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September 15, 2000

**VIA UPS OVERNIGHT DELIVERY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
Records Department – 1<sup>st</sup> Floor  
200 Madison Street  
Jefferson City, Missouri 65102

**FILED<sup>2</sup>**

SEP 18 2000

Missouri Public  
Service Commission

**RE: Case No. TO-2000-374**

Dear Judge Roberts:

Enclosed please find an original and nine (9) copies of the Brief of Verizon Wireless with respect to the above-referenced docket. Please file this Brief in your usual manner and return the extra enclosed copy with the date of filing stamped thereon directly to the undersigned in the enclosed, self-addressed stamped envelope at your earliest convenience.

If you have any questions with respect to this filing, please contact me. Thank you for your assistance with and attention to this matter.

Very truly yours,

*Thomas E. Pulliam*

Thomas E. Pulliam

TEP\wh  
Enclosures

cc: Counsel of Record (w/enclosure)  
Anne Hoskins, Esq. (w/enclosure)

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of the Petition of the North  
American Numbering Plan Administrator, on  
Behalf of the Missouri Telecommunications  
Industry, for Approval of NPA Relief  
Plan for the 314 and 816 Area Codes

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Case No. TO-2000-374

FILED<sup>2</sup>

SEP 18 2000

Missouri Public  
Service Commission

BRIEF OF

CELLCO PARTNERSHIP AND CYBERTEL CELLULAR TELEPHONE COMPANY  
d/b/a VERIZON WIRELESS

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## **I. INTRODUCTION**

The Missouri Public Service Commission ("Commission") has before it for decision a contested docket concerning a plan of relief for the impending exhaustion of central office codes ("NXXs") in the 314 Numbering Plan Area ("NPA"). In Case No. TO-95-289, the Commission selected a geographic split of the existing 314 NPA, leaving the 314 NPA in the St. Louis Metropolitan area and surrounding communities and assigning the new 573 NPA to the area constituting the remainder of the former 314 NPA. In Case No. TO-98-212, the Commission again selected a geographic split of the existing 314 NPA, dividing the 314 NPA into two new NPAs: The new 636 NPA, which encompasses portions of western St. Louis County and St. Charles County, and areas west to the 573 NPA border, and the new 314 NPA, encompassing what was left of the original 314 NPA after splitting off the 636 NPA.

Although proponents of the 314/636 NPA split estimated that the new 314 NPA would not exhaust until 2012 (Tr. 150, l. 9-19), the 314 NPA is now projected to exhaust by the second quarter of 2001. Thus, the Commission is again faced with ordering area code relief for the 314 NPA. Unlike previous dockets, no party to these proceedings supports a further geographic split of the 314 NPA. All participants taking a position support implementation of some type of an overlay. The Office of the Public Counsel ("OPC") and the Staff of the Commission ("Staff") support an all-service overlay of the current 314 NPA with a new NPA. Intervenor Southwestern Bell Telephone Company ("SWBT"), Southwestern Bell Wireless, Inc. ("SWBW"), Verizon Wireless ("Verizon Wireless"), GTE Midwest Incorporated d/b/a Verizon Midwest ("GTE/VM"), the Sprint entities ("Sprint") and AT&T Communications of the

Southwest, Inc. ("AT&T")<sup>1</sup> all support a "retroactive" all-service overlay wherein codes from the 636 NPA would be used in the 314 NPA.

For the reasons set forth below, Verizon Wireless submits that the substantial and competent evidence in the record clearly merits the selection by the Commission of the retroactive all-services overlay alternative.

## **II. DISCUSSION**<sup>2</sup>

### **A. Jurisdiction of the Commission.**

#### **1. The Federal Communications Commission ("FCC") has properly left oversight of NPA relief to State Commissions.**

The Communications Act of 1934 establishes a dual regulatory system over telephone service by granting to the FCC the authority to regulate "interstate and foreign commerce and wire and radio communication" while reserving to the states "jurisdiction with respect to ... intrastate communication service ..." (47 U.S.C. §152; 47 U.S.C. §152(b)).

