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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of: )  
)  
Implementation of the Local Competition )  
Provisions in the Telecommunications Act )  
of 1996 )  
)  
)

CC Docket No. 96-98

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REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION  
on  
Dialing Parity/Number Administration/Technical Changes/Access to Rights of Way

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**TABLE OF CONTENTS**

**SUMMARY ..... ii**

**I. The Initial Comments Support Minimally Intrusive Regulation to Fulfill The Act’s Requirements Applicable to All LECs ..... 1**

**A. The Comments Present No Basis For the Commission to Preempt State Regulations Implementing IntraLATA Presubscription and Dialing Parity ..... 1**

**B. Implementation of the Requirement to Offer NonDiscriminatory Access to Operator Services Must Be Consistent With the Branding Requirements of Section 226(b)(1)(A). ..... 5**

**C. The Commission Can Defer To Existing Procedures To Ensure Nondiscriminatory Access to Rights-of-Way ..... 7**

**II. The Commission Should Recognize That Burdensome National Standards for Notice of Technical Changes are Unnecessary to Protect Competing LECs ..... 10**

**III. The Commission Should Affirm Its Tentative Conclusions Regarding Number Administration, Including State Authority Over Area Code Relief ..... 11**

**CONCLUSION ..... 13**

## Summary

Generally, the comments reflect agreement with the Commission's tentative conclusions regarding the issues of dialing parity, number administration, notice of technical changes, and access to rights of way. Unfortunately, many commenters seek to add on new requirements which are not based on the language of the Communications Act, and in fact which are contrary to the intent of Congress. Congress intended to continue the careful balance between state and federal jurisdiction - not to federalize the local market in order to benefit the profits of large interexchange carriers, cable operators and other local competitors, particularly at the expense of local interests. Congress intended to remove barriers to local competition, and to require LECs to cooperatively provide dialing parity, access to operator services, and access to rights of way. But Congress did not seek to subject incumbent local exchange carriers to increased regulatory burdens and increased network expenses in order to provide an advantage to other competitors.

A number of parties agree with USTA's belief that uniform federal standards for toll dialing parity are unnecessary. Comments of USTA at 2. The Commission should defer determinations as to dialing parity mechanisms and dialing parity implementation to the states. Some states have already adopted particular methods, based on careful consideration of the costs of implementing dialing parity and the benefits to competition and customer choice.

As states have already required implementation, there is no need for a federal mandate to ensure prompt implementation. There is also no basis for requiring that methods or implementation timetables be uniform - different states have different circumstances to consider, and LEC networks differ as to the type, cost and extent of upgrades required. Similarly, cost recovery for dialing parity has been addressed by states, and federal interference with these arrangements is unnecessary. More importantly, a federally mandated implementation date at this time would disregard the hearings, findings, and hard work already done by these parties, and would create significant disincentives for parties to continue to work with state commissions to resolve competitive issues of this type.

The initial comments demonstrate that the issue of access to rights-of-way is one which affects not only the obligation of all LECs to provide nondiscriminatory access, but the ability of all LECs to obtain such access from other entities, primarily electric utilities. Many comments generally fail to recognize, however, that federal jurisdiction to regulate access to pole attachments and rights-of-way is expressly limited by the Communications Act. Also, USTA's initial comments agree with those of many other LECs and electric utilities that any regulations adopted pursuant to Section 251(b)(4) must properly consider the property rights of owners, as well as the importance of nondiscriminatory access to local competition.

The Commission should not use TSLRIC to set the price of creating excess capacity for new parties to obtain pole attachments, as recommended by MCI. MCI's approach fails to recognize the existing rate formula required by the Act (the formula in Section 224), ignores the cost-causer principle, and will not allow for full cost recovery. The Commission should also not

mandate excessive notice periods. Lengthy notice periods will not always be necessary, and could result in carriers awaiting pole attachments which require modifications longer than needed. LECs should also have the ability to make modifications in emergency situations.

