

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

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Implementation of the Local)
Competition Provisions in the) CC Docket No. 96-98
Telecommunications Act of 1996)

To: The Commission

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OFFICE OF THE SECRETARY

COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

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COMMENTS OF THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.

The National Cable Television Association, Inc. ("NCTA") hereby submits its comments on the dialing parity, number administration, technical changes, and access to rights of way portions of the Notice^{1/} in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

In this proceeding, the Commission seeks to adopt rules in fulfillment of the statutory mandate to "remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry" by new competitors.^{2/} To this end, the Commission's rules should reflect Congress's view that access to poles, conduits, and ducts is essential to promote facilities-based competition. The Commission should narrowly construe the exception that permits utilities providing electric service to deny access under certain circumstances.

^{1/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC No. 96-182 (released April 19, 1996) ("Notice").

^{2/} Notice ¶ 12.

NCTA supports the Commission's tentative conclusion that the 1996 Act's dialing parity provisions require local exchange carriers ("LECs") to permit customers to dial the same number of digits to make a local telephone call regardless of the identity of the customer's or called party's service provider.

NCTA agrees that the Commission's recently adopted order on numbering administration generally satisfies the requirements of the 1996 Act, but requests that the Commission exclude overlays as a means of addressing area code exhaustion. The Commission should also ensure that the transfer of numbering duties from incumbent local exchange carriers to a neutral administrator occur as soon as possible. In addition, the Commission should clarify that companies be required to fund the numbering administration based on their gross revenues from telecommunications activities rather than their overall gross revenues.

Finally, the Commission should ensure that incumbent local exchange carriers ("ILECs") give prompt public notice of all technical changes in their networks that affect interconnection. Such information is essential to the efficient routing and transmission of services by new entrants.

I. Exceptions to the Right of Access to Poles, Conduits, and Ducts Must be Narrowly Construed

Congress originally enacted the Pole Attachment Act in 1978 to ensure that utilities providing cable systems with access to poles did so at just and reasonable rates, terms, and conditions.^{3/} The 1996 Act broadens the Pole Attachment Act to cover attachments by

^{3/} Pub. L. No. 95-234, February 21, 1978, Communications Act Amendments of 1978; S. Rep. No. 580, 95th Cong., 2d Sess. 13 (1977), reprinted in 1978 U.S.C.C.A.N. 109, 121.

providers of telecommunications services as well as by cable television systems,^{4/} and establishes an affirmative duty on local exchange carriers and other utilities to provide access to poles for cable television systems and telecommunications carriers.^{5/} For electric utilities only, Section 224(f)(2) provides a limited exception to this duty: "[A] utility providing electric service may deny a cable system or any telecommunications carrier access . . . on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes."^{6/}

Consistent with the purposes of Section 251 and Congress's intent in amending the Pole Attachment Act, Section 224(f)(2) must be narrowly construed.^{7/} As the Commission has consistently acknowledged, poles, ducts, conduits, and rights-of-way (hereinafter referred to collectively as "poles") are essential facilities, access to which is necessary to the ability of cable

^{4/} 47 U.S.C. § 224(a)(4).

^{5/} Id. §§ 251(b)(4), 224(f)(1).

^{6/} Id. § 224(f)(2).

^{7/} The language utilized in the Section 224(f)(2) exception, which tracks standard language in existing pole attachment agreements, indicates a congressional intent to restrict the loophole afforded utilities providing electric service to that currently existing in private agreements. Subsection (f)(2) was not intended to give electric utilities any greater right than existed prior to enactment to prevent cable operators and others from obtaining access.

systems and telecommunications carriers to provide local exchange services.^{8/} Consequently, access to these facilities also is crucial to the development of facilities-based competition.

Congressional recognition of poles as essential facilities appears in both the 1996 Act and its legislative history. Pole access is among the obligations imposed on all local exchange carriers in 251(b)(4),^{9/} and in the competitive checklist of Section 271(c)(2), which must be satisfied before a Bell operating company ("BOC") may provide in-region interLATA services.^{10/} The competitive checklist is a "current reflection of those things that a telecommunications carrier would need from a Bell operating company in order to provide a service such as telephone exchange service or exchange access service in competition with the Bell operating company."^{11/}

^{8/} Notice at 76, ¶ 220; see e.g., In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Fourth Further Notice of Proposed Rulemaking, 10 FCC Rcd 4617, 4640-4641 (1995); Common Carrier Bureau Cautions Owners of Utility Poles, Public Notice, DA 95-35, 1995 FCC LEXIS 193 (1995); In the Matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, First Report, 9 FCC Rcd 7442, 7498 (1994); Letter from Richard M. Firestone, Chief, Common Carrier Bureau, 5 FCC Rcd 4547, 4548 (1990); In the Matter of Revision of the Processing Policies for Waivers of the Telephone Company - Cable Television "Cross Ownership Rules," Sections 63.54 and 64.601 of the Commission's Rules and Regulations, Memorandum Opinion and Order, 82 FCC 2d 254, 269 (1980), modified on other grounds, 86 FCC 2d 36 (1981).

