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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

The Use of N11 Codes and
Other Abbreviated Dialing
Arrangements

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CC Docket No. 92-105

COMMENTS OF COX ENTERPRISES, INC.

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June 5, 1992

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SUMMARY

Cox Enterprises, Inc. ("Cox") supports the Commission's proposed codification of the requirement that local telephone companies make N11 codes generally available. General availability of N11 codes promotes the public interest and the Commission should adopt rules that will assure the availability of N11 codes to all on a fair basis.

Local assignment of N11 codes serves the public interest. N11 codes are ideally suited to local use and their use will spur the growth of competition in enhanced services. Other possible uses do not have the same promise. Letting N11 codes lie fallow contributes to underutilization of the telephone network and nationwide assignments would require reprogramming every switch in the country in order to serve only four users. Commission action is necessary because LECs will not assign N11 codes unless the Commission expressly tells them to do so.

The Commission has the power to require LECs to assign N11 codes by virtue of its plenary authority over telephone numbering. Uniform numbering policy is essential to the operation of the nationwide, interstate telephone network, and N11 codes are an integral part of the numbering scheme.

N11 codes must be assigned on a reasonable basis. First and foremost, codes must be assigned on a first-come, first-served basis, in accordance with basic common carrier principles. First-come, first-served assignment is a simple, reasonable allocation method approved by the Commission and the courts on many occasions, including for the allocation of limited resources. Other possible assignment mechanisms would result in unreasonable discrimination

between the telephone company and other users of N11 codes and have other undesirable results that render them unreasonable.

Other N11 practices must be just and reasonable as well. The Commission should forbid carriers from erecting any barriers to privately beneficial, lawful uses of N11 codes, especially use restrictions or practices that make use of N11 codes uneconomical. There is no need to adopt a "pioneer preference" for N11 assignments so long as first-come, first-served assignment is in place. Finally, telephone companies should not be permitted to impose other, inferior dialing arrangements on subscribers so long as N11 codes are available.

Once N11 codes are assigned, subscribers should be allowed to use them for any lawful service that is privately beneficial. LECs should not be permitted to impose any restrictions on the nature of the subscriber's use of its N11 code. LEC use of N11 codes for enhanced services, however, should not be permitted unless the LEC meets basic requirements necessary to assure fairness in the assignment of N11 codes. In particular, LECs should not be permitted to use N11 codes for enhanced services unless they have made N11 codes available to non-LEC subscribers and LEC use of 811 and 611 for enhanced services should not be permitted.

The Commission must not delegate any of its numbering authority to the Administrators of the North American Numbering Plan. The Commission has no power to delegate its authority to a private entity, including Bellcore, the Administrators' parent company. It also would be imprudent to delegate any authority to the Administrators because they are not suited to make impartial decisions regarding the assignment of N11 codes. Moreover, there is no need to

condition the assignment of N11 codes because there is little likelihood that a better, conflicting use will arise. Even if such a use did arise, the Commission's own processes provide the best mechanism for determining whether reassignment is appropriate.

For these reasons, Cox supports the Commission's efforts to assure that telephone companies meet their common carrier obligations by making N11 codes available. Cox respectfully submits that rules and policies governing the assignment of N11 codes should be adopted in the form described in these Comments.

long-term availability of N11 and similar arrangements to enhanced service providers ("ESPs") and other users.

I. INTRODUCTION

Cox is a diversified company with wide interests in the creation and distribution of information. Cox provides millions of U.S. consumers with information via its newspapers, broadcast outlets and cable systems. Cox also provides information to consumers via the telephone network.^{2/} As noted in the Notice initiating this proceeding, Notice at ¶ 3, n.1, and as described below, in order to offer new information services to the public, Cox sought an N11 code from BellSouth for the Atlanta area, thereby beginning the events that led to this proceeding. Cox also has made similar requests to other LECs.