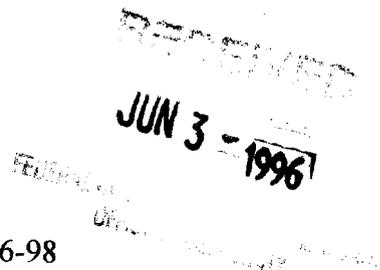
A number of the comments seek to expand the type of information which incumbent LECs must disclose beyond the requirements of the Act, and even the proposed definition included in the Notice. Some commenters' suggestions would require incumbent LECs to provide notice of changes which do not affect the transmission and routing or interoperability of the incumbent LECs' network, but would give competitors advance notice of new innovative services. Providing competitors with notice of network innovations that do not affect the way competitors use the LEC network to provide services or affect the interoperability of incumbent LECs' network is not required by the Act. There are sound policy reasons why Congress limited public notice of technical changes to those required in Section 251(c)(5). Advance notice of all network innovations is not the result of a competitive market. Congress did not intend that the Commission restrain competition or innovation for the benefit of competitors to the incumbent LEC. Rather, the Commission should limit the required notice so as to further the Congressional mandate to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services."

All parties who addressed the issue agree that expeditious establishment of the North American Numbering Council is desirable. USTA seeks to be supportive of the Commission's efforts to get the new neutral numbering administration underway and would be happy to work with Commission staff on any issues that may remain. Almost all parties who addressed the issue agree with the Commission's tentative conclusion to continue to delegate authority to the states to select an appropriate method for area code relief, as established in the Ameritech Order. MCI suggests that the Commission limit states from using area code overlays, and in fact require a number of conditions for using area code overlays. The issue of whether, and under what conditions, an area code overlay is unreasonably discriminatory to competitors was already addressed in the Ameritech Order. There is no need to revisit the issue, particularly to consider imposing conditions which are either irrelevant (e.g., requiring LECs to accelerate their implementation of local number portability) or unreasonably discriminatory, (e.g., assignment of all remaining NXX codes to competing carriers).

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**REPLY COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION  
on  
Dialing Parity/Number Administration/Technical Changes/Access to Rights of Way**

The United States Telephone Association (USTA) respectfully submits these reply comments in response to the Federal Communications Commission's (Commission)'s Notice of Proposed Rulemaking dated April 19, 1996.<sup>1</sup> USTA is the principal trade association of the local exchange carrier industry. Its members provide a wide variety of telecommunications services, including interstate, interexchange service.

- I. The Initial Comments Support Minimally Intrusive Regulation to Fulfill The Act's Requirements Applicable to All LECs**
  - A. The Comments Present No Basis For the Commission to Preempt State Regulations Implementing IntraLATA Presubscription and Dialing Parity**

Comments on the issues of dialing parity were filed by a number of types of interest groups: state commissions, interexchange carriers, competitive local exchange carriers, and

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<sup>1</sup>In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-182, Notice of Proposed Rulemaking (released April 19, 1996)("Notice").

incumbent local exchange carriers. While their positions differed in some respects, no commenter disagrees with the tentative conclusion to address local dialing parity through interconnection arrangements. Notice, para. 207, n.284. Also, there was no support in the record for extensive subdivision of the categories of toll service offered on a presubscribed basis, including a separate international PIC. See Comments of AT&T at 4, n.4 (“A separate “breakdown” of interLATA traffic into domestic and international categories is unnecessary). There is disagreement in the record, however, as to whether states should determine the required presubscription method, and if not, what method should be mandated.

A number of parties agree with USTA’s belief that uniform federal standards for toll dialing parity are unnecessary. Comments of USTA at 2. The Commission should defer determinations as to dialing parity mechanisms and dialing parity implementation to the states. Some states have already adopted particular methods, based on careful consideration of the costs of implementing dialing parity, and the benefits to competition and customer choice. For example, the Louisiana Public Service Commission notes that it has already conducted hearings, made findings, and established regulations for the implementation of intraLATA presubscription using the 2-PIC method. Comments of the Louisiana PSC at 2-5. The Michigan PSC has also established regulations which permit subscribers to presubscribe to separate toll providers for intraLATA and interLATA toll service and requires dialing parity. See Comments of Michigan PSC, Attachment 2, at 8-13.

