

BEFORE THE **DOCKET FILE COPY ORIGINAL**
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petition by the United States Department of)	NSD-L-99-24
Transportation for Assignment of an Abbreviated)	
Dialing Code (N11) to Access Intelligent)	
Transportation System (ITS) Services Nationwide)	
)	
Request by the Alliance of Information and)	NSD-L-98-80
Referral Systems, United Way of America,)	
United Way 211 (Atlanta, Georgia), United)	
Way of Connecticut, Florida Alliance of)	
Information and Referral Services, Inc., and)	
Texas I&R Network for Assignment of 211)	
Dialing Code)	
)	
The Use of N11 Codes and Other Abbreviated)	CC Docket No. 92-105
Dialing Arrangements)	

**REPLY OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
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Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide)	NSD-L-99-24
)	
Request by the Alliance of Information and Referral Systems, United Way of America, United Way 211 (Atlanta, Georgia), United Way of Connecticut, Florida Alliance of Information and Referral Services, Inc., and Texas I&R Network for Assignment of 211 Dialing Code)	NSD-L-98-80
)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements)	CC Docket No. 92-105
)	

**REPLY OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹ hereby submits its Reply to oppositions to its Petition for Reconsideration in the above-captioned proceeding.²

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See Petition by the United States Department of Transportation for Assignment of an Abbreviated Dialing Code (N11) to Access Intelligent Transportation System (ITS) Services Nationwide, *et al.*, NSD-L-99-24, NSD-L-98-80, Docket No. 92-105, *Third Report and Order and Order on Reconsideration*, 15 FCC Rcd 16753 (2000) (“Order”).

I. INTRODUCTION AND SUMMARY

In the Order, the Commission required providers of telecommunications services, including CMRS carriers, to provide community information and referral services using the 211 abbreviated dialing code and to provide travel information using the 511 code.³ As CTIA explained in its Petition, in imposing these requirements on CMRS providers the Commission did not adequately consider the unique mobile implementation issues affecting services. CMRS networks are designed without regard to state, municipal, or other political boundaries. In fact, CMRS service areas routinely cover more than one state. Indeed, a caller may drive through many different jurisdictions during a single call. These characteristics make the implementation of abbreviated dialing codes, such as 211 and 511, much more complex than implementation by wireline carriers. Moreover, the Commission did not consider the impact of its 511 requirement on competition in the highly-competitive wireless market. Finally, the Commission did not provide sufficient specificity for the requirements to enable wireless carriers to implement them effectively and efficiently.

³ While not explaining how carriers should implement the 211 dialing code requirement, the Commission directed carriers, upon receipt of “a request from an entity ... to use 211 for access to community information and referral services,” to ensure that entities providing non-compliant services relinquish use of the codes, and to “take any steps necessary (such as reprogramming switch software) to complete 211 calls from its subscriber to the requesting entity in its service area.” *Id.* ¶ 21. To implement this service, the Commission relies on “community service organizations to work cooperatively to ensure the greatest public use of this scarce resource.” *Id.* In adopting the 511 requirement, the Commission ordered that “a governmental entity may request 511 from both wireline and wireless providers to use for intelligent transportation systems or other transportation information.” *Id.* ¶ 15. The Commission declined to address cost recovery or technical issues, and left the discretion to determine deployment schedules and the types of information provided, to federal, state, and local government transportation agencies cooperatively. *Id.*

The Oppositions to the Petitions for Reconsideration did not raise any arguments that refute CTIA's concerns regarding implementation of the 211 and 511 abbreviated dialing code requirements by the CMRS industry. While Commenters acknowledge that wireless implementation issues exist, they argue that a cooperative effort is sufficient to resolve the many technical and practical obstacles that remain to full implementation of the 211 and 511 dialing codes. For example, no Commenter shows how mutually-exclusive requests for 211 are to be resolved under the Commission's current rules. Nor do Commenters resolve issues related to call routing in multi-jurisdictional areas. With regard to 511, Commenters show little concern for the negative impact on competition in the wireless market, and ignore the benefits that competition in the provision of traffic services brings to the public. For these reasons, CTIA respectfully reiterates its request for reconsideration of the Commission's order adopting the 211 and 511 abbreviated dialing code requirements for CMRS carriers.

