

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the Matter of Telephone Number	)	<u>DOCKET NO. 99-999-04</u>
Conservation Measures for (801) Area	)	
Code Relief	)	
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	)	<u>DOCKET NO. 99-999-05</u>
In the Matter of the Request of the North	)	
American Numbering Plan Administrator	)	<b>JOINT PETITION FOR</b>
For a New Area Code within the (801) Area	)	<b>RECONSIDERATION AND</b>
Code	)	<b>REHEARING</b>

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**VERIZON WIRELESS, VERIZON WIRELESS MESSAGING SERVICES,  
VOICESTREAM WIRELESS CORP., AT&T WIRELESS SERVICES OF UTAH,  
INC., AND SPRINT SPECTRUM L.P. d/b/a SPRINT PCS= JOINT PETITION  
FOR RECONSIDERATION AND REHEARING**

**I. INTRODUCTION**

Pursuant to Utah Code Ann. §§ 54-7-15 and 63-46b-13 and Utah Admin. Code § R746-199-11.F, Verizon Wireless, Verizon Wireless Messaging Services, VoiceStream Wireless Corp., AT&T Wireless Services of Utah, Inc., and Sprint Spectrum L.P. d/b/a Sprint PCS (collectively, Utah Wireless Carriers), hereby jointly petition for reconsideration and rehearing of the Utah Public Service Commission's November 2, 2000, Order (AOrder) in the above-referenced proceedings, particularly the 90% Utilization factor.

Utah Wireless Carriers generally support the Utah Public Service Commission's (AUPSC) efforts to conserve numbering resources. Prudent resource management, number utilization methodologies, and appropriate area code relief will

promote efficient number resource optimization in the state of Utah for consumers.<sup>1</sup>

While the Federal Communications Commission (AFCC@) has undertaken, in conjunction with the states, a nationally coordinated effort to enhance number resource optimization, the FCC has simultaneously required that consumers not be denied their choice of technology or service provider due to a lack of numbering resources. To this end, the FCC delegated authority to requesting states to enable them to engage in selected number conservation initiatives, but steadfastly maintained the need for states to engage in timely area code relief. In the most recent State Delegation Order, which included Utah, the FCC firmly restated its position:

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<sup>1</sup> The alternatives to prudent number conservation and area code relief are exhaustion or expansion of the North American Numbering Plan (ANANP@). Expansion of the NANP is projected to cost the nation billions of dollars and will require ten years or more to implement. It is unrealistic to expect area codes imminently in need of relief to last until NANP expansion.

The grants of authority herein are not intended to allow 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 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. Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible. If the state commissions do not fulfill these obligations in a timely manner, we may be compelled to reconsider the authority being delegated to the states herein.<sup>2</sup>

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<sup>2</sup> *In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Petitions for Delegated Authority to Implement Number Conservation Measures of Arizona, Colorado, Georgia, Indiana, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, Order, CC Docket Nos. 99-200 & 96-98, Released July 20, 2000, (AState Delegation*

On November 2, 2000, the UPSC issued an Order that seeks to promote efficiency and greater number optimization in the state of Utah.<sup>3</sup> As more specifically set forth below, the 90% utilization factor exceeds the UPSC=s delegated authority, is impracticable, and would impermissibly deny the Utah Wireless Carriers and other carriers numbering resources in a timely fashion. Also, we believe that the UPSC Order only requires that non-pooling carriers submit copies of the Utah portion of their utilization and forecast information submitted to NANPA (in accordance with the FCC=s rules), not additional monthly reporting. Accordingly, the Utah Wireless Carriers respectfully request that the UPSC reconsider its November 2, 2000 Order and conduct a rehearing on the issues presented therein.

**II. THE UPSC DOES NOT HAVE AUTHORITY TO IMPOSE A UTILIZATION FACTOR**

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Order@), at & 11.