Cox generally supports the rules and policies proposed in the Notice. As detailed below, the general availability of N11 codes for local assignment promotes the public interest and the Commission has the authority to adopt rules governing the assignment of N11 codes. The Commission should assure that LECs assign N11 codes reasonably, that is, on a first-come, first-served basis and without hindering any privately beneficial use of the N11 code that is not publicly detrimental. LEC use of N11 codes should be permitted only if N11 codes are provided to non-LECs on a reasonable basis. Finally, the

^{2/} Cox's Atlanta newspapers, The Atlanta Journal and Constitution, now offer 25 telephone voice information services ranging from weather forecasts to early information about the next day's classified advertising. In 1991 the newspapers received 12 million calls for those services.

Commission should eliminate its proposal to delegate authority over N11 codes to Bellcore or its affiliates. Such a delegation is unlawful and there is no reason to condition the assignment of N11 codes.

The Commission should be especially careful to assure that the rules it adopts maximize the opportunities available to enhanced service providers and other users of numbering resources. Cox believes that adopting rules and policies consistent with these comments will achieve that goal.

II. GENERAL AVAILABILITY OF N11 CODES FOR LOCAL ASSIGNMENTS WILL SERVE THE PUBLIC INTEREST.

The Notice concludes that continued local assignment of N11 codes serves the public interest. Notice at ¶ 12. This conclusion, as shown below, is correct. However, telephone companies are not likely to make N11 codes promptly available to non-LECs unless the Commission adopts rules expressly requiring them to do so.^{3/}

A. The Use of N11 Codes for Local Assignments Will Serve the Public Interest.

N11 codes are ideally suited for local use, as proposed in the Notice. Other uses, or permitting the unused N11 codes to lie fallow, would be inefficient uses of numbering resources. At the same time, because the telephone industry has used N11 to provide directory assistance and emergency services for over two decades, local use of N11 codes will be easy to implement.

^{3/} For instance, BellSouth would not make an N11 code available to Cox without Commission direction. See Part II(B), *infra*.

N11 codes are well suited for local assignments. The current configuration of the telephone network routes N11 calls to locations within the local calling area. The current uses of N11 codes – notably directory assistance, repair and emergency calls – are local in nature. Indeed, the standard telephone network reference recognizes the nature of N11 codes by explicitly reserving them for local use. BOC Notes on the LEC Networks - 1990, § 3.2.4 (1991) ("Notes on the Network").^{4/}

Local assignment of N11 codes allows ESPs and other users to make more efficient and effective use of the telephone network. Moreover, each N11 code can be assigned many times across the country, which permits hundreds of assignments of the four available codes and hundreds more assignments if telephone companies make 611 and 811 available. No comparable alternative dialing arrangement is available at this time, let alone any arrangement that would permit so many uses nationwide.^{5/}

Local N11 codes could have many uses. Cox plans to use N11 for local pay-per-call information services, but many other uses are possible. In fact, any information service could benefit from the availability of N11 codes, just as

4/ Copies of relevant excerpts from Notes on the Network are attached hereto as Exhibit 1.

5/ Other arrangements, such as *NXX and NNX#, either are not immediately available or cannot be reached from a significant proportion of the telephones now in use. While industry groups like the Industry Carriers Compatibility Forum are considering alternative dialing arrangements, they have yet to set standards, let alone begin implementation. The only other alternative arrangement now in place, *XX, has been designed to control network features like Call Trace, not to connect telephone calls.

411 has made obtaining directory information easier and 911 has greatly aided public safety.

Implementing local N11 code assignment also will be relatively simple. Switches already are capable of locally routing N11 calls, as they do today for 411, 611, 811 and 911 calls. See, e.g., Notes on the Network, Exhibit 1 at § 4.1.3. There will be no adverse effects, and many public benefits, from new services offered to telephone users already familiar with local services offered through N11 codes. Consequently, the benefits of local assignment of N11 codes will come at very little cost.

