

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

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

APPLICATION FOR REHEARING

COME NOW T-Mobile Central LLC, d/b/a T-Mobile, Verizon Wireless, Cingular Wireless, and Sprint Nextel Corporation (collectively the "Wireless Carriers") by their attorneys, and pursuant to RSMo. §386.500 (2000) and 4 CSR 240-2.160(1), file this Application for Rehearing with respect to the Orders of Rulemaking concerning 4 CSR 240-37.030(4)(C) and 4 CSR 240-37.060(2) issued by the Missouri Public Service Commission (the "Commission") in this case on January 15, 2007 . In support of its Motion, the Wireless Carriers state as follows:

1. The Wireless Carriers previously filed comments in this case. They are interested parties in the rules adopted by the Commission because of the obligations and responsibilities placed upon the Wireless Carriers as set forth in the rules. As such, the Wireless Carriers have standing under Missouri law to file this Application for Rehearing.

2. The Commission's promulgation and adoption of 4 CSR 240-37.030(4)(C) and 4 CSR 240-37.060(2) are unlawful, unjust and unreasonable because: (a) the obligations imposed upon the Wireless Carriers in said rules exceed the Commission's jurisdiction and power over the Wireless Carriers as established under Missouri law; (b) said rules infringe upon the power of the Federal Communications Commission (the "FCC"), and (c) said rules go beyond the power and rights previously delegated the Commission by the FCC with respect to numbering issues.

THE COMMISSION LACKS STATUTORY AND DELEGATED AUTHORITY TO REQUIRE WIRELESS CARRIERS TO FILE NUMBERING DATA OUTSIDE THE CONTEXT OF A FEDERAL NUMBERING AUDIT

3. The Wireless Carriers appreciate that the Commission has modified some of its proposed rules to be more consistent with existing federal requirements as a result of comments of the Wireless Carriers and others. However, in other instances, the Commission makes sweeping statements that do not properly characterize or recognize the clear division of authority between state commissions and the FCC. For example, an often-repeated passage from the Order of Rulemaking is:

The Commission's authority to promulgate the rule, in addition to its general authority under Section 386.250(2) RSMo. (2000) to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-220 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 areas codes in Missouri. Section 386.210(2) provides that the Commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the Commission has additional authority under this statutory section to carry out the FCC's directives.¹

¹ RESPONSE in Orders of Rulemaking for 4 CSR 240-37.030 and 4 CSR 240-37.060.

4. In this lengthy passage, the Commission is asserting authority to obtain data from carriers regarding sequential numbering, utilization, forecasting, and applications for numbering resources on the following bases: 1) various FCC numbering orders that granted the Commission additional delegated authority; 2) its general authority under state law, RSMo. Section 386.250(2), to supervise telecommunications companies; and 3) another provision of state law, RSMo. Section 386.210(2), which allows the Commission to act as an agent or licensee for the FCC, giving rise to authority to carry out the FCC's directives. As is discussed below in more detail, none of these bases provides the Commission with jurisdiction over wireless carriers to require submission of numbering data not already required under federal rules.

The Commission Does Not Have General Authority Over Wireless Carriers

5. By statutory definition, the Commission does not possess general jurisdiction over wireless carriers. The jurisdiction and powers of the Commission are defined under RSMo. §386.250 and extend under subsection (2) thereof to:

all telecommunications facilities, telecommunications services and to all telecommunications companies ...

Each of the aforementioned terms is defined under Missouri statutes. "Telecommunications companies" are those entities

owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

RSMo. §386.020(51) (2000). "Telecommunications facilities" include a myriad of items

used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

RSMo. §386.020(52) (2000).

6. As is plainly evident, unless “telecommunications service” is involved, Missouri law does not confer jurisdiction upon the Commission to carriers providing wireless service. Missouri statutes unquestionably exclude the services provided by wireless carriers from the definition of “telecommunications service”:

Telecommunications service does not include: . . . (c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

RSMo. §386.020(53)(c) (2000). Thus, Missouri statutes, by their plain meaning, clearly confer no general jurisdiction over the Wireless Carriers to the Commission.