The major facilities-based interexchange carriers support a federally mandated 2-PIC methodology. Comments of MCI at 2-4; Comments of Sprint at 5 (recommending “modified 2-PIC”); see Comments of AT&T at 5 (recommending “full 2-PIC”). The interexchange carriers’ argument for a federally mandated methodology is based on the premise that a federal mandate will further prompt, uniform implementation of dialing parity, see, e.g., Comments of AT&T at 4, and that the 2-PIC option has been implemented in a number of states and therefore is likely to be less costly. See Comments of MCI at 5; Id., Attachment A. But if states have already agreed on a methodology, there is no need for a federally mandated method.<sup>2</sup> Where LECs are already

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<sup>2</sup> The Pennsylvania PUC notes that FCC may not have authority under Section 251 to mandate uniform intraLATA toll dialing parity requirements, or at a minimum cannot set aside state commission orders issued prior to December 19, 1995. Comments of Penna. PUC at 2.

complying with state requirements, there is no basis for LECs or the states to incur unnecessary expenses associated with a change in course at this time.<sup>3</sup>

Some commenters suggest that the FCC should require the implementation of dialing parity by all LECs by a date certain. See, e.g., Comments of MCI at 6 (all LECs within 6 months of an Order in this docket); see also Comments of AT&T at 5 (all Tier I LECs should implement dialing parity by January 1, 1997). As MCI details in Attachment A to its comments, a number of states have ordered dialing parity and presubscription plans which take into account the circumstances unique to that state. See, e.g., MCI Comments, Attachment A at 5 (New Jersey order establishes different timetables for different switches, and grants waivers until 1998 for analog switches); Id., at 6 (Pennsylvania establishes different timetables for carriers over 250,000 lines); Id., at 3 (Georgia commission accepts intraLATA equal access arrangement stipulated to by AT&T, MCI, and BellSouth).

As these state orders demonstrate, different intraLATA presubscription and dialing parity implementation requirements have been agreed to by state commissions, IXC's, and the LECs. A federally mandated implementation date at this time would disregard the hearings, findings, and hard work already done by these parties, and would create significant disincentives for parties to continue to work with state commissions to resolve competitive issues of this type.<sup>4</sup>

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<sup>3</sup>It is telling that Sprint supports uniformity only in one direction: where states have implemented more burdensome requirements, those should be retained. Comments of Sprint at 7.

<sup>4</sup>While supporting a uniform federal deadline, AT&T is at least aware that different legal requirements should apply to rural carriers who should not be required to upgrade switches for intraLATA equal access and dialing parity until a competitor requests it. See Comments of AT&T at 6. (Non-Tier 1 LECs (and LECs serving U.S. possessions and territories under the Commission's jurisdiction) should only be required to provide dialing parity within six months of a bona fide request from a competing toll carrier). Some LEC's smaller switches are electromechanical or are otherwise unable to even support interLATA equal access. Replacement of such switches should not be mandated simply on the basis of these rules.

Also, as both AT&T and MCI acknowledge, see Comments of MCI at 6; Comments of AT&T at 5, intraLATA toll competition in a BOC service area is not permitted under the Act until the BOC has entered the interLATA market, or three years have passed (except for single-LATA states, or where a state required intraLATA toll dialing parity before December 19, 1995). Thus, different states will have different schedules for implementing intraLATA toll dialing

Many interexchange carriers and other commenters do agree with USTA that no equal access balloting for intraLATA is necessary. See Comments of AT&T at 8; Comments of MCI at 5; Comments of Michigan PSC at 4 (Balloting for intraLATA toll dialing parity was rejected by the Michigan Commission due to its potential to create customer confusion and the imposition of additional cost); Comments of Citizens Utilities at 6. As MCI notes, the Commission can rely on carrier marketing to make customers aware of their options. Comments of MCI at 5.