Other potential uses of N11 codes do not have the same promise. Letting them lie fallow, as they do today, contributes to underutilization of the public switched telephone network.^{6/} Assigning N11 codes for nationwide use, on the other hand, would restrict the availability of abbreviated dialing to only four users and require reprogramming or re-engineering of every switch in the United States. National assignments of N11 numbers also are contrary to the Numbering Plan. In any event, nationwide abbreviated access is available through 1-0-XXX and abbreviated nationwide dialing could be implemented in the future through *XXX codes or other means. See NANP Administrator's Proposal on the Future of Numbering in World Zone 1, §§ 4.2.3, 7.2 ("NANP Numbering Proposal").^{7/}

^{6/} Further, as discussed below, there is no need to hold N11 codes in reserve against the possibility that they might someday be put to some other use. See Part VI(C), infra.

^{7/} Relevant excerpts from the NANP Numbering Proposal are attached hereto as Exhibit 2.

Thus, local assignment of N11 codes is the best use for these numbers. It will spur the growth of local information services and other services. Local assignment is technically consistent with the current structure of the telephone network and with telephone customers' existing dialing patterns. At the same time, there are no other uses of N11 codes that better serve the public interest. Taken together, these facts warrant the adoption of rules assuring that N11 codes are available for local use.

B. Commission Action Is Necessary to Assure the Prompt Assignment of N11 Codes.

If local carriers were responsive to requests for N11 codes from information service providers, there would be little need for the Commission to adopt rules. However, given the responses to Cox's requests for N11 codes and the carriers' strategic interests it is unlikely that carriers will make N11 codes available without the Commission expressly requiring them to do so.

Cox's request for a number from BellSouth is illustrative. That request was made on August 30, 1991. It took BellSouth until March 4, 1992 to process the request under its ONA guidelines and provide a formal response.^{8/} At that time, BellSouth filed its "Request for Expedited Declaratory Ruling" concerning whether it was permitted to offer N11 service to Cox. Following the issuance of the Pettit Letter, BellSouth informally informed Cox it would provide N11 service. To date, however, Cox has received no firm indication that

^{8/} BellSouth did not explain why assignment of a telephone number is an ONA service. Cox does not believe that it is.

BellSouth will comply promptly with the Pettit Letter. Only after the issuance of the Pettit Letter and the Notice did BellSouth begin the process of preparing its state tariff, which has yet to be filed. As a consequence, BellSouth is unlikely to begin providing N11 service to Cox in Atlanta until at least November, more than 14 months after Cox's initial request.^{9/}

While the request to BellSouth was pending, Cox made requests for N11 service in other communities around the country where Cox has newspapers. The other RBOCs followed BellSouth's lead and delayed their responses to Cox's requests for service. Before the Pettit Letter was issued, U S West and Ameritech informed Cox they would not provide N11 service until the Commission acted on BellSouth's request for a declaratory ruling, and neither has provided any further response. Southwestern Bell representatives have acknowledged the request and met with Cox, but have not provided any definitive response.^{10/} Only Cox's Lufkin, Texas Daily News received a positive response, which came not from an RBOC but from Lufkin-Conroe Telephone Exchange, a carrier with less than 100,000 lines.

While the nation's largest telephone companies have not been responsive to Cox's requests, they are moving already to take advantage of their existing 411 offerings to provide service enhancements. Bell Atlantic offers call

^{9/} BellSouth also is in the process of responding to Cox's request for N11 service in the West Palm Beach, Florida area. Although all of the technical and legal issues are the same as those resulting from Cox's Atlanta request, BellSouth has invoked the 120 day ONA process for the West Palm Beach request as well.

^{10/} Copies of relevant correspondence are attached hereto as Exhibit 3.

completion service to customers calling 411, and similar services have been approved in Texas for Southwestern Bell. Pacific Telesis has announced its intention to provide enhanced directory assistance, including directions to commercial establishments. Southwestern Bell also has proposed to provide zip codes to 411 callers on request. For that matter, Notes on the Network includes detailed descriptions of enhanced directory assistance services that go far beyond the traditional name and number. See Notes on the Network, Exhibit 1 at § 4.2.7.