<sup>3</sup>

*In the Matter of Telephone Number Conservation Measures for (801) Area Code Relief, Request of the North American Numbering Plan Administrator for a New Area Code Within the (801) Area Code, Order, Docket Nos. 99-999-04 & 99-999-05, Issued November 2, 2000, (AUPSC Order@).*

The UPSC has required telecommunications carriers seeking number resources to establish that they have a Utilization factor<sup>4</sup> of 90% of their existing number resources before seeking additional resources. Utah Wireless Carriers assume that by use of the undefined term Utilization factor,<sup>4</sup> the UPSC is employing a fill rate concept. The UPSC must, however, obtain authority from the FCC to establish a fill rate, Utilization factor,<sup>4</sup> or any code allocation/assignment mechanism.<sup>4</sup>

**A. The FCC Has Exclusive Authority Over Numbering**

Congress granted the FCC plenary jurisdiction over numbering issues.<sup>5</sup> Section 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, allows the FCC to delegate all or portions of its jurisdiction over numbering administration to state commissions.<sup>6</sup> Thus, the FCC must affirmatively grant authority to the states. The FCC has chosen to affirmatively grant portions of its exclusive authority to requesting states on an interim basis in various state delegation orders.

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*See* 47 U.S.C. ' 251(e).

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*Id.*

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*Id.* at ' 251(e)(1).

On October 25, 1999, the UPSC petitioned the FCC for additional authority to implement a variety of conservation measures in the State of Utah.<sup>7</sup> The UPSC did not, unlike some other states, request authority to set and establish number assignment and NXX code allocation standards (including the requirement that carriers meet certain fill rates prior to obtaining additional numbering resources). Instead, UPSC requested that the FCC direct NANPA to, among other things, establish code allocation standards to more efficiently manage numbering resources, including a requirement that NANPA consult with the UPSC prior to issuing additional codes.<sup>8</sup> On July 20, 2000, the FCC released an order addressing the petitions of multiple states including Utah. With respect to state requests to set and establish number assignment and NXX code allocation standards, including fill rates, the FCC stated, "Because the FCC in the *Number Resource Optimization Order*, has already addressed these specific numbering resource optimization measures, we do not rule on these aspects of the state commissions' petitions."<sup>9</sup> Not only did UPSC not request the authority it now seeks to exercise, but the

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*Petition of the Utah Public Service Commission for Accelerated Grant of Authority to Implement Number Conservation Measures*, NSD File No. L-99-89, filed October 25, 1999 (AUPSC Petition@). The UPSC petition requested authority to: (1) institute mandatory thousands= block number pooling; (2) implement sharing of NXX codes in rate centers; (3) revise rationing measures and institute NXX lotteries (prior to adoption of area code plans or establishment of an area code relief date) to prolong the life of the existing 801 area code; (4) reclaim unused and reserved central office codes; (5) investigate whether any of these reserved central office codes can be reclaimed for future distribution without causing disruption to carriers= network operations; (6) maintain the current central office code rationing measures for at least six months after the implementation of all area code relief plans; (7) expand deployment of permanent number portability; (8) implement unassigned number porting and (9) implement rate center consolidation. UPSC Petition at 2-3.

8 UPSC Petition at 4.

9 State Delegation Order at & 5.

FCC declined to grant it to requesting states whose petitions were decided after disposition of certain issues by the *NRO Order*. Barring an affirmative grant by the FCC, the UPSC may not exercise authority over number administration.

**B. The FCC Established A National Code Allocation Scheme In The NRO Order And Is Preparing To Issue Another Order in December**

In the NRO Order released earlier this year, the FCC adopted a national fill rate scheme for non LNP-capable carriers. Specifically, the FCC stated that it was adopting national verification standards, a more verifiable needs-based approach for both initial and growth codes. With regard to fill rates, the FCC stated that it was adopting a nationwide utilization threshold for non-pooling carriers beginning January 1, 2001.<sup>10</sup> It is anticipated that the FCC will release a second NRO Order in December resolving outstanding issues from the Further Notice of Proposed Rulemaking, which would likely include the exact fill rate for non-pooling carriers. Even those states which had been granted authority to establish fill rates (which as explained above, does not include Utah), will have their grants of authority superceded by the establishment of a national fill rate. The UPSC's Order expressly recognizes that the 90% factor would no longer apply once a preempting factor is established by the FCC. Given the extremely short period of time that the Commission's utilization factor would be in effect, the question of the UPSC's authority to adopt a utilization factor, and the controversy associated with the specific 90% utilization factor, the UPSC should allow the national fill rate to become effective.