II. CTIA'S PETITION FOR RECONSIDERATION WAS TIMELY FILED.

As an initial matter, commenters in opposition to CTIA's Petition for Reconsideration ("Commenters") argue that CTIA's petition is procedurally defective because it was filed beyond the deadline for filing petitions for reconsideration under the Commission's rules.⁴ They contend that petitions for reconsideration were due by August 30, 2000 because they argue that this proceeding was not a rulemaking. Contrary to these assertions, the Commission's action in this proceeding was a rulemaking, thus petitions for reconsideration were timely filed.

⁴ See Opposition of the Intelligent Transportation Society of America to Petitions For Reconsideration, at 7-9 ("ITS America Comments"); Opposition of the United Way of America, The United Way of Connecticut, The United Way of Metropolitan Atlanta, and the Alliance of Information and Referral Systems to the Petitions for Reconsideration, at 9-10 ("United Way Comments").

Whether a Commission proceeding is a rulemaking or adjudication is defined in the Administrative Procedure Act (“APA”).⁵ Section 553 of the APA requires that the Commission conduct a rulemaking proceeding to formulate, amend, or repeal a rule.⁶ In turn, the APA defines a rule as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy....”⁷ In the case of the 211 and 511 dialing code requirements, the Commission has imposed new obligations of general applicability on all providers of telecommunications services to provide 211 and 511 dialing code services on a going-forward basis. By definition, this proceeding is a rulemaking under the APA.⁸ As a result, the Commission’s rules require that petitions for reconsideration be filed within thirty days of the public notice of the action, and that notice in the Federal Register serves as public notice in a rulemaking proceeding.⁹ CTIA complied with this rule in full, and therefore, its petition for reconsideration should be considered by the Commission.¹⁰

⁵ See NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); Ford Motor Co. v. FTC, 673 F.2d 1008, 1009 (9th Cir. 1981) (“[A]n agency must proceed by rulemaking if it seeks to change the law and establish rules of widespread application.”).

⁶ See 5 U.S.C. §§ 551(5), 553.

⁷ See 5 U.S.C. § 551(4).

⁸ Although the Commission did not amend the Code of Federal Regulations in the Order, the Order nonetheless adopts a rule of general applicability and future effect pursuant to the definition of “Rule” in the APA. As a result, the Commission has full authority to enforce these requirements against all providers of telecommunications services. Moreover, the general assignment of N11 codes applicable to all carriers is procedurally different than assigning NPA-NXX codes to be used by only one carrier.

⁹ See 47 C.F.R. §§ 1.4(b)(1), 1.429(d).

¹⁰ Notice of the Order was published in the Federal Register on February 9, 2001. 66 Fed. Reg. 9674 (Feb. 9, 2001). This notice states that the Commission’s action is a “Final Rule.” Therefore, the final date for filing petitions for reconsideration was March 11,

III. THE COMMISSION SHOULD PROVIDE GUIDANCE ON HOW THE WIRELESS INDUSTRY SHOULD COMPLY WITH THE 211 IMPLEMENTATION REQUIREMENTS.

Commenters opposing CTIA's Petition for Reconsideration of the 211 requirements of the Order have not demonstrated that the Commission's rules address the concerns of the wireless industry with sufficient specificity to allow wireless carriers to comply with the Commission's Order. Indeed, Commenters acknowledge that significant implementation issues remain unresolved. For example, the United Way Comments not only agree that wireless implementation issues remain outstanding, they indicate that the United Way Commenters would not oppose a further proceeding to address these matters, and even suggest that they would "gladly participate."¹¹ Because these critical implementation questions persist, CTIA reiterates its request that the Commission reconsider its decision to impose the 211 abbreviated dialing code requirements on CMRS carriers until it provides further implementation guidance.