In this environment, it is no surprise that the telephone companies are reluctant to provide N11 codes to their enhanced service competitors. If the Commission intends to promote the development of information services, it plainly must take action affirmatively to cut through the delays and obfuscations created by the telephone companies' competitive ambitions by requiring the general availability of N11 codes.

III. THE FCC HAS THE AUTHORITY AND IS OBLIGATED TO ADOPT RULES GOVERNING THE ASSIGNMENT OF N11 CODES.

The public interest in assigning N11 codes for local use is clear. The Commission's ability to require telephone companies to make them available, through its plenary authority over numbering, is equally clear.

The Commission has asserted its authority over numbering on several occasions, most notably in the context of the assignment of NXX codes to cellular carriers. See The Need to Promote Competition and Efficient Use of

Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910 (1987), recon. 4 FCC Rcd 2369 (1989) ("Cellular Interconnection Orders"). In that context, the Commission found that "any state regulation of NXX codes could affect interstate communications by disrupting the uniformity of the North American Numbering Plan." 4 FCC Rcd at 2369.

What is true of NXX codes is equally true of N11 codes. Uniform numbering policy is essential to the operation of a nationwide telephone network. Uniform numbering makes it possible for telephone users across the country to reach each other and use the telephone no matter where they are. Any contrary state practices would undermine the integrity of the national network.^{11/}

Consequently, the Commission, through its plenary jurisdiction over numbering, has the power to adopt rules governing N11 codes. The Commission should exercise that authority to make N11 codes generally available.

IV. N11 CODES MUST BE ASSIGNED ON A REASONABLE BASIS.

The Commission also should make it clear that N11 service, like any other common carrier service, must comply with the basic requirements of Section 201 and 202 of the Communications Act. 47 U.S.C. §§ 201-202. Carriers should not be permitted to impose unreasonable restrictions on the use or assignment of N11 codes. The Report and Order in this proceeding should require carrier practices that comport with the public interest.

^{11/} This is not to say that states have no role in numbering issues, but only that their role is limited by the necessity for nationwide uniformity.

A. Telephone Companies Must Not Be Permitted to Erect Barriers to Privately Beneficial Uses of N11 Codes.

Telephone companies could avoid independent ESP competition in N11 services by imposing unreasonable conditions on the use of N11 codes. The Commission can avoid the need to remedy objectionable restrictions by preventing such practices now.

The most objectionable restrictions would be on the uses of N11 codes. For instance, while Cox intends to use an N11 number in Atlanta for local pay-per-call services, other users (and Cox itself, either in the future or in other cities) may have uses for N11 numbers or other alternative dialing arrangements that do not involve pay-per-call services. There is no technical, legal or policy justification for limiting the use of N11 codes in any way, so long as the service to be provided using the N11 code is privately beneficial without being publicly harmful and is otherwise lawful. Just as carrier-imposed restrictions on the resale of basic telecommunications services are unlawful, the imposition of restrictions on the use of N11 codes is not in the public interest. See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 48 R.R.2d 1027 (1980); see also Hush-a-Phone Corp. v. U.S., 238 F.2d 266 (D.C. Cir. 1956).

The Commission also should make it clear that telephone companies are not permitted to raise indirect barriers to privately beneficial uses by setting prohibitive rates for N11 services. A rate or an initial charge so high as to prevent other potential users from acquiring N11 codes would have the

same effect as not making them available in the first place. Meanwhile, the public interest would suffer. Similarly, charges for N11 services may not be discriminatory so as to violate Section 202 of the Communications Act. See, e.g., Ad Hoc Telecommunications Users Committee v. F.C.C., 680 F.2d 790, 797, n. 15 (D.C. Cir. 1982).

The preceding examples are only some of the unreasonable terms and conditions that telephone companies could impose. Many more are possible. For that reason, Cox urges the Commission to forbid all unreasonable terms and conditions on the offering of N11 service by telephone companies.