Within this context, although the FCC has asserted plenary jurisdiction over numbering matters, it has left jurisdiction over NPA relief and local dialing plans to the state regulatory commissions. See, for example, *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 92-237, Phases One and Two, Notice of Inquiry released October 29, 1992, n. 20, and *Notice of Proposed Rulemaking*, released April 4, 1994, §§ 43-44. Moreover, in the Declaratory Ruling and Order issued by the FCC in IAD File No. 94-102: *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, January 12, 1995 ("Ameritech Order"), the FCC stated:

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<sup>1</sup> Intervenor SWBT, SWBW, Verizon Wireless, GTE/VM, and Sprint also support selection of an all-services overlay of the 314 NPA as a backup or alternative to selection of a retroactive all-services overlay.

<sup>2</sup> As Verizon Wireless filed no testimony and took no position on appropriate relief for the 816 NPA, this brief shall only address proposed relief for the 314 NPA.

State regulators clearly have legitimate interests in the administration of the NANP [North American Numbering Plan]. We would expect that they would continue to exercise regulatory supervision over the NANP as it affects intrastate telecommunications just as we intend to continue exercising our regulatory authority to resolve NANP issues clearly out of intrastate concern.

*Id.*, p. 7.

From the foregoing, it is clear that this Commission has the authority to exercise jurisdiction in selecting and implementing a relief plan for the 314 NPA.

**B. Selection of a Relief Plan.**

**1. Proposed Options.**

Initially, three different overlay options were advanced by the parties in this case to address the exhaust of the 314 NPA: (1) a wireless-only overlay of the 314 NPA, supported only by OPC<sup>3</sup>; (2) an all-services overlay of the 314 NPA with a new NPA, wherein NXXs from a new NPA would be distributed throughout the current 314 NPA as and where needed; and (3) a retroactive all-services overlay of the 636 and 314 NPAs wherein NXX codes from the 636 NPA would be used in the 314 NPA. The latter overlay option has been characterized as a "retroactive" overlay because its implementation would retroactively erase the 636/314 NPA boundary line recently implemented by the Commission.

**2. Retroactive Overlay.**

The substantial and competent evidence in the record establishes without question that a retroactive overlay is the best alternative available for long-term NPA relief in the 314 NPA.

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<sup>3</sup> OPC announced at the hearing that it was not proposing that the Commission order a wireless-only overlay in this proceeding unless the FCC reversed its current position of prohibiting wireless-only overlays. (Tr. 229, l. 3-5)

**a. Efficiency in Usage of Numbers.**

A retroactive all-service overlay would allow 636 NXX codes to be used in either the present 314 NPA or the 636 NPA based upon where the need for numbers is greatest (Ex. 12, p. 3, l. 12-23; p. 4, l. 1-2), versus utilizing the 636 NXXs only in the 636 NPA, where number utilization is growing at a much slower pace than in the 314 NPA. Selection of a retroactive all-services overlay will eliminate the necessity of using a third NPA (and its 7,920,000 numbers) in the St. Louis area until sometime in the future, perhaps as long as six years. (Tr. 332, l. 10-25). Since NPAs are themselves becoming more scarce, delaying the need for utilization of another NPA for the St. Louis area serves to increase the efficient utilization of numbering resources in the NANP. Thus, if measured strictly by efficiency of utilization of numbering resources, a retroactive all-services overlay is clearly superior to an all-services overlay requiring usage of a new NPA.

**b. Dialing Patterns.**

There is no doubt that people are still confused as to which phone numbers require 7 digits to complete and which phone numbers require 10 digits to complete when making calls in the present 636 and 314 NPAs. This is not surprising since the separation of the 636 NPA from the 314 NPA split the local calling scope of the St. Louis metropolitan area. In ordering relief for the 314 NPA, the Commission has the opportunity to eliminate this confusion once and for all. If the Commission orders the implementation of a retroactive all-services overlay, all local calls within the recombined 314/636 NPA will require 10 digit dialing. There will be no more guessing on the part of consumers as to whether a call will require 7 digits or 10 digits to dial. By selecting an overlay of only the 314 NPA, the Commission will perpetuate the

existing confusion among consumers in the St. Louis telecommunications market whether a call requires 7 digits or 10 digits.

