed Rulemaking, the FCC stated,

The third criterion, that the [numbering plan area (NPA)] is in one of the largest 100 MSAs or **the majority of the wireline carriers in the NPA are LNP-capable, is not relevant here.** These petitions seek authority to implement pooling outside of the largest 100 MSAs, and **we have since determined that pooling can be implemented without full LNP capability.** Instead, we are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand. For this reason, we have exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center. Although this exemption should ensure that LNP is only required in areas where competition dictates demand, it is important to also note that, **for carriers who are required to participate in number pooling, full LNP capability is not required.** In this case, we require state commissions, in exercising the authority delegated herein to implement

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<sup>4</sup> *Fourth Report and Order*, 18 FCC Rcd at 12473 through 12476.

number pooling, to implement this delegation consistent with the exemption for the carriers described above. We therefore expect that rural carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of the delegation of authority set forth herein. (footnotes omitted, emphasis added)<sup>5</sup>

The FCC now draws a distinction between exemptions for LNP and exemptions for pooling. This distinction was one factor in developing the definition of “exempt” carrier. Another factor considered was the FCC’s expectation that rural carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of number pooling. Finally, the FCC’s determination that full LNP capability is not required prior to participating in thousands block pooling was another major factor in developing the definition of “exempt” carrier.

The FCC’s rules require a carrier to provide LNP within 30, 60 or 180 days of a request, depending on the readiness and type of switch. There are no apparent enforcement mechanisms if a carrier fails to meet the required timeframe. Therefore, according to the definition of “exempt”, a carrier that receives a bona fide request, but does not meet the specified timeframe, shall no longer meet the definition of “exempt” for purposes of Chapter 37 and will be required to participate in all number conservation efforts.

#### **4 CSR 240-37.030 – Thousands-Block Number Pooling**

Consistent with the Commission’s delegated authority, the proposed rule outlines the timeframes and guidelines for implementing thousands-block number pooling (pooling) throughout Missouri. Staff supports the rule with the modification discussed below.

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<sup>5</sup> *Order and Fifth Further Notice of Proposed Rulemaking*. In the Matter of Numbering Resource Optimization, Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Efforts, et al. CC Docket No. 99-200. Par. 11.

Section 1 requires thousands-block number pooling to be implemented within 30 days of the effective date of the rule unless otherwise determined by the schedule of the Thousands-Block Pooling Administrator (Administrator). This requirement ensures that pooling moves forward expeditiously, but still allows the Administrator leeway to accommodate scheduling needs.

Carriers meeting the definition of “exempt” are not required to participate in pooling. Several carriers have expressed informal concerns because the proposed rule requires carriers with the technical capability to participate in pooling even in the absence of a competitor in the carriers’ service areas or rate centers. Several data requests were sent to those carriers expressing informal concerns. A summary of those responses is contained in Attachment SC1. The full responses are attached as Attachment SC2.

According to the responses, 23 of the 37 respondents have complete technical capability (both through hardware and software) to participate in number pooling. Most carriers indicated there would be no technical difficulties if they were required to donate blocks of numbers to the pool. Carriers indicated initial start-up costs ranging between \$500 and \$5000, with most carriers indicating costs less than \$1,000 if they are required to donate uncontaminated blocks. These costs are primarily for switch translations to technically capable switches. The fiscal impact analysis attached to the proposed rule included one-time charges for switch replacement or modification. Based on the information that was provided, it does not appear the fiscal estimate included costs for switch translations. Therefore the total fiscal impact of the proposed rule could be an additional \$16,500 to \$28,000 for the first year cost of compliance with the rule.