**III. THE 90% UTILIZATION FACTOR REQUIREMENT IMPOSES  
AN UNFAIR AND UNREASONABLE BURDEN ON WIRELESS  
CARRIERS**

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<sup>10</sup> *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000), (ANRO Order@) at & 115.



Without sufficient justification or explanation -- beyond the general conclusion that carriers should be required to use numbers assigned to them efficiently -- the Order requires telecommunications carriers seeking number resources to establish that they have a Utilization factor<sup>11</sup> of 90% of their existing number resources before seeking additional resources. This requirement is problematic because a 90% utilization factor is impractical and imposes an unfair burden on wireless carriers, with no safety valve<sup>12</sup> to ensure the availability of numbers in a timely fashion.

**A. A 90% Utilization Factor Is Impracticable, Unfair and Does Not Provide For A Safety Valve**

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<sup>11</sup> See UPSC Order at 3.

Setting the utilization factor at 90% is unreasonable and inconsistent with the states' obligation to ensure that carriers have timely and adequate access to numbering resources. The wireless industry is a fast growing and competitive industry with a high demand for numbers, especially during the upcoming holiday season. Under the UPSC Order a carrier can not even request a code until it reaches a 90% fill rate. At that point the carrier is eligible only to participate in the lottery and there is no guarantee that it will be awarded a code. Then once the carrier is allocated a code, it still takes a minimum of 66 days to provide newly requested numbers in the local exchange routing guide (ALERG@). An available inventory of numbers as low as 10% is simply too low. Requiring that 90% of a carrier=s inventory of numbers be used before a company can request additional numbering resources is unreasonable and will seriously harm wireless carriers= ability to be competitive.<sup>12</sup> A 90% utilization factor is so exceedingly high that it is unreasonable to expect carriers to be able to offer service while managing resources so tightly. It will mean that carriers will not have crucial numbering resources when they need them, despite their best efforts to efficiently manage numbers.

Utah Wireless Carriers are concerned about the treatment of intermediate numbers. Although intermediate numbers are part of a company=s existing resources, they are assigned to resellers and are beyond a carrier=s control or use. Since they are

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<sup>12</sup> In the NRO Further Notice, the FCC tentatively concluded that a nationwide utilization threshold for growth numbering resources should initially be set at 50%. This threshold would increase annually until it reached a maximum of 80%. *See Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000), NPRM at & 248.

not subject to a carrier=s control, but are used as part of a reseller=s inventory, the effect of intermediate numbers on a carrier's utilization level should be eliminated.

Regardless of the fill rate level, the UPSC should provide for a Asafety valve@ to ensure that numbers are available for anticipated increases in demand. A utilization factor alone is rigid and does not afford carriers, which manage their resources tightly, an opportunity to obtain needed resources when there is a legitimate business need. Flexibility is needed to address situations where a precise utilization factor is not yet met but historic seasonality or the roll-out of a new service feature or promotion will trigger the imminent need for resources well before the process of reaching the prescribed factor and waiting through the 66 day LERG period can be completed.<sup>13</sup> However, a safety valve is no substitute for a reasonable factor and will not cure the problems created by a 90% factor.

**IV. NON-POOLING CARRIERS MUST SUBMIT SEMIANNUAL FORECAST AND UTILIZATION DATA REPORTS TO NANPA**

In the Order, the UPSC states:

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<sup>13</sup> Other states have provided for a safety valve. See Connecticut Department of Utility Control Review of Management of Telephone Resources in Connecticut B Conservation Measures, *Final Decision*, Docket No. 96-11-10RE03, October 11, 2000, [www.dpuc.state.ct.us](http://www.dpuc.state.ct.us).

We will require that telecommunications carriers provide us with their forecast and utilization information for their NXX codes submitted to the NANPA and will require that such data, as required by the FCC=s March 31, 2000, Report and Order, In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 00-104, be submitted directly to the Commission. We will require telecommunications carriers to also provide us their applications for initial or growth numbering resources and will require direct submission of this information as well. Like the FCC, we recognize the confidential nature of this information and will treat it accordingly.<sup>14</sup>

The FCC=s NRO Order granted the states access to the reports of carrier utilization and forecast information that is submitted to the NANPA semi-annually.<sup>15</sup> Carriers filed the first of those reports on September 15, 2000. Utah Wireless Carriers are willing to provide copies of the Utah portion of the September 15, 2000 utilization and forecast data to the Utah Commission (as well as subsequent semi-annual NRO data filings), subject to confidentiality protections provided for by the UPSC.