^{9/} Id. § 251(b)(4). See also H.R. Rep. No. 23, 104th Cong., 1st Sess. 20 (1995); 141 Cong. Rec. S7886 (1995).

^{10/} Id. § 271(c)(2). See also 141 Cong. Rec. S8469 (1995).

^{11/} 141 Cong. Rec. S8469 (Statement of Sen. Pressler).

In every respect, Congress sought to minimize the ability of utilities to deny pole access.^{12/} Accordingly, the Commission should ensure that their exercise of this limited ability to deny access is based on bona fide problems with capacity, safety or reliability rather than competitive or financial issues. In this regard, an electric utility that is currently providing pole attachments should bear a heavy burden if it attempts to deny access under the Section 224(f)(2) exceptions. To do otherwise would undermine the effectiveness of the vitally important pole access requirements,^{13/} and frustrate the development of facilities-based competition.

II. The Commission Should Ensure that the 1996 Act's Dialing Parity Requirement is Implemented to Advance Local Competition

The 1996 Act requires all local exchange carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service.^{14/} In order to satisfy the competitive checklist, the BOCs must also provide nondiscriminatory access to the services or information necessary to allow a requesting carrier to implement local dialing parity.^{15/}

^{12/} Even the scope of the exception is limited by the statute, which prescribes that any denial of access must be non-discriminatory. Thus, an electric company may not deny access to some providers of cable or telecommunications services and not others.

^{13/} See, e.g., In the Matter of Pacific Bell Petition for Waiver of 800 Data Base Access Time Requirements; Bell South Petition for Waiver of 800 Data Base Access Time Requirements, Memorandum Opinion and Order, 1995 FCC LEXIS 1375, at *11 (Common Carrier Bureau 1991); In the Matter of BellSouth Telecommunications Petition for Limited Waiver of Network Disclosure Requirements, Memorandum Opinion and Order, 9 FCC Rcd 4847, 4848 (Common Carrier Bureau 1994); In the Matter of American Tel. and Tel. Co. Petition for Limited Interim Waiver of Requirements of Third Computer Inquiry. Order, 5 FCC Rcd 5991, 1992 (Common Carrier Bureau 1990).

^{14/} 47 U.S.C. § 251(b)(3).

^{15/} Id. at § 271(c)(2)(B)(xii). BOCs granted authority to offer interLATA services must provide intraLATA toll dialing parity in the region where they offer interLATA services. Id. at § 271(e)(2)(A). States may not require a BOC to provide intraLATA toll dialing parity before

As the Commission recognizes,^{16/} the 1996 Act contains broad dialing parity directives. The 1996 Act defines dialing parity as the ability "to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications."^{17/} The Commission tentatively interprets this definition to require LECs to permit telephone exchange service customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of the customer's or the called party's local telephone service provider.^{18/}

NCTA agrees that local service customers should not be required to dial additional access codes or personal identification numbers to access the services of new competitors.^{19/} Dialing parity will increase consumer choice, increase network usage, diminish ILEC control of bottleneck facilities, permit growth in the number of service providers, provide all carriers with the ability to assemble marketing packages that will appeal to their customers, promote competition, and lower prices.

the BOC receives interLATA relief or before three years after the enactment of the 1996 Act unless the State had implemented intraLATA toll dialing parity requirements prior to December 19, 1995. Id. at § 271(e)(2)(B).

^{16/} Notice ¶ 205.

^{17/} This includes routing among two or more telecommunications services providers, including the local exchange carrier. 47 U.S.C. § 153(39).

^{18/} Notice ¶ 211.

^{19/} Id.