Most of the rate centers associated with carriers that have the technical capability to provide local number portability have both contaminated and uncontaminated blocks that could be donated to the pool. Staff made some inquiries as to how long it typically takes to donate numbers to the pool once thousands-block pooling has been implemented. Staff understands that it could take approximately four to six months to complete the activities necessary to actually donate numbers. Although several carriers do not currently have competitors in their area to take advantage of thousands-block pooling at this time, postponing pooling requirements in their areas could be viewed as inefficient and anti-competitive. Competitors would either have to wait to enter an area until the ILEC donated numbers for the carriers use, or would have to obtain a 10,000 block of numbers, with the majority to be donated back to the pool once the ILEC has completed its activities. Staff continues to support the requirement that all carriers with both the hardware and software technical capability to provide local number portability be required to participate in thousands-block pooling regardless of whether they have received a bona fide request for porting numbers. However, Staff recommends Section (1) be modified to indicate that small (rural) ILECs, as defined in 392.230.4 RSMO, that have the technical capability to provide local number portability only be required to donate to the pool those blocks that are uncontaminated. This modification should eliminate most, if not all, costs associated with the fiscal impact as submitted with the rule, and should result in total fiscal impact of approximately \$16,500 to \$28,000 for Class B carriers as discussed above.

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within 30 days after the effective date of this rule unless otherwise determined by the Thousands-block Pooling Administrator. **A carrier that is a small ILEC, as defined in 392.230.4RSMo, and has both the hardware and software technical capability to provide local number portability shall only be required to donate uncontaminated thousands-blocks to the inventory pool until such time as the carrier receives a bona fide request.**

*4 CSR 240-37.030(2) and (3)*

Sections 2 and 3 of the proposed rule require carriers to submit certain information, upon request, to the Telecommunications Department Staff. These sections are consistent with 47 C.F.R. 52.15(g), specifically subsection (5) *State access to applications*, which states ... “service providers must comply with state commission requests for copies of numbering resource applications”.

The FCC recognized the invaluable role of state commissions in number administration and optimization.<sup>6</sup> Sections 2 and 3 of the proposed rule will provide Staff additional data to monitor the numbering resources in Missouri in order to keep the Commission apprised of any concerns that may arise upon review of that data.

*4 CSR 240-37.030(4)*

Section 4 sets forth the circumstances by which carriers must assign all available numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block. The section includes an exemption for situations in which the uncontaminated thousands-block was opened to accommodate the needs of a customer. A carrier that opens an uncontaminated thousands-block before assigning all available numbers shall be required to submit a report to the Commission explaining the reasons for such actions, including a demonstration that the carrier has a verifiable need for the numbers and has exhausted all other available remedies. This section is consistent with 47 C.F.R. 52.15(j), which requires the commission to make a finding as to whether the carrier received a genuine request and whether the carrier was able to meet that request. It appears that Section (4) and subsection (4)(A) conflict since Section (4) allows carriers to open an uncontaminated thousands-block to meet

customer demand, while Section (4)(A) requires a carrier to submit a report explaining its actions each time it opens an uncontaminated thousands-block. Staff suggests the exemption be moved with modification as indicated below. The proposed section will serve to further conserve numbering resources in Missouri.

As can be seen in Attachment SC1, there are 855 uncontaminated thousands-blocks in the areas of certain rural ILECs. This number is presumably exponentially compounded by the addition of uncontaminated thousands-blocks in the areas of all other ILECs and competitors in Missouri. Through the requirements of this section of the proposed rule, numbers will be preserved for future use and assignment.

(4) All carriers, **to the extent possible**, shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block **(for purposes of section (4) “assignment”)** [*unless the available numbers in the opened thousands-block are not sufficient to meet a specific customer request*]. This requirement shall apply to a carrier’s existing numbering resources as well as any new numbering resources it obtains in the future. **If a carrier is not able to assign all available numbers within an opened thousands block before assigning telephone numbers from an uncontaminated thousands block, the following reporting conditions apply:**

**(A) If the carrier opens the uncontaminated thousands-block to meet the needs of a customer that has requested multiple telephone numbers and the quantity of remaining numbers within the contaminated thousands-block is not sufficient to meet the request, no commission reporting under this section is required.**

**(B) If the assignment was previously approved pursuant to 4 CSR 240-37.040, no commission reporting under this section is required.**

**(C) If the carrier [(A) A carrier that] opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block [(for purposes of section (4) “assignment”)] for any purpose other than those listed in subsection (A) and (B) above, the carrier shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission’s Electronic Filing and Information System (EFIS). The Report shall explain why the assignment is reasonable and include, but not be limited to, the following:**

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<sup>6</sup> Id at par. 16.

