

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

In the Matter of a Proposed Rulemaking to)
Create Chapter 37 - Number Pooling and) Case No. TX-2007-0086
Number Conservation Efforts.)

STAFF’S RESPONSE TO WIRELESS CARRIERS’ APPLICATION FOR REHEARING

COMES NOW the Staff of the Missouri Public Service Commission, in response to the Application for Rehearing filed on February 14, 2007 by T-Mobile Central LLC, d/b/a T-Mobile, Verizon Wireless, Cingular Wireless, and Sprint Nextel Corporation (collectively, “wireless carriers”), and submits the following response.

1. The Wireless Carriers have filed an Application for Rehearing (“Application”) with respect to the Orders of Rulemaking in 4 CSR 240-37.030(4)(C) and 4 CSR 240-37.060(2). Staff’s response addresses the points in the Application in the order raised by the Wireless Carriers.

A. “The Commission Does Not Have General Authority Over Wireless Carriers.”

2. Relying on Section 386.020(53)(c),¹ the wireless carriers assert that Missouri law does not confer general jurisdiction over wireless carriers to the Missouri Public Service Commission (“Commission”). As explained in Staff’s Comments in support of the rulemaking, the Commission’s jurisdiction over numbering resources does not stem from general state authority, but from authority delegated to it by the Federal Communications Commission (“FCC”).

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,

¹ All references are to RSMo. (2000).

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. 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 [as that service is defined in 47 U.S.C. 153]. 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.²

To the extent the wireless carriers receive numbering resources directly from the North American Numbering Pool Administrator, the Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing a telecommunications service, it is appropriate for those carriers to be subject to the Commission’s authority for the purpose of number conservation efforts. This is further supported by the FCC in its Order in CC Docket 99-200 adopted July 20, 2000:

Thus, the state commissions, to the extent they act under the authority delegated herein, must ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; **that whatever policies the state commissions institute with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and that the state commissions not unduly favor one telecommunications technology over another.** (Order at 7, para. 10) (emphasis added)

3. The wireless carriers suggest that because Missouri has no statute conferring jurisdiction upon this Commission to govern wireless carriers, the Commission has acted beyond its authority in promulgating a rule that applies to wireless carriers. However, as the

² Staff comments filed November 30, 2006, beginning at page 1.

Commission indicated in its Order of Rulemaking, Missouri does have a statute that confers jurisdiction upon the Commission to act under delegated authority in the form of Section 386.210.2, which states that the “commission may ... act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof ... for the purpose of carrying out its duties under section 386.250 as limited and supplemented by section 386.030... .” Although the wireless carriers do not meet the definition of “telecommunications company” at Section 386.020(51) due to their explicit exclusion from the definition of “telecommunications service” at Section 386.020(53)(c), that limitation is not dispositive. Section 386.030 indicates that the provisions of Chapter 386 may be applied to interstate commerce should an act of Congress so permit. An act of Congress does permit the Commission to exercise its authority over service providers that obtain numbering resources. Congress explicitly authorized the Federal Communications Commission to delegate “to State commissions or other entities all or any portion of” its “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.” 47 U.S.C. 251(e)(1). Thus, this Commission has received authority to act under its own statute at Section 386.210 from the Federal Communications Commission, which in turn activated the provisions of Section 386.030 by exercise of Federal law.

B. “The FCC Has Plenary Jurisdiction Over Numbering Administration and Must Specifically Delegate its Authority to the States.”

4. The Commission previously addressed this concern in its Order of Rulemaking in 4 CSR 240-37.020. In its Order, the Commission responded to similar concerns by stating:

In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that “[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant authority

to them to implement certain measures within their local jurisdictions.” Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this commission authority to implement mandatory thousands-block number pooling in the 417, 573, 636 and 660 NPAs. The Federal Communications Commission had previously delegated similar authority to this commission for the other area codes in Missouri.

In addition to the various orders referenced in the Commission’s Order of Rulemaking, the Staff notes that 47 C.F.R. 52.15 contains several references³ to states’ delegated authority over service providers and number conservation efforts.

5. The wireless carriers, at paragraph 10 of their Application, express concerns that 4 CSR 240-37.030(4)(C)⁴ and 4 CSR 240-37.060(2) impose new and additional reporting requirements on the wireless carriers. 4 CSR 240-37.030(4)(C) requires a report from any carrier that opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block for any reason other than those reasons specifically identified in the rule. 4 CSR 240-37.060(2) requires carriers, upon request of Commission staff, to provide information to the staff so that the staff can ensure carriers are complying with numbering rules and regulations and verify the validity and accuracy of the carrier’s utilization data. The merits of the arguments related to 4 CSR 240-37.060(2) are discussed in Section C below.