The Telecommunications Resellers Assn. (TRA) argues that balloting is the optimal means of affording customers an opportunity to choose, and that incumbent LECs should bear the burden of notifying customers of the expanded PIC process, undertake all necessary consumer education, and conduct the balloting. TRA contends that requiring competitive providers to educate consumers about their services and obtain presubscription from their customers is an undue barrier to entry. Comments of TRA at 5. TRA's arguments are without persuasive merit. TRA essentially argues that they cannot enter the market unless the incumbent LEC signs up their customers for them. There is no basis for the Commission to require such hand-holding in a competitive market. AT&T, MCI, and other carriers are fully ready to compete for intraLATA traffic through traditional market mechanisms.

Issues regarding cost recovery of dialing parity, see Notice, para. 219, should be handled by the states, consistent with their authority to consider the costs and benefits of various levels of upgrades to the incumbent LECs' network. Many states already have in place requirements for intraLATA presubscription which address the costs of implementation. See, e.g., Comments of Michigan PSC at 5; Comments of MCI, Attachment A. Absent a finding that these cost recovery mechanisms are unlawful, there is no basis for replacing them with federal cost recovery standards.<sup>5</sup> As the Michigan PSC notes, the Commission should not cause delay in implementing

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parity for RBOCs. There is therefore no basis for arguing that a uniform, nationwide method and schedule for implementation of dialing parity is necessary. Differing timetables are expressly contemplated by the Act.

<sup>5</sup>The particular approach adopted in Michigan, the "equal access recovery charge," is similar to the approach favored by AT&T. See Comments of AT&T at 7. As Michigan notes, however, a number of other states have adopted different approaches which also comply with the 1996 Act. Comments of Michigan PSC at 6; see Comments of MCI, Attachment A.

the Act by requiring a “one answer serves all” approach. Comments of Michigan PSC at 6. LECs who have already addressed dialing parity issues, pursuant to orders from their state commissions, should not be required to change course this far into the transition to a competitive market.

TRA’s statement that because of “enormous advantage from which LECs have benefitted for years in the intraLATA toll market,” LECs should “shoulder the full financial burden of remedying this competitive imbalance,” is typical of the hype surrounding much of the Section 251 proceeding. The Commission’s Notice correctly recognizes that dialing parity applies to all LECs, including competitive LECs. Moreover, TRA’s argument presumes 1) that incumbent LECs would charge competitors for the services competitors provide to end users (unless the competitor is purchasing facilities or interconnection from the ILEC, there is no relationship at all); 2) that the Commission has the authority to impose the full financial burden on incumbent LECs; and 3) ignores that government policy, not LEC business choices, have designed the intraLATA toll market.<sup>6</sup>

**B. Implementation of the Requirement to Offer Non-Discriminatory Access to Operator Services Must Be Consistent With the Branding Requirements of Section 226(b)(1)(A).**

Most commenters correctly interpret the Act’s requirement that all LECs offer non-discriminatory access to directory assistance and operator services. For example, Citizens Utilities (including its CLEC subsidiary Electric Lightwave, Inc.) suggests that each LEC be required to provide non-discriminatory access to its directory assistance database. Comments of Citizens Utilities at 7; see Comments of MCI at 9 (carriers should share directory listings).<sup>7</sup>

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<sup>6</sup>Of course, there are some important ongoing actions for the Commission in the intraLATA toll market. For example, LECs implementing intraLATA equal access will need to obtain a CIC code to identify their presubscribed intraLATA customers. The Commission should therefore process CIC code requests expeditiously.

<sup>7</sup>As USTA noted in its initial comments, as a technical requirement for all LECs to provide their subscribers with robust directory assistance, at least one database in a particular area must house all customer records for that service area. Comments of USTA at 8, n.6.

