

Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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■ 3. Section 80.46 is amended by revising paragraphs (b), (f)(3)(i), and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

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(b) *Olefins*. Olefin content shall be determined using ASTM standard method D 1319-02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption."

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(f) * * *

(3) (i) Prior to September 1, 2004, any refiner or importer may determine aromatics content using ASTM standard method D 1319-02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption," for purposes of meeting any testing requirement involving aromatics content; provided that

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(h) *Incorporations by reference*. ASTM standard methods D 3606-99, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography;" D 1319-02a, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption;" D 4815-99, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C₁ to C₄ Alcohols in Gasoline by Gas Chromatography;" D 2622-98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry;" D 3246-96, entitled "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry;" D 5191-01, entitled, "Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method);" D 5599-00, entitled, "Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection;" D 5769-98, entitled, "Standard Test Method for Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry," and D 86-01, entitled, "Standard Test Method for Distillation

of Petroleum Products at Atmospheric Pressure;" are incorporated by reference in this section. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428-2959. Copies may be inspected at the Air Docket Center, room B-108, U.S.

Environmental Protection Agency, Docket No. A-2202-15, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or at the Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW., Suite 700, Washington, DC.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket 99-200; FCC 03-140]

Numbering Resource Optimization

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) and found that forbearance was not warranted.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400, TTY (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 99-200, FCC 03-140 released on June 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street SW., Washington, DC 20554.

I. Introduction

In this Order, the Commission denied the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) on June 28, 2002. CTIA sought forbearance from further scheduled increases to the numbering resources utilization threshold. CTIA argued that forbearance should be granted because the projected

life of the North American Numbering Plan (NANP) has been extended, and increases to the current utilization threshold will raise the cost of providing service and increase the risk that numbering resources will not be available to carriers when needed. All commenters opposed CTIA's forbearance request. The Commission denied CTIA's Petition and found that forbearance was not warranted.

II. Discussion

1. We find that CTIA's forbearance petition does not satisfy the forbearance criteria set forth in section 10(a) of the Act. Specifically, we find that the numbering resources utilization threshold, and the scheduled increases up to the 75% cap, are necessary to ensure that carriers will obtain numbering resources in a just and reasonable manner, *i.e.*, only when and where they are needed to provide services. We further find that requiring carriers to manage their numbering inventories at increasing thresholds is a preventative measure that is necessary to protect consumers from premature area code changes and exhaust of the NANP. We also find that it is consistent with the public interest to increase the threshold because it will continue to require carriers to use numbering resources more efficiently, which will benefit carriers and consumers.

Charges, Practices, Classifications and Regulations

2. The scheduled increases to the threshold ensure that carriers will obtain additional numbering resources only when they are needed and utilize their numbering inventories on an increasingly efficient basis. Such efficiency is necessary to avoid the waste of finite numbering resources that are essential to providing telecommunications service. Conversely, freezing the threshold at its current level could accelerate NANP exhaust and burden customers with premature area code changes, contrary to the public interest.

3. As the Commission first concluded in the *Numbering Resource Optimization First Report and Order*, 65 FR 43251, July 13, 2000, the utilization threshold requirement, coupled with the MTE requirement, deters carriers from stockpiling excessive inventories and helps ensure that carriers optimize the use of existing numbering resources. Due in part to these measures, the projected life of the NANP has been significantly extended. Even CTIA lauds the success of these measures. Furthermore, the Pennsylvania Commission submits that forbearance

from increasing the utilization threshold could result in the unnecessary stranding of over 1.3 million individual telephone numbers in Pennsylvania's NPAs. Thus, we find that the Commission's numbering resources utilization threshold and its scheduled increases are necessary to ensure that carrier practices with regard to numbering resources are not unjust or unreasonable.

4. We also disagree with CTIA's suggestion that scheduled increases are rendered unnecessary by the Commission's already existing authority under sections 201 and 202 of the Act to address unjust or unreasonable carrier practices. While we agree that we have authority pursuant to these sections to address matters regarding carriers' access to numbering resources, the existence of such authority does not, by itself, negate the necessity of retaining scheduled increases to the utilization threshold. Targeted rules, such as the utilization threshold and its scheduled increases, provide an additional measure to ensure that carriers optimize the use of existing numbering resources on an ongoing basis to prevent premature NANP exhaust. As mentioned above, telephone numbers are a finite resource. Therefore, we must maintain proactive and predictable measures that preserve the NANP in addition to depending on our authority to initiate case-by-case enforcement investigations. We find that because of the concerns described above, we would not be justified in forbearing now, even if we were to "revisit the issue at a later date if necessary to preserve the NANP" as CTIA suggests.