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

7. The Commission does not have the authority to establish new rules burdening carriers with sharing numbering data or otherwise requiring adherence to state-specific numbering administration rules absent specific FCC delegated authority. Authority over numbering administration resides exclusively with the FCC where appropriate national policies can, and have been, set.²

8. After enactment of the 1996 Telecom Act, in the *Local Competition Order*, the FCC recognized that Section 251(e)(1) confers upon the FCC “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”³

² 47 U.S.C. § 251(e); see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd. 19392, 19512, ¶¶ 268 –293 (1996) (“*Local Competition Order*”); *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd. 19,009, ¶21 (1998) (“*Pennsylvania Order*”).

³ *Local Competition Order* at 19511, ¶ 268.

9. The FCC also balanced the need for uniform federal rules and policies with the need for state commissions to act on local issues. Commenting on its authority, the FCC stated:

We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act.⁴

10. Despite being alerted by the Wireless Carriers of the limits of the Commission's authority,⁵ the rules adopted by the Commission impose new and additional reporting requirements upon the Wireless Carriers regarding: 1) the monitoring of compliance with sequential numbering, *i.e.*, CSR 240-37.030(4)(C), and 2) the monitoring and verifying of utilization and forecasting data, historical trends data, and numbering applications, *i.e.*, CSR 240-37.060(2).

11. Absent a specific delegation of authority by the FCC, by requiring *additional* reporting at the state level of data to ensure compliance with the FCC's numbering rules, the Commission encroaches on the FCC's jurisdiction.

12. The FCC specifically retained jurisdiction over monitoring carriers' adherence to its rules and policies by adopting the semi-annual Numbering Resource Utilization and Forecast ("NRUF") reporting scheme and establishing the federal audit program.

13. Where the FCC has sought state assistance, it has provided specific guidance and delineated the role for the states.

14. The FCC established NRUF reporting as the way to monitor number usage and ensure efficiency. The NRUF is the primary method by which the FCC tracks compliance with its rules. It is backstopped by a federal audit program which includes both random and for-cause

⁴ *Id.* at 19512, ¶ 271.

⁵ Wireless Carriers Comments, December 1, 2006 at 2-4.

audits. NRUF data and audits will reveal whether carriers adhere to sequential numbering and whether they are using numbers efficiently.

15. When the FCC established NRUF reporting, it expressly rejected the assertion that states should continue to have authority to collect additional utilization and forecast data beyond that which carriers report to NANPA. In ordering state access to the federal NRUF reports, the FCC “eliminated the need for states to require carriers to report utilization and forecast data on a regular basis” and “supercede[d] the authority specifically delegated to some states to require such reporting.”⁶

16. While the FCC did not purport to supplant independent state authority to collect data under state law, as is discussed above, no such authority exists in Missouri with respect to wireless carriers.

17. In addition, the FCC tasked the North American Numbering Plan Administrator (“NANPA”) with the role of examining NRUF submissions for inconsistencies or anomalies.⁷ If NANPA concludes that the carrier’s data is insufficient or anomalous, NANPA is charged with reporting as much to the state commission and to the FCC.⁸ It is at this juncture that the FCC delegated expanded authority to the states to determine if the data submitted to NANPA is valid and to instruct the carrier how to remedy the bad submission.⁹ However, the power to withhold numbering resources until the inconsistency or anomaly has been resolved rests solely with NANPA.¹⁰

⁶ *Numbering Resource Optimization, Report and Order and Notice of Proposed Rulemaking*, 15 FCC Rcd. 7574, ¶76 (2000) (“*First NRO Order*”).

⁷ *Id.*, ¶ 53. Such conclusions can be used to trigger a for-cause federal numbering audit.

⁸ *Id.*, ¶ 54.

⁹ *Id.*

¹⁰ *Id.*

18. Lastly, the FCC's numbering orders delegating additional authority to the Commission to pursue selected number conservation measures such as pooling do not supply the requisite legal authority to the Commission to request numbering reports and data. As discussed in the Wireless Carriers initial comments, and incorporated herein by reference, the orders in which the FCC made specific grants of authority to the Commission have not supplied any justification or authority for the rules adopted by the Commission.¹¹

19. Moreover, general statements of dicta expressing the FCC's willingness to work with the states on numbering issues are not delegations of authority to the Commission, and are not a substitute for a specific delegation, especially in the face of contrary precedent.