AT&T also argues that “non-discriminatory access” means that equal opportunities for “branding” are available - if an incumbent carrier “brands” its operator services with announcements, it should ensure that other operator service providers have the capability to do the same. Comments of AT&T at 9, n.12. AT&T suggests that if this cannot be achieved, that the incumbent carrier be prohibited from “branding.” AT&T’s suggestion to bar incumbent carriers from “branding” is inconsistent with the requirements of Section 226(b)(1)(A) of the Communications Act, which requires each provider of operator services to identify itself audibly and distinctly to consumers at the beginning of each telephone call. 47 U.S.C. § 226(b)(1)(A); see 47 C.F.R. § 64.703(a)(1).<sup>8</sup> As the definition of operator services in the Notice is modeled on that in Section 226(a)(7) of the Act, the same policies as in Section 226 should apply to the operator services referenced in Section 251(b)(3). See Notice, para. 216, n.294.

Consequently, where a competing LEC obtains operator services from another LEC, and there are no technical limitations, each LEC should “brand” their operator services. Each LEC should bear an appropriate share of any costs associated with implementing that capability. Where multiple brands are not possible due to technical limitations, the default result should be to use the branding announcement of the facilities-based carrier in order to comply with the Act.

Measurement of dialing delays, as Sprint notes, should recognize that certain portions of call processing are not under a carriers’ control. See Comments of Sprint at 10-1 (supporting measurement of dialing delay by examining the period “beginning when the caller completes dialing a call and ending when the call is delivered by the incumbent LEC to a competing service provider”).<sup>9</sup> But that period is only the beginning of a sequence - the competing service provider

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<sup>8</sup>While the requirements of Section 226 apply only to interstate services, see 47 U.S.C. § 226(a)(7), there is a substantial public interest in providing customers with information regarding the identity of their operator services provider; this public interest is applicable to all services.

<sup>9</sup>Sprint, like so many other commenters, fails to recognize that the obligations of Section 251(b)(3) were not intended to protect against “attempts by the incumbent LEC to degrade its competitors’ service by increasing call set-up times.” Comments of Sprint at 10. Rather, the obligations of Section 251(b)(3), which extend to all LECs, were intended to require competing LECs to provide non-discriminatory access to certain services to each other. Congress was at least equally concerned that a competitive LEC might seek to degrade the service of the incumbent LEC in an effort to win new customers.

must then engage in additional functions before a customer receives service. Customers do not know or care when the handoff occurs between providers. The relevant issue is parity, not absolute connection time. Other commenters' proposals fail to take this into account. For example, ALTS' proposed rule, suggesting that the dialing delay period should end when a ringing tone or busy signal is heard on the line fails to take this into account.<sup>10</sup>

**C. The Commission Can Defer To Existing Procedures To Ensure Non-Discriminatory Access to Rights-of-Way**

The initial comments demonstrate that the issue of access to rights-of-way is one which affects not only the obligation of all LECs to provide non-discriminatory access, see 47 U.S.C. § 251(b)(4), but the ability of all LECs to obtain such access from other entities, primarily electric utilities. The involvement of other entities only further emphasizes that the Commission must defer to local regulation of rights-of-way. See Comments of Ohio Edison at 11 (noting that electric utilities are subject to state local regulations on pole attachments even apart from those authorized under Section 224. Many commenters argue that the Commission must regulate to ensure that competing LECs have access to pole attachments, including tariffing of pole attachment rates. See Comments of AT&T at 15-21; Comments of ALTS at 7.

While the 1996 Act added new sections to Section 224, it did not remove Section 224(c), which provides that “[n]othing in this section shall be construed to . . . give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way where such matters are regulated by a State. 47 U.S.C. § 224(c)(1). The Commission may only regulate such matters where states have not issued rules, or has not acted on a pole attachment complaint within 180 days (or other applicable period). In order to implement Section 251(b)(4), the Commission must merely affirm that all LECs are required to afford competing providers non-discriminatory access to pole attachments, consistent with the applicable state regulations authorized under Section 224.