Consumer Protection

5. We conclude that retaining the scheduled increases to the numbering resource utilization threshold is necessary for the protection of consumers, and we disagree with CTIA that forbearance in this instance would benefit consumers. One of the overarching goals of the Commission's numbering optimization orders is to protect consumers from the expense and inconvenience resulting from frequent area code changes, and to prevent what would be a costly premature expansion of the NANP. We agree with the Pennsylvania, California and Michigan commissions that freezing the utilization threshold could burden customers with premature area code changes as a result of earlier NANP exhaust. We find that by increasing the threshold, we are minimizing the opportunity for carriers to stockpile unused numbers when other carriers are

in need of such resources to serve their customers. Higher utilization levels will help to maximize the use of all available numbers which, in turn, will delay the exhaust of individual area codes.

6. Furthermore, we agree with the states that maintain that evolving technologies, as well as expanding services, could cause the demand for numbers to spike past the previous levels. For example, as voice over Internet protocol (VoIP) providers continue to penetrate the telecommunications market, the demand for numbers may increase. Such demand could burden existing numbering resources. Therefore, we find that requiring carriers to manage their numbering inventories at higher thresholds is a preventative measure that is necessary to ensure that consumers will not have to bear the burden of premature area code changes and NANP expansion.

7. We disagree with CTIA's claim that we should forbear from further increases because they will lead to increased carrier and consumer costs. CTIA has not presented any data or detailed cost-benefit analysis to support this assertion. In fact, CTIA readily concedes that it is "impossible to quantify the administrative costs carriers will incur from managing numbers at higher utilization levels." Moreover, the New York and California commissions have maintained utilization thresholds at 75% without any indication that there have been adverse effects on consumers. We are not convinced that increases to the utilization threshold would result in significantly more costs because the scheduled increases to the threshold are limited to 5% annually and are capped at 75%. We note that previously CTIA proposed and supported 5% annual increases to the utilization threshold. Moreover, in a recent *ex parte* filing, CTIA appears to depart from its position that the Commission should freeze the threshold at 65% by indicating that a 70% threshold would be an acceptable utilization level. Thus, it appears that CTIA now claims only that the difference between a 70% and 75% utilization threshold would be unnecessarily burdensome, in which case carriers would be required to use only 50 more numbers per thousands-block. We reject CTIA's claim that scheduled increases to the utilization threshold will raise costs while providing little benefit.

8. We also disagree with CTIA's claim that forbearance is warranted as a consumer benefit because it will allow carriers more time to "age" telephone numbers. We find that the numbering utilization threshold has little or no

affect on the aging process. Because carriers have the flexibility to age numbers up to 90 days regardless of the utilization threshold, carriers will be able to replenish their inventories of unused numbers with numbers that have been aged on an ongoing basis. Carriers, therefore, must make a business decision as to how long to age their numbering resources. In the *Numbering Resource Optimization First Report and Order*, the Commission stated that it believes that carriers can reuse numbers in significantly less than 90 days. Certain states have maintained utilization thresholds higher than the current threshold without any indication that there have been adverse effects on the aging process or on consumers. Therefore, we find that carriers' ability to age numbers within the Commission's prescribed limits will not be negatively affected by further increases in the numbering resources utilization threshold.

9. Moreover, we believe that CTIA's claim regarding the aging process is merely another attempt at arguing that increases to the utilization threshold are burdensome because they require carriers to use numbers more efficiently. Requiring carriers to use numbering resources more efficiently, however, is the goal that increases to the utilization threshold were designed to achieve. We find that freezing the utilization threshold at its current level would have a detrimental effect on numbering resource optimization and, in turn, on consumers because it would provide opportunity for carriers to stockpile unused numbers that could be assigned to other requesting customers.