#### **4 CSR 240-37.040 – Requests for Review of the Decisions of the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator**

The proposed rule codifies existing processes for reviewing the decisions of the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator (collectively, Administrator). Pursuant to 47 C.F.R. 52.15(g)(3)(iv) and (4), a carrier may challenge the decision of the Administrator to the appropriate state regulatory commission. The state commission may affirm or overturn the decision of the Administrator based on a determination of compliance with the reporting and numbering resource application requirements and a determination that the carrier has a verifiable need for numbering resources and has exhausted all other available remedies. The proposed rule outlines the documentation a carrier must submit to the Commission for its review and requires a carrier to demonstrate it has a verifiable need for numbering resources and has exhausted all other available remedies to conserve numbering resources. Federal regulations dictate that a carrier will be denied numbering resources if it fails to provide the state commission with numbering resource application materials. The federal rules are silent as to the action of state commissions if the carrier fails to make a demonstration of a verifiable need or fails to demonstrate that it has exhausted all other remedies. Such demonstrations will provide the Commission with the information needed to make its determination as set forth in 47 C.F.R. 52.15(g)(3)(iv) and (4). Therefore, Staff supports the rule with the following change.

**(2) A carrier that fails to provide any items in Section (1)(A) above, or fails to make a reasonable demonstration as required by Section (1)(A)7 above shall be denied numbering resources.**

#### 4 CSR 240-37.050 - Reclamation

The provisions of this proposed rule outline the conditions by which carriers are required to return unused telephone numbers. The proposed rule is consistent with 47 C.F.R. 52.15(i). Staff supports the rule as proposed.

All carriers, except exempt carriers, are required to return thousands-blocks that are no longer needed, were not in place within six months of receipt, or are ten percent or less contaminated. Several companies expressed informal concerns about the requirement to donate thousands-blocks in rate centers where there are no competitors in need of numbering resources. Data requests were sent to carriers expressing concerns. A summary of those responses is contained in Attachment SC1. The full responses are attached as Attachment SC2. As can be seen in the summary of responses to DRs 4 and 5, there are 855 uncontaminated thousands-blocks and 667 thousands-blocks that are ten percent or less contaminated. For the 37 respondents, a total of 1,522 thousands-blocks meet the criteria of 4 CSR 240-37.050 as eligible to be returned or reclaimed.

Since, by definition, contaminated thousands-blocks have numbers assigned to customers, database dips will be necessary to route calls to customers with numbers assigned from these blocks once donated to the pool. The estimated cost for database dips average \$12,960 per company per year. (This amount was included in the fiscal impact estimated published with the proposed rule.) Since information was already available related to carriers donating contaminated thousands-blocks to the pool, the data request questions concentrated on technical difficulties or costs associated with donating **uncontaminated** thousands-blocks to the pool. Three carriers identified problems with donating uncontaminated thousands-blocks. Three carriers stated database dips would need to be performed if uncontaminated thousands-blocks

were donated to the pool even if those numbers were not assigned to another carrier in the same rate center. Thirty-two carriers indicated there would be initial costs associated with donating uncontaminated blocks of 1000 numbers to the pool. The cost estimates ranged from \$500 to \$5000, with several carriers not able to provide an estimate at this time. (These are the same costs as discussed in Staff's Comments on 4 CSR 240-37.030.)

Carriers expressed concerns about meeting customer demand and needs if required to donate thousands-blocks to the pool. As discussed in its comments on 4 CSR 240-37-030, Staff supports the requirement that all carriers with the technical capability to provide local number portability be required to participate in thousands-block pooling and suggests that rural ILECs only be required to donate uncontaminated numbers. Staff suggests Section (2) be modified as follows:

(2) All carriers, except exempt carriers, shall donate thousands-blocks with ten (10) percent or less contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned. **A carrier that is a small ILEC, as defined in 392.230.4RSMo, and has both the hardware and software technical capability to provide local number portability shall only be required to donate uncontaminated thousands-blocks to the inventory pool until such time as the carrier receives a bona fide request.**

#### **4 CSR 240-37.060 – Reporting Requirements**

The proposed rule establishes procedures for a carrier to report to the Commission when telephone numbers are given to an “indirect carrier”. The proposed rule also requires certain documentation to assist the Commission and its Staff in completing audits of numbering resources. Staff supports the rule, but as discussed below suggests an additional reporting requirement be added to the rule as proposed.