Implementation of a retroactive all-services overlay will eliminate the remaining 7-digit dialing within the 636 NPA. (Tr. 156, l. 1-6). However, the evidence establishes that there is substantial 10-digit dialing already taking place by consumers in the 636 NPA. (Tr. 125, l. 11-18). That being the case, customers would readily adapt to a conversion to 10-digit dialing.

**c. Proven Track Record of Retroactive Overlays.**

The retroactive overlay solution is not an untried, theoretical concept in the world of telecommunications. In fact, such an NPA relief plan has been ordered and successfully implemented on two different occasions in the state of Texas. When a retroactive overlay was imposed in the Dallas and Houston areas, customers "responded very well to the initial 10-digit dialing that was mandated in the [retroactive overlay] order." (Tr. 376, l. 2-4). Consumers residing in communities of interest that had been split geographically enthusiastically welcomed the elimination of the previous split and the implementation of a retroactive all services overlay. (Ex. 15, p. 4, l. 8-11). Given the current state of confusion among telecommunications consumers residing in the 314 and 636 NPAs as to which calls require 7 digits and which require 10 digits (especially those consumers residing or making calls to locations near the split boundary), the Commission can expect the same benefits felt in Texas to accrue to Missouri consumers.

**C. Number Conservation Measures.**

The FCC has issued two orders in the last six months concerning the Commission's rights, duties and obligations regarding number conservation and numbering resource optimization: *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-



200 (March 17, 2000) (Ex. 24) and *In the Matter of Numbering Resource Optimization, et al.*, CC Docket No. 99-200 (July 20, 2000) (Ex. 26). In this latter order, the FCC granted the Commission the right to: (1) institute thousands-block number pooling in the 314 NPA; (2) maintain rationing procedures for six (6) months following implementation of area code relief; (3) hear and address claims of carriers seeking numbering resources outside of the rationing process; (4) implement NXX code sharing; and (5) conduct audits of carriers' use of numbering resources. While Verizon Wireless endorses reasonable measures which act to maximize the efficient use of numbering resources in Missouri, the details of such implementation should be referred for development by a technical committee made up of representatives of all segments of the telecommunications industry, the Commission's Staff and the Office Public Counsel.

Regarding the number utilization threshold rate which non-LNP-capable carriers must achieve before they are eligible to obtain a new growth code, Staff has proposed an initial utilization rate (also known as a "fill rate") of 75%, with the opportunity to increase it to 80% or 85% over time. (Ex. 19, p. 5, l. 8-9.) SWBT and GTE/VM have proposed rates beginning at 55% and 50%, respectively, with each to be increased by 5% annually until the maximum of 70% and 65%, respectively, is reached. (*Id.* at l. 3-6). The evidence in this case clearly establishes that adopting Staff's proposed utilization rate would result in carriers practically exhausting their number resources before they are permitted to seek new numbering resources (or "growth codes"), a process that takes at least 66 days. (Tr. 342, l. 4-9).

There is no question that a carrier is unable to utilize 100% of its numbers in its inventory at any one time because numbers such as intermediate numbers, reserve numbers, aged numbers and administrative numbers cannot be assigned to customers. These categories of numbers which are unavailable for assignment to consumers constitute approximately 15% of a

carrier's numbers (Tr. 377, l. 1-6). Therefore, at any one time, a carrier only has, at most, 85% of the numbers in its inventory which it can actually assign to customers. Although Staff contends it does not favor a 100% utilization rate for growth codes (Tr. 341, l. 20), that is exactly what would happen if Staff's recommendation of a utilization rate of up to 85% is accepted. A utilization rate of 70% (as proposed by SWBT and GTE/VM) clearly is more reasonable and does not place carriers in a situation where they could run out of numbers before being able to request additional numbering resources, a process that takes over two months. Even with 70% fill rates, the Commission should allow for a "safety value," whereby carriers could be assigned a new code before they reach the designated fill rate if they have demonstrated demand (*e.g.* – a new large customer) that warrants an earlier assignment.