Disparity in dialing convenience between competitors has long been recognized to have a significant negative impact on competition.^{20/} Prior to the divestiture of AT&T and the implementation of equal access, long distance calls could be placed over the AT&T network by dialing 10 or 11 digits, while 22 or 23 digits were necessary to use the facilities of other interexchange carriers ("IXCs").^{21/} To end AT&T's competitive advantage, the Modification of Final Judgment ("MFJ") required the BOCs to provide all IXCs with "exchange access on an unbundled, tariffed basis, that is equal in type and quality to that provided . . . AT&T."^{22/}

Just as the MFJ court recognized that dialing parity was critical to containing the anticompetitive effects of the BOC-controlled bottleneck,^{23/} Congress identified dialing parity as one of the minimum standards necessary to foster local competition.^{24/} Accordingly, the Commission should ensure that ILECs are not permitted to force consumers to take any additional steps to reach their preferred competitive service providers and should preclude ILECs from imposing surcharges or other similar barriers to the availability of dialing parity.

^{20/} United States v. American Telephone and Telegraph Co., 552 F.Supp. 131, 197 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

^{21/} Id.

^{22/} Id. at 233.

^{23/} Id. at 195.

^{24/} H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 118 (1996).

III. The Commission's Recent Numbering Administration Order Generally Satisfies The Requirements of the 1996 Act

Prior to the enactment of the 1996 Act, the Commission adopted an NANP Order^{25/} restructuring the administration of the North American Numbering Plan ("NANP"). Pursuant to the NANP Order, the assignment of central office ("NXX") codes will be transferred from ILECs to a new NANP Administrator selected by industry representatives sitting as the North American Numbering Council.^{26/} Although the NANP Order directs the NANP Administrator to perform most numbering administration duties, the NANP Order permits State commissions to continue holding hearings and adopting final plans for area code exhaustion relief.^{27/} Finally, the NANP Order provides for the recovery of costs associated with the NANP Administrator based on a portion of the gross revenues of each communications provider.^{28/}

The 1996 Act grants the Commission exclusive jurisdiction over the NANP, but permits the delegation of its jurisdiction to State commissions or other entities.^{29/} The Commission is directed to create or designate one or more impartial entities to administer numbering and to make such numbers available on an equitable basis.^{30/} In addition, the 1996 Act requires all telecommunications carriers to bear the costs of numbering administration on a competitively

^{25/} Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd 2588 (1995).

^{26/} Id. at 2619.

^{27/} Id. at 2621.

^{28/} Id. at 2627-28.

^{29/} Id.

^{30/} 47 U.S.C. § 251(e)(1).

neutral basis.^{31/} NCTA agrees with the Commission's tentative conclusion that the NANP Order largely satisfies the requirements of the 1996 Act,^{32/} but requests the Commission to clarify certain issues.

First, the Commission should preclude States from using geographic overlays to provide area code relief. Geographic splits have traditionally been used to address area code exhaustion. Because splits are competitively neutral and non-discriminatory, they are vastly preferable to overlays. Overlay plans are confusing for consumers and will deter the development of local competition.

If competitors are relegated to new area codes, potential customers would be forced to change their telephone numbers in order to obtain service from competitors. A customer is unlikely to want to trade a familiar code for a number that may appear to prospective callers to involve a toll charge, or to purchase additional lines from a competitor if that line is assigned a different area code than other lines in the home or business. Customers who do change to competitive local exchange carriers would be required to dial ten or eleven digits to place local calls to ILEC customers in the same local calling area. ILEC customers, by contrast, would remain able to reach most other local customers through the traditional seven-digit number.^{33/}

^{31/} Id. at § 251(e)(2).

^{32/} See Notice ¶ 252.

^{33/} Because the burdens of area code overlays fall disproportionately on CLECs and their customers, overlays violate the principles set forth in the Ameritech Order. Notice ¶ 255 (recounting Commission's finding that number administration "should not unduly favor or disadvantage any particular industry segment or group of customers").

Only the adoption of true service provider portability would mitigate the anticompetitive effects of area code overlays. If customers could retain their existing numbers (including area codes) when they changed carriers, competitors would avoid the stigma of a "foreign" area code. Indeed, today's area code "exhaustion" would likely abate as incumbents lose their current incentive to warehouse numbers under existing area codes.

Second, NCTA urges the Commission to ensure that NXX codes are provided in an efficient manner. The 1996 Act requires all LECs to provide nondiscriminatory access to telephone numbers.^{34/} As the Commission stated in the NANP Order, ILECs should surrender their roles as central office code administrators as soon as practicable.^{35/} Transfer of NXX administration from the ILECs to the new NANP Administrator is critical to promoting competition because ILECs have the ability to discriminate against new entrants in the provision of NXX codes. The Commission should therefore ensure that this transition occurs expeditiously.