Some commenters argue that the Commission has authority under Section 224(e)(1) of the

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<sup>10</sup> ALTS' proposed rule also fails to take into account the fact that other types of confirmations, e.g. announcements for a non-working number, may be received by the customer.

Act to promulgate comprehensive pole attachment regulations in order to promote local competition. But as the California PUC notes, there is no need for the Commission to develop regulations for Section 224 within the six-month time frame required for Section 251. Section 224(e)(1) provides that the Commission has two years to prescribe regulations to govern the charges for pole attachments used by telecommunications carriers, when the parties fail to resolve a dispute over such charges. 47 U.S.C. § 224(e)(1)(emphasis added). Moreover, Congress has provided that these regulations will not become effective until five years after the date of enactment (February 8, 2001). Not only have parties not demonstrated that states are unable to ensure non-discriminatory access, but they cannot demonstrate that any regulations adopted under Section 224(e)(1) will address these issues.<sup>11</sup>

To the extent that the Commission adopts regulations for those circumstances in which it may act on pole attachment issues, USTA's initial comments agree with those of many other LECs and electric utilities that such regulations must properly balance between the property rights of owners, and the importance of non-discriminatory access to local competition. See Comments of NYNEX; Comments of Puget Sound Power and Light at 5. As the Rural Telephone Coalition notes, the access issues involved relate directly to property rights under the U.S. Constitution, and under state law; such property rights may also be affected by the nature of the property rights granted to LECs by other parties. Where telephone company facilities are constructed on easements granted to them by private landowners, other utilities or railroads, or the U.S. government, the easement terms will govern the extent to which the LEC may unilaterally afford access to other parties. All LEC's must respect the property rights of the landowners which their facilities occupy. See Comments of Rural Telephone Coalition at 12-14.

In contrast, ALTS believes that the Commission's right-of-way rules should define rights

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<sup>11</sup>As noted in its comments, USTA members have experience in both offering and obtaining pole attachments. USTA notes that in some jurisdictions, utility pole attachments are not regulated by the states, and (where the utility's facilities are not used for wire communications) not subject to Commission jurisdiction under Section 224. LECs may not be able to obtain pole attachments at just and reasonable rates (under the price standard of Section 224) in such circumstances. Accordingly, USTA suggests that not only should the FCC defer to state regulation, but it should in fact encourage states to accelerate private sector deployment of telecommunications by ensuring that pole attachments are available at reasonable rates.

of way to include all poles, ducts, conduits and rights-of-way owned or controlled by the incumbent, regardless of how the legal title over such facilities is held. Comments of ALTS at 7 (emphasis added). The meaning of ALTS' suggestion is unclear: at best it suggests that rights-of-way should be defined broadly, at worst it suggests that the Commission violate the law. Section 224(f)(1) requires utilities to provide cable systems or telecommunications carriers to rights-of-way "owned or controlled" by the utility. Where the utility does not own the facilities, and either holds a limited easement, or is restricted by contract from unilaterally providing attachments to other entities, access to those facilities must be obtained through negotiations with the facilities owner. ALTS is incorrect to suggest that legal title may be disregarded for purposes of a LEC's obligations under Section 251(b)(3).

The Commission should not use TSLRIC to set the price of creating excess capacity for new parties to obtain pole attachments, as recommended by MCI. See Comments of MCI at 24. MCI's approach fails to recognize the existing rate formula required by the Act (the formula in Section 224), ignores the cost-causer principle, and will not allow for full cost recovery. Specifically, Section 224(d)(1) already provides a guideline for determining when rates are just and reasonable. 47 U.S.C. § 224(d)(1); see Comments of USTA at 11. Additionally, where the rate formula is used to determine the price charged for a modified pole attachment, the price should include both an appropriate share of the costs incurred by the firm for the modification, and an appropriate share of the costs (including joint and common costs) of the pole attachment itself. This is consistent with the principle that costs should be recovered from the cost causer. Under the standard of Section 224(d)(1), TSLRIC might be an acceptable method for measuring the lowest permissible rate (e.g., a rate which "assures the utility the recovery of not less than the additional costs of providing pole attachments"), but it would be inconsistent with the statute to find that TSLRIC represents the highest permissible rate.