Section 1 requires carriers to notify the Commission, via an informal filing in EFIS, when a thousands-block is assigned or transferred to an “indirect carrier”. The definition of “indirect carrier” will be discussed in more detail below. However, it is important to note the Commission’s authority, as well as the FCC’s authority, over number conservation efforts is limited to carriers that obtain numbering resources directly from the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator (collectively, Administrator). Many of the numbering resources are being expended by non-incumbent, non-certificated entities (e.g. wireless providers, Voice over Internet Providers, paging companies, entities providing telephone numbers for use by telephone dating services, etc.). Since the Commission has no authority over the numbering resources obtained by this subset of entities, requests by these carriers largely go unnoticed and unmonitored.

The information Staff currently receives on numbering resources shows the local exchange carrier (LEC) subject to the Commission’s jurisdiction has assigned numbers to “customers”, since the non-certificated entity qualifies as a customer of the LEC, the blocks of numbers appear to be in use by LEC customers. Since the blocks are assigned to the non-certificated entities, many of these numbers remain unused since these entities typically assign only a few numbers to an area to allow such things as access to an Internet Service Provider or a phone dating service. Section 1 of the proposed rule allows the Commission to effectively monitor the use of numbering resources in Missouri. The requirement may also provide the Commission with necessary documentation to petition the FCC to initiate a rulemaking to extend numbering authority over carriers not covered by existing regulations.

As previously stated, Section 1 of the proposed rule refers to “indirect carrier”. This term is not a term used in the federal regulations, but was designed for the proposed rulemaking to capture the type of entity and number assignment discussed above. According to federal guidelines, numbering resources must be classified in one of the following categories:

- (i) Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.
- (ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.
- (iii) Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.
- (iv) Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.
- (v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers.
- (vi) Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

Staff has been informed carriers periodically provide the Administrator a report associated with the various numbering resources categories. Within this report, “intermediate numbers” most closely match the intent of the reporting requirements of Section 1 of the proposed rule. Staff was also informed that the information provided to the Administrator is detailed at the wire center level, but does not include the entity receiving the numbers from the

reporting LEC. This additional information will provide the Commission with a more complete picture of the use of numbering resources in Missouri.

Staff recommends 4 CSR 240-37.060 be expanded to include an additional reporting requirement that carriers submit to the Commission via EFIS<sup>7</sup>, a copy of the quarterly report classifying numbering resources in the various categories. Staff proposes a new section be added to the proposed rule as follows. Staff further recommends the remainder of the rule be renumbered accordingly.

**(2) Each carrier shall submit a copy of its number use categories report to the commission. Such report shall be submitted via EFIS within thirty (30) days of submission to the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator.**

No significant fiscal impact is expected as a result of the recommended change since the documentation is already compiled to meet federal requirements.

*4 CSR 240-37.060(2)*

Section 2 of the proposed rule requires companies to submit certain information to ensure compliance with state and federal numbering rules. Federal regulation, 47 C.F.R. 52.15(k), allows “for cause” and random audits to verify carrier compliance with regulations and guidelines related to numbering administration. The FCC determined states may conduct random audits that are not duplicative of national efforts, stating, “The [FCC] values input from the states and considers coordination with them to be vitally important to advancing our shared policy goals of administering numbering resources efficiently. We reaffirm that states continue

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<sup>7</sup> EFIS submissions, as referenced in the proposed rulemakings, would be handled in much the same manner as non-case related submissions for 4 CSR 240-3.570, whereby a wireless carrier designated as an eligible telecommunications carrier submits an informational filing of rates, terms and conditions. Once the non-case related submission is submitted to EFIS, designated Commission Staff receive an electronic notification of the submission for review. Modification to EFIS should be achieved with minimal costs.

to have authority to conduct audits to the extent permitted under state law.”<sup>8</sup> Section 2 of the proposed rule requires the carriers to provide, upon request, documentation for the Staff to complete such audits. This is a vital process in the Commission’s role of monitoring numbering resources in Missouri.

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<sup>8</sup> *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*. In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability. CC Docket Nos. 99-200, 96-98 and 95-116. Par. 101.