

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Establishment of a statewide)
Emergency Area Code Relief Plan.)
_____)

Docket No. 990373-TP
Filed: June 23, 1999

**AERIAL COMMUNICATIONS, INC.'S
PREHEARING STATEMENT**

Aerial Communications, Inc. ("Aerial"), by and through its undersigned counsel, and pursuant to Order No. PSC-99-0761-PCO-TP issued April 20, 1999, hereby files the following Prehearing Statement in the above-referenced docket.

A. Witnesses

Aerial does not intend to call a witness in this proceeding.

B. Exhibits

Aerial has not prefiled any exhibits in this proceeding. Aerial reserves the right to use exhibits for purposes of cross-examination at the final hearing.

C. Basic Position

Aerial is a personal communications service ("PCS") provider licensed by the Federal Communications Commission to operate in the State of Florida. Aerial began offering PCS in Tampa on June 23, 1997 and in Orlando on November 10, 1997, and currently provides facilities-based wireless communications services in twenty counties. Aerial is a current NXX codeholder in the 813, 727, 941, 407, 352 and 904 area codes.

Aerial does not object to Commission approval of the relief requested in the Joint Motion to Accept Stipulation and Voluntary Number Conservation Measures, Issue a Temporary Stay and Request for Expedited Ruling filed May 27, 1999. Aerial recognizes that the NXX code conservation measures voluntarily undertaken by the signatories to the Stipulation may be

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appropriate for landline carriers; however, Aerial advises the Commission that such measures are not appropriate for implementation by wireless carriers such as Aerial.

Aerial's basic position is that the availability of number resources will be optimized by consolidation of rate centers and implementation of wireless-only overlays for new area codes.

D. Issues of Fact, Law and Policy

Issue 1: Should codeholders be required to distribute telephone numbers consecutively, beginning with the lowest assignable telephone number? If not, what alternative interim mechanism for number administration would be appropriate?

Aerial: The Commission will enhance number resource conservation and availability by investigating and implementing rate center consolidation and wireless-only overlays for new area codes.

Issue 2: Does the Commission have the jurisdiction to order carriers to assign telephone numbers sequentially?

Aerial: No. The Commission does not have jurisdiction to order carriers to assign telephone numbers sequentially because sequential numbering is a code rationing methodology which may only be implemented by a state commission under the limited circumstances defined in the Pennsylvania Numbering Order, CC Docket No. 96-98, 13 FCC Rcd. 19009, released by the Federal Communications Commission on September 28, 1998. Specifically, a state commission may only impose an NXX code rationing plan if: (a) the state commission previously has decided upon a specific form of area code relief; (b) the state commission previously has established an implementation date; and (c) the industry is unable to agree upon a rationing plan.

Issue 3: Does the Commission have jurisdiction to impose a consecutive number distribution requirement on CMRS providers?

Aerial: No. As stated under Issue 2, the Commission lacks jurisdiction to impose a consecutive numbering distribution requirement on telecommunications companies subject to Commission jurisdiction absent meeting the three-prong test in the Pennsylvania Numbering Order. Even where the Pennsylvania Numbering Order test is met, CMRS providers are excluded from the definition of a "telecommunications company" subject to Commission

jurisdiction under subsections 364.02(3) and (12)(c), Florida Statutes.

Issue 4: **Is the Commission authorized to impose consecutive number assignment requirements on all NXX code holders in Florida without adopting that requirement through formal rule making pursuant to Chapter 120, Florida Statutes?**

Aerial: No. Even if the Commission had the authority to impose consecutive number assignment requirements on all NXX codeholders in Florida, which it does not, such requirements constitute a rule which must be promulgated pursuant to the procedures and requirements of Section 120.54, Florida Statutes.

E. Stipulated Issues

On May 27, 1999, certain parties to the docket filed a Joint Motion to Accept Stipulation and Voluntary Number Conservation Measures, Issue a Temporary Stay, and Request for Expedited Ruling. Pursuant to the terms and conditions of the Stipulation, the signatories to the Stipulation request that the Commission approve the Stipulation and Voluntary Measures and close this docket.

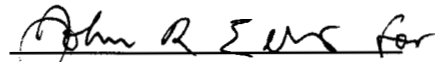
F. Pending Matters

See discussion of Joint Motion to Accept Stipulation and Voluntary Number Conservation Measures, etc. discussed above.

G. Requirements that cannot be Complied With

Aerial is aware of no procedural requirements that cannot be complied with at this time.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Prehearing Statement was furnished by U. S. Mail this 23rd of June, 1999, to the following:

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