Teleport argues that the owner of a pole should be required to wait a full year before modifying pole attachments. Comments of Teleport at 10. This restriction is silly. Among other things, requiring a full year's notice before modifying or altering pole attachments would violate the rule that the LEC not discriminate against other parties seeking attachments. For example, if an additional CLEC wants to move existing attachments to obtain access, the utility would be required to instruct that CLEC to return with its trucks and cable in a year in order to provide other telecommunications providers (or cable operators) with adequate notice. Notice periods

should not ignore the owner's need to make modifications in emergency situations, or for general safety reasons. USTA recommends that these matters should be agreed upon by the parties involved, and that exceptions to the notice requirement be permitted in emergencies. See Comments of USTA at 10.

In general, USTA agrees with many commenters that broad rules are unlikely to effectively resolve a wide variety of fact-specific situations. See Comments of Rural Telephone Coalition at 14; see also Comments of Delmarva Power and Light at 5 (Commission should for the present resolve any disputes by adjudication). The Commission's experience with pole attachments demonstrates that, while disputes do arise, they are best handled through application of the existing guidelines of Section 224 in the context of a complaint. See, e.g., Comments of SBC at 15-16, citing 1987 Pole Attachment Order.

## **II. The Commission Should Recognize That Burdensome National Standards for Notice of Technical Changes are Unnecessary to Protect Competing LECs**

A number of the commenters seek to expand the type of information which incumbent LECs must disclose beyond the requirements of the Act, and the proposed definition included in the Notice. See Notice, para. 189-190.<sup>12</sup> For example, MCI blatantly suggests that the Commission should ensure that competitors are made aware of LEC network innovations - "all telecommunications carriers must be given an equal opportunity to take advantage of any and all changes in ILEC networks and facilities." MCI at 15. Providing competitors with notice of network innovations that do not affect the way competitors use the LEC network to provide services, or affect the interoperability of incumbent LECs' network, is not required by the Act.

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<sup>12</sup>The Act requires reasonable public notice of information necessary for the transmission and routing of services using that [incumbent] local exchange carrier's facilities or network, as well as changes that would affect the interoperability of those facilities and networks [of the incumbent]. 47 U.S.C. § 251(c)(5). The Notice tentatively concludes that incumbent LECs must provide reasonable public notice of any information in their possession that affects interconnectors' performance or ability to provide services (including both telecommunications services and information services). Notice, para. 189-190. Incumbent LECs would also be required to provide all information relating to network design and technical changes, and information regarding changes that affect interconnection. Id.

Moreover, there are sound policy reasons for limiting public notice of technical changes to those required by the Act. This is not the result that would obtain in a competitive market. In a competitive market, the Commission should not restrain competition or innovation, and should instead further the Congressional mandate to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services.” See Comments of Northern Telecom at 3.<sup>13</sup>

A number of commenters agree that industry forums and industry publications will be the best method of ensuring adequate public notice of this information. See, e.g., Comments of TRA at 11; Comments of General Communications, Inc. (GCI) at 5. Other comments agree that the ICCF industry rules represent the best framework for this process - efficient interoperability is in every carrier’s interest. Comments of SBC at 14. USTA encourages the Commission to rely on industry fora and established industry procedures for providing notice required by Section 251(c)(5). Moreover, participation by all LECs in industry fora will facilitate better accommodation of technical changes across a variety of networks. The duty to provide notice of technical changes should not be misconstrued as a duty to predict what the precise impact might be, or to educate a competitor as to how to reengineer their network. See Comments of BellSouth at 3. Participation by all LECs in industry fora will better serve to educate carriers as to upcoming technical developments.