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<sup>14</sup> UPSC Order at 3.

<sup>15</sup> NRO Order at & 75.

The Utah Commission does not have authority, however, to request any additional data from non-pooling carriers. The FCC specifically rejected the request that states be given authority to collect additional utilization and forecast data independently. The FCC stated, A We will not delegate authority to the states to impose additional regularly scheduled reporting requirements on any carriers.@<sup>16</sup> The NRO Order terminated previous grants of delegated authority to some states to require such reporting.<sup>17</sup> Instead it simply said that states should have access to disaggregated, carrier-specific data if appropriate confidentiality measures are in place, and thus allowed states to request copies directly from carriers of the data provided to NANPA.

## V. CONCLUSION

Utah Wireless Carriers are committed to using numbers efficiently. However, the FCC has required that the rules governing efficient number utilization and optimization must not constitute barriers to consumer choice and competition. The FCC has provided specific guidance that area code relief must continue and consumer choice ensured. Carriers which are managing numbering resources tightly as required by state and federal rules should not be penalized in the marketplace with an exceedingly high and unreasonable 90% utilization factor. Because the UPSC lacks authority to require a 90% factor, the UPSC should defer to the FCC to determine an appropriate fill rate.

DATED this \_\_\_\_ day of November, 2000.

WOOD CRAPO LLC

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<sup>16</sup> *Id.* at & 76.

<sup>17</sup> *Id.*

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James W. Stewart  
Eric Todd Johnson  
Attorneys for Verizon Wireless

**CERTIFICATE OF SERVICE**

I hereby certify that the original and eight copies of the foregoing VERIZON WIRELESS, VERIZON WIRELESS MESSAGING SERVICES, VOICESTREAM WIRELESS CORP., AT&T WIRELESS SERVICES OF UTAH, INC., AND SPRINT SPECTRUM L.P. d/b/a SPRINT PCS= JOINT PETITION FOR RECONSIDERATION AND REHEARING in Docket Nos. 99-999-04 and 99-999-05 were hand delivered on November \_\_\_\_, 2000 to:

Ms. Julie Orchard  
Executive Secretary  
Utah Public Service Commission  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, Utah 84111

and a true and correct copy were sent by U.S. Mail, postage prepaid, on November \_\_\_\_, 2000 to:

Michael Ginsberg  
Assistant Attorney General  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, Utah 84111

2600 Century Square  
1501 Fourth Avenue  
Seattle, Washington 98101-1688

David LaFrance  
Nextlink Utah, Inc.  
111 E. Broadway, Suite 1000  
Salt Lake City, Utah 84111

Lynn Anton Stang  
USWEST Communications, Inc.  
1801 California Street, Suite 5100  
Denver, Colorado 80202

Gregory B. Monson  
David L. Mortensen  
Stoel Rives LLP  
201 S. Main Street, Suite 1100  
Salt Lake City, Utah 84111

Thomas F. Dixon  
MCI WorldCom, Inc.  
707 17th Street, Suite 3900  
Denver, Colorado 80202

Suzanne Brooks  
MCI WorldCom, Inc.  
701 Fifth Avenue, Suite 500  
Seattle, Washington 98104

William J. Evans  
Parsons, Behle & Latimer  
201 S. Main Street, Suite 1800  
Salt Lake City, Utah 84111-2218

Stanley K. Stoll  
Jerry D. Fenn  
Blackburn & Stoll, LC  
77 West 200 South, Suite 400  
Salt Lake City, Utah 84101

Rich Kowalewski  
Sprint Communications Corp.  
1850 Gateway Drive, 7th Floor  
San Mateo, California 94404

Jeffrey Weston Shields  
Jones, Waldo, Holbrook & McDonough  
1500 Wells Fargo Plaza  
170 S. Main Street  
P.O. Box 45444  
Salt Lake City, Utah 84145-0444  
Gregory J. Kopta  
Davis Wright Tremaine

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