B. N11 Codes Should Be Assigned on a First-Come, First-Served Basis.

In the Notice, the Commission proposes to permit LECs to assign N11 codes using "any reasonable allocation mechanism." Notice at ¶ 16. Cox agrees that the assignment of N11 codes should be governed by the statutory requirement of reasonableness. That principle does not, however, give carriers unbridled discretion to choose any allocation mechanism. In fact, Commission precedent and the circumstances of this matter require that N11 codes be assigned on a first-come, first-served basis. This fact was acknowledged in the Pettit Letter, which informed BellSouth that first-come, first-served procedures were appropriate for the assignment of N11 codes, and confirmed in the Notice. Notice, ¶ 3, n. 1.

1. First-come, First-Served Assignment Is Reasonable.

The simplest and most reasonable approach to the assignment of N11 codes is first-come, first-served. First-come, first-served is the standard allocation method for common carriers services and is well-suited to the allocation of resources like N11 codes. As it did in the Notice, the Commission should confirm the accuracy of the Pettit Letter's conclusion that first-come, first-served assignment is appropriate for N11 service.

If there is any core principle of common carriage, it is to serve all comers on a non-discriminatory basis. National Association of Regulatory Utility Commissioners v. F.C.C., 525 F.2d 630, 642 (D.C. Cir) ("NARUC I"), cert. denied, 425 U.S. 992 (1976). Deeply embedded in this principle is the requirement that consumers should be served on a first-come, first-served basis. See, e.g., Wold Communications, Inc. v. F.C.C., 735 F.2d 1465, 1471 (D.C. Cir. 1984). It is a requirement that has guided provision of communications service at the state and federal level, and the Commission has endorsed the first-come, first-served principle on a number of occasions.

For instance, first-come, first-served was approved as the allocation principle for satellite services, Spanish International Network, Inc., 78 FCC 2d 1451 (1980) ("SIN"), and for Multipoint Distribution Services. Metrock Corporation, 73 FCC 2d 802, 806 (1979). See also Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials, 2 FCC Rcd 2819 (1987) ("[C]ommon carriers have a general obligation to hold out their services to the public on a first-come, first-served

basis"). In fact, when the Commission considered BOC Comparably Efficient Interconnection plans, it required each CEI plan to include a statement that basic services would be provided on a first-come, first-served basis. See, e.g., American Telephone & Telegraph Co., 3 FCC Rcd 2702 (1988) (approval of CEI plan for transaction services).

The duty to serve upon request permeates current carrier practices regarding allocation of communications service generally as well as NXX codes and local and 800 vanity telephone numbers in particular.^{12/} See Murrin v. Midco Communications, Inc., 726 F.Supp. 1195, 1199 (D. Minn. 1989) (in deciding which party had rights to an 800 number, court found that "[t]he practice by common carriers of allocating limited facilities on a 'first come, first served' basis has been recognized by the courts and the FCC as an appropriate method by which common carriers may discharge their duty of nondiscrimination under section 202." (citations omitted)). See also F.C.C. v. Midwest Video Corp., 440 U.S. 689, 701-702 (1979) (first-come, first-served is a basic obligation of common carriers);

^{12/} The Commission has encountered matters relating to number exclusivity in the context of 800 numbers whose seven digits spell a recognizable term or name, e.g., 800-HOLIDAY. For obvious reasons, it has never been suggested that, simply because other hotels or travel entities wish to use the "HOLIDAY" telephone number, the existing user must forego its use.

Nor can it reasonably be suggested that a common carrier may decline to grant a specific request because another party, if informed of its availability, might wish to use the same number. Every telephone number is unique and its assignment in a particular area precludes its use by others. LECs recognize the value of unique telephone numbers by allowing customers to choose their telephone numbers in return for a monthly fee. N11 codes are no more or less unique.