THE COMMISSION SHOULD MODIFY THE REQUIREMENTS IN 4 CSR 240-37.060(2)

20. The Wireless Carriers have particular concern with respect to 4 CSR 240-37.060(2) and believe that this section should be modified. This rule provides:

Consistent with federal audit authority, a carrier shall report, upon request by the commission staff, certain information to ensure compliance with commission and Federal Communications Commission numbering rules and to monitor and verify the validity and accuracy of carrier utilization data. Such information includes, but is not limited to, all number utilization, number utilization forecast and historical trend documentation and applications... (emphasis added).

21. As explained above, the FCC has plenary authority over numbering matters and has only delegated certain authority to the Commission. In the context of federal numbering audits, the FCC explicitly recognized the important role of auditing as the comprehensive method for verifying the validity and accuracy of utilization data submitted by carriers.¹² The

¹¹ Wireless Carriers Comments at 2-4.

¹² *Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd. 306 (2000), ("Second NRO Order"), ¶ 81.

FCC also believed that federal audits would ensure compliance and work as a deterrent; prevent behavior contrary to its optimization goals; and identify inefficiencies in the manner in which carriers use numbers – including an examination of various number use categories such as aging, administrative, and intermediate.¹³ Initially, the FCC denied the request of state commissions seeking delegated authority to conduct numbering audits either for the FCC or in addition to federal audits¹⁴ and explicitly stated, “[w]e decline to delegate authority to the states to conduct audits” pursuant to the national audit program.¹⁵ While the FCC later clarified that a state may conduct an audit to determine whether a particular carrier is in compliance with the FCC’s rules in order to discharge their own responsibilities, the FCC emphasized that the information sought should not be available through another source, such as the NRUF report.¹⁶

23. Although the FCC stated that it was not preempting state authority to perform audits under state law, this does not provide the Commission with any greater authority to conduct audits for wireless providers. As explained in detail above, the Commission does not have general jurisdiction over wireless carriers and thus lacks independent state authority to conduct audits. The FCC further emphasized that any state audits should not be duplicative of those performed by the FCC.

24. The Commission’s existing rule is overly broad when compared to the limited auditing authority that has been granted to the state. While the first phrase, “[c]onsistent with federal authority” does limit the Commission’s authority in some respects, the Wireless Carriers

¹³ Id., ¶ 83.

¹⁴ Id., ¶ 91.

¹⁵ Id.

¹⁶ In *Number Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Telephone Number Portability, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, Dkt No. 99-200, 96-98, and 96-116 (rel. December 28, 2001) (“*Third NRO Order*”), ¶ 101.

believe that the rule should be further modified. Further, the list of information that the Commission can request, "number utilization data, number utilization forecast, all number utilization and historical trend documentation and applications" is all information that is available through another source – either the NRUF report or applications for numbering resources. As this is all information that the Commission already has access to, it should not be information requested through any audit of a carrier.

25. Thus, the Wireless Carriers propose that 4 CSR 240-37.060(2) be modified as follows:

Consistent with federal numbering policy, upon determination by NANPA or the commission staff that there are unexplained or unacceptable irregularities associated with a carrier's NRUF filings or numbering applications, the Commission may request that the FCC initiate a for-cause audit of the carrier and may request to participate in that audit alongside federal auditors, including any recommendations for remedy or penalty.

III. CONCLUSION

WHEREFORE, for the reasons set forth herein, the Wireless Carriers respectfully request the Commission to: (1) grant the Wireless Carriers' Application for Rehearing; (2) take such steps as may be necessary and required to: (a) rescind 4 CSR 240-37.030(4)(C) and 4 CSR 240-37.060(2) as adopted, and (b) adopt a new rule 4 CSR 240-37.060(2) in conformity with the language suggested herein, and (3) grant such other and further relief as the Commission deems just and proper in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Application for Rehearing was sent to the Commission via electronic transmission on the 14th day of February, 2007, and sent to the following parties as noted:

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