Whatever number conservation measures are ultimately implemented by the Commission, it is imperative that the relief sought for the exhaust of the 314 NPA not be delayed in the hope that number conservation will slow the rate of the exhaust of the 314 NPA. The evidence in this proceeding strongly suggests that any delay by the Commission in ordering relief for the 314 NPA will leave carriers without numbers to deliver to their customers.

With the exception of OPC<sup>4</sup>, all parties to this proceeding taking a position seek immediate action by the Commission concerning the pending exhaust of the 314 NPA. The 314 NPA is expected to exhaust in the second quarter of 2001, and it is estimated that whatever relief is ordered by the Commission is expected to take between six and nine months to implement from the date of a final order. (Tr. 330, l. 11-16). Thus, the Commission has very little time after submission of the briefs in this proceeding to consider the evidence and issue an Order

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<sup>4</sup> OPC recommends that relief for the 314 NPA be delayed until there are only 90 NXXs left for allocation in the 314 NPA.

before the need to commence permissive dialing arises. As the FCC has pointed out in its last two Orders on number conservation:

The grants of authority to the state public utility commissions, however, were not intended to allow the state commissions to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief.

(Ex. 24, ¶ 7). Moreover, just recently, the FCC has again admonished state commissions that:

The grants of authority herein are not intended to allow the state commissions to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief. Although we are giving the state commissions tools that may help to prolong the lives of existing area codes, the state commissions continue to bear the obligation of implementing area code relief when necessary, and we expect the state commissions to fulfill this obligation in a timely manner.

(Ex. 26, ¶11). In this proceeding, relief delayed is relief denied, and Verizon Wireless urges the Commission to proceed in issuing its Order promptly so that carriers can continue to provide their customers with numbers in the 314 NPA.

#### **IV. CONCLUSION**

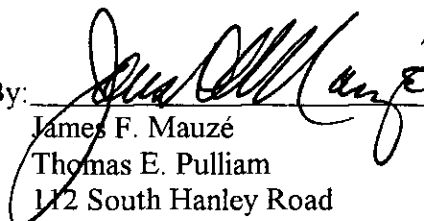
In this proceeding, the Commission is faced with a decision of what type of relief to order for the impending exhaustion of the 314 NPA. Evidence has been placed into the record in support of an overlay of the 314 NPA, which will result in 10 digit dialing throughout the 314 NPA, while preserving 7 digit dialing within the 636 NPA. This relief plan is much less efficient in the utilization of scarce numbering resources, will immediately introduce a third NPA into the St. Louis metropolitan area, and will maintain the confused state of individuals residing in the 636 NPA as to whether they need to dial 7 digits or 10 digits to complete their calls. Based upon the substantial and competent evidence in this record, the best choice for a relief plan is a retroactive all-services overlay. Under this plan, NXXs from the 636 NPA would be used

wherever needed throughout both the 636 NPA and the 314 NPA, as dictated by demand, and not impeded by an arbitrary line defining the former geographic split of the 636 NPA from the 314 NPA. Such a retroactive overlay will eliminate any confusion among telecommunications consumers in the St. Louis metropolitan area as to which numbers require 7 digits and which numbers require 10 digits as it would require 10 digit dialing for all local calls. This relief plan has been happily accepted when ordered in situations very similar to those in the St. Louis metropolitan area, and is the best relief plan for the 314 NPA. Although number conservation measures hold substantial promise for the future, none of these measures justifies a delay in the Commission ordering relief for the 314 NPA.

WHEREFORE, Verizon Wireless respectfully requests the Commission to: issue its Order imposing a retroactive all-services overlay over the 314 and 636 NPAs; create a technical committee comprised of all segments of the telecommunications industry, the Staff of the Commission and the Office of Public Counsel to address and recommend the particulars in connection with the implementation of number conservation measures for which the Commission has been granted authority by the FCC; and for such other and further relief as the Commission deems necessary and just in the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE: Case No. TO-2000-374

The undersigned hereby certifies that a true and correct copy of the foregoing Brief was sent by first-class U.S. mail, postage prepaid to the following parties on this 15<sup>TH</sup> day of September, 2000:

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