In the Order, the Commission failed to explain how 211 was to be implemented, nor did it adequately consider the impact of these requirements given the significant differences between implementation by wireline carriers and implementation by wireless carriers. Specifically, the Commission did not adequately consider the mobile nature of wireless services on the requirement that wireless carriers provide access to the 211 dialing code for community information and referral services. CMRS customers may use their phones within a large jurisdiction, visiting other jurisdictions, or even while transiting various jurisdictions during a

2001. See 47 C.F.R. § 1.429(d). Because March 11, 2001 fell on a Sunday, petitions were due on March 12, 2001. See 47 C.F.R. § 1.4(j).

¹¹ See United Way Comments, at 12.

single call. Neither the location of the caller at any particular time nor the mobile telephone number necessarily identify the user with any particular “community of interest.”

The challenges raised by the ambiguity in these requirements is made clear by the California Comments.¹² The California Comments request that 211 services be provided on a county level, because “the county is the political jurisdiction where most of the health, social, and human services are distributed and funded.” This suggestion is unworkable for wireless service providers and demonstrates that the agencies seeking access to the 211 code do not have a clear understanding of how wireless services operate. Without further Commission guidance, entities such as these will make requests that are impractical, if not impossible, for CMRS carriers to fulfill. Thus, it is not clear, based on the Commission’s limited guidance, how wireless carriers should identify “communities of interest” for the purposes of routing 211 calls in a way that is both practical and efficient for wireless carriers.

As part of its reconsideration, the Commission must clarify which community information and referral service organizations are properly qualified to provide 211 services and how carriers are to resolve mutually exclusive and competing requests. The oppositions do not resolve this matter. For example, while the California Comments explain that most community information and referral services organizations “are private non-profit organizations governed by Boards of Directors that represent local community interests. It is unlikely that these entities would all defer to one statewide provider of 211 services.”¹³ The United Way Commenters explain that the Commission expects community organizations to work with carriers and the

¹² Opposition of the California Alliance of Information and Referral Services and Info Line of Los Angeles to Petitions for Reconsideration and Clarification, at 6 (“California Comments”).

¹³ California Comments, at 5-6.

appropriate state and local governments to implement 211.¹⁴ Not only is it not clear which community organizations may demand services or how those services must be provided, it is also not clear which state or local government agencies are responsible for facilitating 211 services. Given that a wireless carrier is required to “take any steps necessary ... to complete 211 calls from its subscriber to the requesting entity,”¹⁵ the mandate has the potential of placing carriers in the middle of disputes between these entities. Therefore, CTIA respectfully requests that the Commission reconsider its decision to impose the 211 abbreviated dialing code requirements on CMRS carriers until it provides further guidance as to how matters such as these are to be resolved.

IV. THE COMMISSION SHOULD PROVIDE GUIDANCE ON HOW THE WIRELESS INDUSTRY SHOULD COMPLY WITH THE 511 IMPLEMENTATION REQUIREMENTS.

Comments on the 511 requirement also did not show that the Commission’s rules adequately address wireless industry concerns regarding implementation of the 511 dialing code for travel information. First, Commenters glossed over the anti-competitive effects of the government monopoly in providing traffic services using the 511 code. Second, while Commenters detailed ongoing implementation efforts, these descriptions highlight the need for more clarification, not less, from the Commission. They demonstrate that even where there is extensive cooperation, there is no uniform approach to providing traffic services. Finally, Commenters still do not suggest how implementation issues can be resolved if the cooperative processes now underway fail to produce consensus. In mandating the use of 511 for travel

¹⁴ See United Way Comments, at 15 (quoting FCC, N11 Abbreviated Dialing Codes Third Report and Order and Order on Reconsideration Questions and Answers <<http://www.fcc.gov/ccb/nsd/documents/N11QA.DOC>>.).

¹⁵ Order ¶ 21.

information, the Commission should place the priority on ensuring that the public has access to travel information, rather than granting governments a monopoly on providing services using the 511 dialing code.