Third, with respect to the costs of NXX assignment, the 1996 Act requires the recovery of costs of numbering administration from all "telecommunications carriers" on a competitively

^{34/} 47 U.S.C. § 251(b)(3). In addition, all LECs must provide nondiscriminatory access to operator services, directory assistance, and directory listing, with no unreasonable dialing delays. Id. BOCs desiring to provide interLATA services in their regions must afford nondiscriminatory access to telephone numbers for assignment to another carrier's telephone exchange service customers. Id. at § 271(c)(2)(B). As required by the 1996 Act, new entrants should be permitted to control routing of N11 calls, including directory assistance, and operator-assisted calls in order to be able to offer complete service packages to compete with incumbent LECs. See id. at § 251(b)(3).

^{35/} NANP Order, 11 FCC Rcd at 2619.

neutral basis.^{36/} The 1996 Act defines telecommunications carrier as "any provider of telecommunications services."^{37/} In contrast, the NANP Order permits the recovery of costs of NANP administration from each "communications provider."^{38/} To conform its rules to the 1996 Act, the Commission should clarify that only telecommunications carriers -- as defined by the 1996 Act -- must contribute a portion of their gross revenues toward the administration of the NANP. In addition, because the 1996 Act requires the costs of numbering administration to be borne on a "competitively neutral" basis,^{39/} the Commission should require companies that provide telecommunications and other services to fund NANP administration based on a percentage of their gross telecommunications revenues, and not their revenues from other services. Otherwise, diversified companies that have relatively little need for NXXs but large gross revenues from other sources may be forced to fund a disproportionately large share of NANP administration expenses.

Finally, the Commission has stated that one of its broad policy objectives for the administration of the NANP is "to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications providers."^{40/} To implement this policy and prevent discrimination in numbering

^{36/} 47 U.S.C. § 251(e)(2).

^{37/} Id. at § 153(44).

^{38/} NANP Order, 11 FCC Rcd at 2627-28.

^{39/} 47 U.S.C. § 251(e)(2).

^{40/} NANP Order, 11 FCC Rcd at 2595, citing, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596, 4604 (1995).

administration, the Commission must address and resolve the petitions for reconsideration of the NANP Order^{41/} that are currently pending before the agency.

IV. The Commission Should Require Prompt Public Notice of Technical Changes

In Section 251(c)(5), Congress recognized that new entrants will require "reasonable public notice of changes" in ILEC network technical information in order to route their services efficiently over an ILEC's facilities. NCTA agrees with the Commission that this "public notice is critical to the uniform implementation of network disclosure, particularly for entities operating networks in numerous locations across a variety of states."^{42/}

Accordingly, NCTA urges the Commission to adopt explicit public notice rules that require ILECs to disclose all information relating to network design and technical standards that affect interconnection. In addition, such rules should ensure that new entrants are given the information they require in a time frame that allows them to adapt their networks to the ILEC changes without interruptions in service and without incurring unnecessary costs. Finally, the Commission must adopt meaningful sanctions to enforce these disclosure rules, including significant monetary sanctions where a competitor's service is disrupted because of an ILEC's failure to comply with the notice requirements.

^{41/} The National Association of Regulatory Utility Commissioners and the Pennsylvania Public Utilities Commission filed petitions for reconsideration of the NANP Order. Pennsylvania Public Utility Commission Petition For Limited Clarification And/Or Reconsideration, CC Docket No. 92-237 (filed Aug. 28, 1995); National Association of Regulatory Utility Commissioners' Request for Clarification, CC Docket No. 92-237 (filed Aug. 28, 1995).

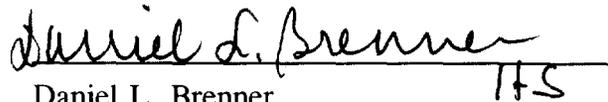
^{42/} Notice ¶ 190.

CONCLUSION

For the foregoing reasons, the Commission should adopt pole access, dialing parity, numbering administration, and public notice rules that promote the 1996 Act's objective of encouraging entry by new facilities-based competitors.

Respectfully Submitted,

THE NATIONAL CABLE TELEVISION
ASSOCIATION, INC.

Handwritten signature of Daniel L. Brenner in cursive script, written over a horizontal line. To the right of the signature, the initials "TFS" are written.

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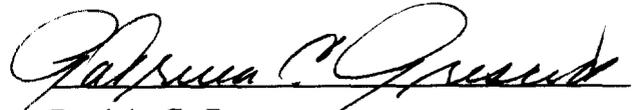
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I do hereby certify that on this 20th day of May, 1996, a copy of the foregoing Comments of The National Cable Television Association, Inc. was hand-delivered to the following:


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