NARUC I, supra. The Commission has specifically approved first-come, first-served assignment when resources are limited. SIN, 78 F.C.C.2d at 1467-68 (first-come, first-served assignment reasonable when common carrier has only eight transponders available on satellite); Metrock Corporation, supra (single MDS channel).

Thus, the first-come, first-served principle is a basic attribute of common carriage. It also is a simple, easily understood principle ideally suited to N11 service. It rewards entrepreneurship, and aids the prompt development of competitive markets.^{13/} The first-come, first-served mechanism also provides a way to reallocate numbers if they are returned.

2. Other Assignment Practices Would Be Unreasonable.

While first-come, first-served assignment of N11 codes meets the Communications Act's reasonableness requirements, it is doubtful that any other assignment mechanisms shares its salutary features. Only first-come, first-served assignment will make N11 numbers available to users efficiently and quickly. In particular, the three principal alternatives to first-come, first-served assignments – lotteries, auctions and assignments based on the "merits" of the proposed service – are contrary to basic common carrier principles.

^{13/} The Commission has specifically recognized the effect of a practice on competition as an element in determining whether a practice is reasonable. See Investigation of Access and Divestiture Related Tariffs, 101 F.C.C.2d 911, 920 (1985) (defaulting interexchange customers to AT&T is not a reasonable practice.)

As a threshold matter, adoption of any assignment method other than first-come, first-served would be unreasonably discriminatory because telephone companies already have assigned themselves 411, 611 and 811 on a first-come, first-served basis. Adoption of any different mechanism to assign N11 codes to non-LECs would face a particularly heavy burden to justify deviation from the assignment principle used for earlier assignments. This burden is made even heavier by existing telephone company uses of 411 for enhanced services. See Part II(B), supra.

Assignment by lottery is unreasonable for several reasons. To begin with, setting an application deadline sometime in the future, a necessary element of a lottery system, will only serve to delay service by parties already able to use and interested in an N11 assignment. A public lottery will only encourage applications from speculators with less than a sincere interest in providing service. As the Commission is well aware, public lotteries encourage speculation in scarce resources, often shutting out parties truly interested in providing new services. See Further Notice of Proposed Rulemaking for the Use of the 220-222 MHz Band, 7 FCC Rcd 898 (1992).

A lottery for N11 numbers would likely draw many applicants with no sincere interest in providing service. Random selection from a pool filled with speculators is much less likely to produce a viable competitor than is the assignment on a first come, first served basis. First, the odds will be against picking sincere applicants. Second, entering a lottery does not require as much of a commitment to provide service as a first-come, first-served service order. If the

N11 assignment is transferable, then speculators may profit from their good luck at a cost to the ultimate user of the number, thereby lessening the financial resources available to invest in the service to be offered.^{14/}

While the potential for abuse and delay makes lotteries unreasonable, auctions would be unreasonably discriminatory. 47 U.S.C. § 202. Auctions would result in differential pricing among similarly situated users for the same service and would effectively preclude all but the wealthiest applicants from obtaining N11 codes. Not only would the price of N11 service differ among non-telephone company users, but telephone companies, which use up to three N11 codes each, paid nothing to obtain the codes.

Assigning N11 codes to the highest bidder also would result in unreasonable profits for the telephone companies assigning the numbers. Where the local exchange company still retains a monopoly, basic price regulation

^{14/} In addition, there are many distinctions between the general assignment of N11 codes and the one case where the Commission permitted a lottery for common carrier services. In that case, RCA American Communications, Inc., 79 FCC 2d 331 (1980) ("RCA Americom"), the Commission approved a lottery for the temporary assignment of two satellite transponders until such time as permanent transponder assignments were available. The lottery was proposed in order to allocate these transponders among parties that previously had been guaranteed transponders on a satellite lost in space. Entry in the lottery was available only to the previously confirmed prospective customers of the lost satellite, who had obtained their rights on a first-come, first-served basis. Id. at 332-333. On these facts, the Commission approved the lottery, with two Commissioners concurring specially to state that they approved of the lottery only because of the extraordinary circumstances caused by the loss of the first satellite. Id. at 337. The limited entry into the lottery and the temporary nature of the assignment in RCA Americom emphasize the extraordinary nature of that case, which is quite different from a lottery for the permanent assignment of services, open to any party desiring to participate.