Public Interest

10. We conclude that it is in the public interest to retain scheduled increases to the utilization threshold because it will continue to result in more efficient use of numbering resources, further extend the life of the NANP, and facilitate impartial numbering administration by encouraging all carriers to use numbers in their existing inventory before requesting new ones. In the *Numbering Resource Optimization Second Report and Order*, the Commission adopted 60% only as an "initial" utilization threshold. The Commission chose this initial threshold because it was demonstrably achievable and it would give carriers the opportunity to transition to the 75% ceiling without compromising their ability to obtain numbering resources to serve customers. The Commission found, as we do here, that a utilization threshold ceiling of 75% was appropriate because it

balanced the Commission's goals of encouraging carriers to use numbers currently in their inventories before applying for additional resources with carriers' need to retain flexibility in managing their inventories. The Commission was concerned that many carriers were not doing enough to groom their numbering inventories to minimize waste of the NANP's finite numbering resources. Today, many areas continue to face a heightened demand for numbering resources and, therefore, a utilization threshold of 75% remains in the public interest to ensure that carriers continue to use their numbering resources more efficiently.

11. We disagree with CTIA's claim that we should forbear because doing so will bring about reduced regulatory costs that will promote competitive market conditions. As stated above, any reductions in regulatory costs that would result from forbearance are speculative, and would relate to relatively few numbers in a carrier's inventory. Thus any cost savings would only be minimal, at best. Even if we granted forbearance from further increases, carriers would still have to continue to bear the costs associated with complying with the current utilization level. We have not been shown, nor are we convinced, that the marginal costs related to compliance with increases to the utilization threshold have any effect on competitive market conditions. In fact, we find that forbearance would result in lost efficiencies in numbering resource optimization. When such costly inefficiencies are balanced against the minimal regulatory costs that may be saved by carriers as a result of freezing the current utilization threshold, it is clear that forbearance is not consistent with the public interest.

12. Finally, we find unsupported CTIA's alternative claim that increases to the utilization threshold will result in certain carriers not having enough numbers available to them to meet customer demand. Once the utilization threshold reaches 75%, carriers will have 25% of their resources available to assign to new customers. Moreover, sufficient mechanisms, such as the safety valve, are in place to ensure that carriers with a verifiable need for additional numbers can get them even if they do not meet the utilization threshold requirements. For example, if, as CTIA suggests is the case for some carriers, a carrier has to use a large amount of numbers for E911 routing purposes, and as a result does not have a sufficient amount of telephone numbers to meet customer demand, that carrier can apply for relief via the safety

valve. In addition, the state commissions note that no carriers have complained that the utilization thresholds are technically or otherwise infeasible, and that no customers have complained about being unable to obtain service because a carrier did not have enough numbers. Therefore, we reject CTIA's contention that forbearance is in the public interest, or will promote or enhance competitive market conditions among providers of telecommunications services.

III. Ordering Clause

13. Pursuant to sections 10 and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. 160 and 251(e), that the Cellular Telecommunications and Internet Association's Petition for Forbearance From Further Increases in the Numbering Utilization Threshold, filed on June 28, 2002, is denied.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030613152-3235-02; I.D. 051903B]

RIN 0648-AQ38

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final initial 2003 quota specifications, General category effort controls, permit revisions, and definition of the management boundary area.

SUMMARY: NMFS announces the final initial 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons (mt) of BFT to account for incidental catch of BFT by pelagic longline vessels "in the vicinity of the management boundary area," to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General

category vessels to participate in registered recreational Highly Migratory Species (HMS) fishing tournaments and to allow permit applicants a 10-calendar day period to make permit category changes to correct potential errors. The final initial quota specifications, including the quota allocation to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area and the General category effort controls, are necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), pursuant to the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The definition of the management boundary area is to assist management, monitoring, and enforcement of the 25 mt allocated to the Longline category. The permit revisions to allow General category permitted vessels to participate in registered recreational HMS fishing tournaments and to allow a time period for permit category changes are intended to relieve restrictions and help achieve domestic management objectives.

DATES: The final initial quota specifications and General category effort controls are effective November 3, 2003 through May 31, 2004. The definition of the management boundary area and applicable restrictions and the revisions to the permit requirements are effective November 3, 2003.

ADDRESSES: Copies of the supporting documents including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) may be obtained from Brad McHale, Highly Migratory Species Management Division, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. These documents are also available from the Highly Migratory Species Division website at www.nmfs.noaa.gov/sfa/hmspg.html.

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of ICCAT. The authority to issue