

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Numbering Resources Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
of 1996)	
)	
Washington Utilities and Transportation)	NSD File No. L-99-102
Commission's Amended Petition for)	
Additional Delegated Authority to)	
Implement Number Conservation Measures)	
_____)	

RESPONSE OF THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
TO QWEST CORPORATION REQUEST FOR CLARIFICATION OR
DECLARATION REGARDING THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION'S DELEGATED AUTHORITY
ASSOCIATED WITH NUMBER POOLING IN THE
STATE OF WASHINGTON

March 2, 2001

On January 22, 2001, Qwest Corporation asked the Federal Communications Commission (FCC) to declare that the Washington Utilities and Transportation Commission (WUTC) does not have the authority to order a number pooling trial in the 509 area code. In response to Qwest's petition, the WUTC argues the FCC did grant the WUTC such authority and that, should the FCC wish to make this delegation more clear, there is ample reason for the FCC to support the WUTC's decision to require number pooling in area code 509.

- A. The FCC should not act favorably on Qwest's petition without opportunity for comment.

The WUTC responds to Qwest's petition even though the FCC has not made a formal request for comments on the Qwest petition. The WUTC understands that the FCC expects to act on the petition without soliciting formal comment. If the FCC is considering favorable action on Qwest's petition, the WUTC strongly urges the FCC to act only after providing an opportunity for all interested parties to comment.

The 509 number pooling trial is already in progress, with pooling scheduled to be implemented in the Spokane MSA in early July. The effect of granting Qwest's petition would be to stop this pooling trial in its tracks. Hundreds of thousands of telecommunications customers in eastern Washington would be directly affected by such an action because it would accelerate the need for area code relief in an area that already has more than enough telephone numbers. The telecommunications industry, including Qwest, can be quite cavalier about imposing burdensome area codes and dialing requirements on customers, but the WUTC does not take such an attitude and neither should the FCC.

- B. The FCC's delegation of authority was granted to give discretion to the WUTC because the WUTC is in a position to understand the conditions in the state of Washington.

The WUTC is the public agency charged with balancing the interests of consumers and telecommunications companies in the state of Washington. There is no reason to presume that the agency would fail to take into consideration any public interest that the FCC itself would have considered. Indeed, the FCC's fundamental reason for delegating this authority is that a state commission will be in a better position to understand the specific circumstances in its state and to balance the competing interests of customers and the telecommunications industry in the light of those circumstances.¹ Therefore, it is reasonable and appropriate to presume that the FCC's grant was a broad delegation of authority to implement number pooling.

- C. The WUTC did not limit, and could not have limited, its request for delegated authority to any single area.

The WUTC originally petitioned for delegated authority in December 1999, and later supplemented its petition in April 2000. In neither of these petitions did the WUTC request delegated authority for any specific number pooling trial. Qwest would lock the WUTC into a specific pooling plan, even though the WUTC's supplemental petition plainly states: "The WUTC would consult with the industry and customers before determining a specific application of interim number pooling[.]" WUTC Supplemental Petition, at 4. The western Washington plan that Qwest believes is binding on the

¹ See *In the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19,392, CC Docket 96-98, FCC 96-333, ¶ 272 (1996) ("We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions.").

WUTC was “one plan currently under consideration” by the WUTC at the time it filed the supplemental petition. *Id.*

At the time it filed the petitions, the WUTC could not have made a request for delegated authority that would have laid out the specifics of the pooling trial because there was too much uncertainty about the timing of the eventual trial. When the WUTC first made its request for delegated authority in December 1999, it had only two months earlier approved an area code relief plan for the 360 area code, and relief planning had started one month earlier for the 206, 425, and 253 area codes. The FCC issued its *Numbering Resource Optimization Order*² in March 2000, and by then Washington’s 509 area code was also in the relief planning process. Had the FCC’s order come earlier, the WUTC would likely have implemented a number pooling trial in western Washington. The fact that the number pooling authority came too late to make a difference in western Washington should not prevent the WUTC from using this authority where it can make a difference to consumers and businesses in the 509 area code.

The fact that the WUTC used examples from western Washington in the supplemental petition does not mean that eastern Washington was not included in the petition. The WUTC explained in the supplemental petition that no area code in the state met the specific requirements set forth in *Numbering Resource Optimization Order*.³ The WUTC further stated that each of the area codes in the state, including the 509 code, were in need of relief measures. *Id.* As discussed above, had the FCC acted sooner on the WUTC petition, a pooling trial in western Washington might well have been the first

² *In the Matter of Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574, CC Docket No. 99-200, FCC 00-104 (2000) (“*Numbering Resource Optimization Order*”).