³ *E.g.*, “State commissions may reduce the reporting frequency for NPAs in their states to annual” (f)(6)(ii); “States shall have access to data reported in the NANPA...” (f)(7); “The state commission may affirm or overturn the NANPA’s decision to withhold numbering resources...” (g)(4); “State regulatory commissions shall have access to service provider’s applications for numbering resources...” (g)(5); “Upon a finding by a state commission that a service provider inappropriately assigned telephone numbers from an uncontaminated thousands-block...” (j)(3).

⁴ The proposed rulemaking, as published in the November 1, 2006 Missouri Register, included the monitoring of compliance with sequential numbering in 4 CSR 240-37.030(A). After incorporating changes proposed during the comment and hearing process, this subsection was subsequently renumbered as 4 CSR 240-37.030(C) as reflected in the wireless carriers’ Application and this response.

6. Although it did not specifically cite the wireless carriers concerns as a reason for modifications to the rule, the Commission made several revisions to 4 CSR 240-37.030(4)(C) to clarify the Commission's authority over sequential numbering issues:

- The commission clarified the provision applies unless otherwise provided by federal law; and
- The commission clarified the block may be open to meet the needs of a customer requesting multiple numbers when the remaining numbers in the contaminated block are insufficient to meet the request.

The Federal Communications Commission has required a service provider that opens an uncontaminated thousands block prior to assigning all available telephone numbers to be prepared to demonstrate to the state commission a genuine request from a customer and the service provider's inability to meet the request.⁵ Instead of placing the burden on this Commission to request proof of such activities, the Commission's current version of 4 CSR 240-37.030(4)(C) recognizes the requirement of 47 C.F.R. 52.15(j)(2) and outlines the situations in which service providers must comply with the federal requirement. Further, as the Commission noted in its Order of Rulemaking,

The Federal Communications Commission has directed the commission to make a finding as to whether a service provider has inappropriately assigned numbers if they are assigned from uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block.

To carry out this directive in any meaningful way, the Commission must have access to documentation and evidence to make its finding as anticipated by 47 C.F.R. 52.15(j)(3) that a service provider inappropriately assigned telephone numbers.

C. "The Commission Should Modify the Requirements in 4 CSR 240-37.060(2)."

7. In support of the request for rehearing on this section of the Commission's rules, the wireless carriers claim the rule is overly broad when compared to the limited auditing

authority that has been granted to the states. The wireless carriers suggest the rule be modified to clarify the Commission may request the FCC initiate a “for-cause audit” and may request to participate in that audit alongside federal auditors. This modification would be consistent with 47 C.F.R. 52.15(k), and the Staff recognizes the Commission has the ability to request and participate in federal “for-cause audits.” However, the FCC also allows state commissions to perform audits pursuant to federally delegated authority separate from the “for-cause audits” and separate from audits pursuant to state authority.

8. In its Third Report and Order, the FCC stated:

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 to have authority to conduct audits to the extent permitted under state law. **Moreover, in recognition that states can serve a valuable role in helping the [FCC] to monitor carriers’ number use, we clarify that states may conduct audits, at their own expense, to determine whether a particular carrier is in compliance with the [FCC]’s numbering rules to discharge their own responsibilities.** For example, state audits that seek to gather information needed to facilitate area code relief decisions would be **appropriate to the extent that the information sought is not available through another source, such as NRUF data reports.** This ability, *coupled with the states’ right to request “for cause” audits* under the national auditing program, should provide states with sufficient and effective tools for carrying out their area code relief responsibilities.⁶ (emphasis and italics added)

From this excerpt, it is clear the FCC anticipated two types of audits pursuant to federal authority: (1) “for cause” audits conducted in conjunction with federal authorities and (2) additional audits at the expense of this Commission designed to determine compliance with FCC rules as they apply to this Commission’s number conservation efforts.

⁵ 47 C.F.R. 52.15(j)(2)

⁶ 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, released December 28, 2001. para.101.

9. Staff acknowledges that any requests for information under the second type of audit cannot be duplicative of federal efforts or duplicative of information already provided through another source such as the NRUF. However, it became clear during the comment and hearing process that not all service providers complete NRUF information consistently. Staff recommends the language in 47 CSR 240-37.060(2) remain unmodified, again recognizing that information readily available from another source may not be requested. Should Staff request information that is inconsistent with federal audit authority, the wireless carriers may request relief from the Commission at that time.

WHEREFORE, Staff submits the attached response for the Commission's consideration, and recommends the Commission deny the wireless carriers' application for rehearing.

Respectfully submitted,

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I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 2nd of March 2007.

/s/ David A. Meyer