principles require that the price charged by the telephone company be based on the cost to the telephone company of providing the service plus a reasonable profit. Even under incentive regulation, prices must bear a reasonable relationship to cost. See generally Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3298-300 (discussing role of cost-based pricing). Auction pricing, of course, is a reflection of the assumed value of the service to the user, not of cost. Since the numbers do not belong to the telephone company to begin with, any premium over the cost of providing the service would be unreasonable.^{15/}

Next, any telephone company-conducted comparison of the "merits" of proposed N11 services is utterly repugnant. The basic premise of common carrier regulation is that, to the extent resources are available, the carrier must be willing to serve all comers. For a local exchange company to make substantive evaluations through comparative analysis of N11 code applicants violates this basic premise.

The delay and cost inherent in comparative hearings or determinations, moreover, would not be in the public interest. As the Commission has found, comparative hearings usually result in decisions based upon minor technical distinctions among applicants that result in little difference

^{15/} Of course, it also is possible that in some areas of the country an auction would attract fewer bidders than numbers or no bidders at all. In that case, an auction would be pointless and the cost of conducting the auction might exceed the money obtained.

to the service offered to the public. See Cellular Lottery Rulemaking, 98 F.C.C.2d 175, 186-187 (1984). Furthermore, basic due process requires that the decision-maker be a disinterested party. See Goldberg v. Kelly, 397 U.S. 254 (1970) (due process requires impartial decision maker in welfare eligibility determination, even though adjudication procedures were informal); 5 U.S.C. § 556(b) (procedures for ruling on claims that decision-makers are biased or otherwise disqualified from participating in formal adjudications). There is no party with a greater interest in the identity of N11 subscribers than the local telephone company, yet the telephone company would be the most likely party to make any "merit"-based decision.^{16/} To allow the local exchange companies to pick and choose their potential competitors is contrary to all notions of fair play. See Tumey v. Ohio, 273 U.S. 510 (1927) (decision-maker receiving share of fines levied on persons convicted could not constitutionally preside over trials). In any event, assignment decisions based on the "merit" of proposed services are nearly impossible to make, in part because there are no established criteria for such a decision.

Finally, each of these assignment mechanisms makes no provision for the possibility that numbers will be returned at some point. First-come, first-served assignment solves that problem by making every number available until it is requested, then making the number available again if it is returned. Lotteries,

^{16/} Certainly the staffs of the state utility commissions are as overburdened as the Commission's own staff and, thus, should not have thrust upon them the additional burden of determining the comparative qualifications of N11 applicants.

auctions and "merit" assignments would require special mechanisms to deal with returned numbers.

Thus, N11 codes should be assigned on a first-come, first-served basis. First-come, first-served assignment is the standard common carrier assignment mechanism, and is particularly well suited to the assignment of N11 codes. Alternative approaches are not suited to N11 codes and, in practice, would violate basic common carrier principles embodied in the Communications Act.

C. Other Code Assignment Practices Must Be Reasonable As Well.

While the basic method of and conditions on N11 code assignment are extremely important, the Commission also should act to assure that other N11 code assignment practices are reasonable as well. The Commission should recognize that the scarcity of N11 codes justifies limiting subscribers to one code each and need not adopt a "pioneer preference" so long as codes are assigned on a first-come, first-served basis. Transfers of codes should be permitted freely. Finally, the Commission should make it clear that telephone companies are not permitted to offer inferior alternative dialing arrangements unless all N11 codes are exhausted.

Limiting each subscriber to one N11 code in a local service area is a reasonable response to the relative scarcity of N11 codes. Of course, a limitation of one N11 code per subscriber means that local telephone companies, which already have assigned themselves as many as three N11 codes, should not