In the wireless marketplace, many CMRS carriers differentiate their products based in part on services such as travel information. Under the Commission's current rule, CMRS carriers will be inhibited from competing based on these services or from tailoring travel-related services to meet the demands of customers. Because the Commission has mandated that 511 travel information be provided by "a governmental entity," the Commission has effectively granted a government monopoly over preferred access to traffic services already being provided by CMRS carriers in certain instances.¹⁶ Although some Commenters dispute that the Commission has granted a monopoly to government entities, they do not dispute that government entities have ultimate control over the use of the 511 code.¹⁷ Only one party may use the code in a particular area. It cannot be shared. Therefore, once a government entity exercises its right to the 511 code, all others are excluded. There is already a thriving competitive market for travel-related information services. By extinguishing the possibility that a carrier may use the 511 code

¹⁶ The Commission seems intent on replacing a variety of services and service providers with one that faces no competition. At present, carriers generally contract with private firms that take the raw traffic data and enhance this information for consumers. See ITS America Comments, at 18. By replacing this competitive market with a government monopoly, the Commission will bring to this service all of the ills associated with monopolies, including decreased efficiency, innovation, and customer service. For example, in a competitive market, traffic information providers may compete based on the frequency of information updates. Carriers may choose to update traffic information every ten minutes, while providers granted monopoly access to the 511 dialing code would not be subject to market pressure to provide such frequent updates.

¹⁷ See ITS America Comments, at 17; Letter from Marthand Nookala, Minnesota Department of Transportation, to Magalie Roman Salas, FCC, CC Docket No. 92-105, at 2 (Apr. 13, 2001).

for its competitive services and ensuring that government-provided services will be more accessible to users, the Commission is reducing competition in the CMRS market and depriving CMRS customers of the benefits of competition.

Furthermore, Commenters did not adequately address the practical issues of implementing the 511 dialing code. The comments described ongoing implementation efforts in various jurisdictions, emphasizing the cooperative nature of these working groups. However, these descriptions demonstrate the need for additional guidance from the Commission. They show that even though there is extensive cooperation in some jurisdictions, there is still no clear guideline that explains what wireless carriers must do to comply with the Commission's Order.¹⁸ For example, as discussed, the unique nature of wireless services makes routing based on location of the caller far more complex than for wireline carriers. The Commission should clarify that a wireless carrier is only responsible for routing calls in a state or a region to a single toll-free number. Any further routing should be the responsibility of the government entity providing services. This will satisfy the goals of the Commission to provide convenient travel information to the public, while limiting the burdens on carriers and their customers by reducing the complexity of call routing. Further, no Commenter addressed what carriers should do if governmental entities within a region are unable to agree and then submit mutually-exclusive and competing requests. Commenters merely assert that this will not occur.¹⁹

¹⁸ See ITS America Comments, at 14, 22 (explaining that various jurisdictions are considering requiring 511 calls be routed to a single call center in the state or MSA) (emphasis added).

¹⁹ See ITS America Comments, at 14; Letter from Steve Heminger, Metropolitan Transportation Commission, to Magalie Roman Salas, FCC, CC Docket 92-105, at 1-2 (Apr. 12, 2001).

Moreover, this problem is particularly acute in areas where there are multiple jurisdictions in a single wireless operating territory. While Commenters cite examples of regional transportation authorities, CMRS carriers operate nationwide and in large operating territories that may not have such coordinated regional government authorities.²⁰ The wireless industry needs clear direction from the Commission as to which demands from governmental entities CMRS carriers must fulfill. Therefore, CTIA respectfully reiterates its request that the Commission reconsider its decision to impose the 511 abbreviated dialing code requirements on CMRS carriers until it provides further guidance on implementation issues.

²⁰ See ITS America Comments, at 14; Comments of the United States Department of Transportation on Petitions for Reconsideration, at 9.

V. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission reconsider its decision to impose both 211 and 511 abbreviated dialing requirements on CMRS carriers until it provides further guidance on implementation issues.

Respectfully submitted,

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