³ Supplemental Petition at 1-2 (citing *Numbering Resource Optimization Order*, ¶ 170).

result. In the intervening time between the WUTC's request and the FCC's decision, the opportunity to use pooling to benefit consumers and businesses in western Washington evaporated.

Further, the WUTC petition was not limited to any specific area code or MSA because the WUTC had not yet decided on where pooling could best be used. In the supplemental petition, the WUTC did not differentiate between the situation in eastern Washington (area code 509) and the situation in western Washington (area codes 206, 360, 253, and 425), nor did it need to. Treating the two areas differently in the petition was not necessary because the circumstances in each area are essentially the same:⁴ Consumers and businesses face the prospect of being forced to dial ten digits on every local call despite the industry holding hundreds of thousands of unused telephone numbers.

The only plausible argument in Qwest's favor would be that the WUTC's petition envisioned an *initial* number pooling trial in western Washington. However, there can be no doubt that the supplemental petition contemplated an *eventual* trial in area code 509 as well: “[W]e believe that our request for additional delegated authority set forth in our original petition, as amended, will prolong the lives of *all of the area codes in Washington.*” WUTC Supplemental Petition, at 4 (emphasis added). The FCC's *Numbering Resource Optimization Order* allows for trials in multiple areas, provided that

⁴ The situations differ in one immaterial respect: The western Washington area codes include top 100 MSAs, while area code 509 does not. This is immaterial because this characteristic is neither sufficient to qualify for the FCC's standard delegation of authority nor sufficient to qualify for its “special circumstances” delegation.

the state commission allows sufficient time for the industry to implement each successive MSA.⁵

In its order granting number pooling authority to the WUTC, the FCC noted that the WUTC had requested number pooling authority in *Washington*.⁶ The FCC granted the WUTC the authority it had asked for: Number pooling where needed throughout the state. *Id.* ¶ 52 (“We thus grant the Washington Commission the authority to implement thousands-block number pooling trials *in the state* subject to the conditions and safeguards set forth above.”). Nothing in the FCC’s grant of authority to the WUTC limits that authority to western Washington.

D. Qwest’s narrow “pled and proved” argument ignores the broad nature of “special circumstances.”

Qwest asserts that the FCC could not have granted pooling authority beyond what the WUTC “specifically pled and proved.” Qwest’s Petition, at 6. This suggests some specific standard of proof or demonstration was required for the FCC to have delegated interim number pooling authority to the WUTC. Had the WUTC based its request on the three factors necessary for the FCC’s standard grant of authority, then Qwest might have a basis to challenge the sufficiency of the WUTC petition. However, one cannot credibly claim that area code 509 does not qualify as a “special circumstance,” because “special circumstance” is inherently undefined.⁷ That area code 509 did not qualify under the standard criteria is both undisputed and irrelevant. The WUTC supplemental request was

⁵ *Numbering Resource Optimization Order*, ¶ 170.

⁶ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, NSD File No. L-99-102, ¶ 50 (rel. July 20, 2000) (“The Washington Commission requests the authority to implement thousands-block number pooling in Washington. . .”).

⁷ *See Numbering Resource Optimization Order*, ¶ 170.

quite clear in using the “special circumstances” provision.⁸ The WUTC pleading plainly refers to circumstances affecting all five area codes and reports that area code 509 “faces the prospect of an additional area code due in large part to the inefficient use of existing prefixes.” WUTC Supplemental Petition, at 2.

E. Conclusion

Qwest’s petition rests, to the extent it rests on anything, on a highly legalistic argument that the WUTC has not “pled and proved” its request for number pooling authority in area code 509. It has made absolutely no arguments that suggest that number pooling in this area would be bad public policy or would be unduly burdensome on it or any other industry member. Indeed, Qwest has not even offered an argument that the FCC would have denied a request for pooling in area code 509 had the WUTC made it in whatever format Qwest felt was required.

The WUTC respectfully suggests that it would be a great disservice to the people of the state of Washington to grant Qwest’s petition. The people of an expectation that policymakers will protect them from the unnecessary and unreasonable imposition of new area codes and mandatory ten-digit local dialing. The WUTC has acted to protect the people by making a reasonable use of the delegated authority granted it by the FCC. To the extent there is any ambiguity in the FCC’s delegation of authority, the WUTC should be given the discretion to act in the best interests of this state.

⁸ Qwest cites the WUTC’s December 1999 petition as making only general reference to area code 509. Qwest Petition, at 6-7. However, the December 1999 petition was the WUTC’s original request for delegated authority, made *before* the FCC had adopted the set of general and special circumstances in which it would grant delegated authority. It could hardly be expected to address a “special circumstances” standard that had not even been announced.

DATED this _____ day of March, 2001, at Olympia, Washington

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

Washington Utilities and Transportation Commission
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