### **III. The Commission Should Affirm Its Tentative Conclusions Regarding Number Administration, Including State Authority Over Area Code Relief**

All parties who addressed the issue agree that expeditious establishment of the North American Numbering Council and selection of a new Numbering Plan Administrator is desirable. See, e.g., Comments of CTIA at 3; Comments of SBC at 9. Many commenters also support the

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<sup>13</sup>USTA also agrees with Northern Telecom that disclosure requirements must not result in the public dissemination of confidential information or adversely affect manufacturer’s intellectual property rights. Comments of Northern Telecom at 4. The Commission should affirm that an incumbent LEC’s obligation to provide notice under Section 251(b)(5) does not preclude that LEC from entering into or complying with non-disclosure agreements required by a manufacturer, nor require that LEC to disclose any information beyond that needed to permit interconnecting LECs to continue providing the services they provide using the incumbent LEC’s network.

Commission's tentative conclusion that the NANP Order satisfies the requirements of Section 251(e)(1) of the Act. See, e.g., Comments of CTIA at 1; Comments of Sprint at 14; Comments of SBC at 9. USTA seeks to be supportive of the Commission's efforts to get the new numbering administration underway and would welcome the opportunity to work with Commission staff on any issues that may remain.

Almost all parties who addressed the issue agree with the Commission's tentative conclusion to continue to delegate authority to the states to select an appropriate method for area code relief, as established in the Ameritech Order.<sup>14</sup> See, e.g., Comments of WinStar at 14-15; Comments of Time Warner at 18. MCI and others suggest that the Commission limit states from using area code overlays, and in fact require a number of conditions for using area code overlays. The issue of whether, and under what conditions, an area code overlay is unreasonably discriminatory to competitors was already addressed in the Ameritech Order. There is no need to revisit the issue, particularly to consider imposing conditions which are either irrelevant, e.g. requiring LECs to accelerate their implementation of local number portability or unreasonably discriminatory, e.g., assignment of all remaining NXX codes to competing carriers. See Comments of MCI at 12.

MFS similarly argues that overlays should not be permitted until service provider number portability has been implemented. MFS argues that absent number portability, a customer would not only have to change telephone numbers, but also change area codes, which would be viewed as an additional disadvantage. Comments of MFS at 8. First, interim number portability enables customers to change carriers while retaining their numbers. Second, absent number portability, a customer will have to change their 7-digit number; requiring them to change to a different 10-digit number will be no more discouraging to customers who already face a change. And even with number portability, some customers will change area codes in an NPA exhaust situation. Number portability is therefore irrelevant to the considerations examined by a state in an NPA exhaust situation.

Other conditions suggested by MCI, e.g., mitigation of the costs of interim LNP to

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<sup>14</sup>Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995), recon. pending. ("Ameritech Order")

Reply Comments of USTA  
June 3, 1996

competitive LECs, and assignment of all remaining NXXs to competing carriers, are merely punitive in nature. They do not address any issues created by a state's decision to utilize an area code overlay. The Commission should continue to enforce the requirements of the Ameritech Order, but it need not restrict the options available to telecom service providers in states who elect to adopt overlays in compliance with that Order.

## CONCLUSION

The Commission's tentative conclusions generally begin with the appropriate premise: loyalty to the language of the Act. The Commission should affirm its tentative conclusions with respect to numbering administration, notice of technical changes, access to operator services and directory assistance, and dialing parity, to the extent consistent with the conclusions described above. The Commission should defer to state and local regulation of access to rights of way, and need not fulfill its responsibilities under Section 224 in this proceeding. The Commission should take care to preserve the important balance between state and federal jurisdiction which is reflected in the local competition sections of the Telecommunications Act of 1996, and also take care to see that its rules and regulations remove barriers to local competition without imposing punitive burdens on incumbent LECs which solely advantage new competitors and do not respect the plain language of the Act.

Respectfully submitted,  
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By 

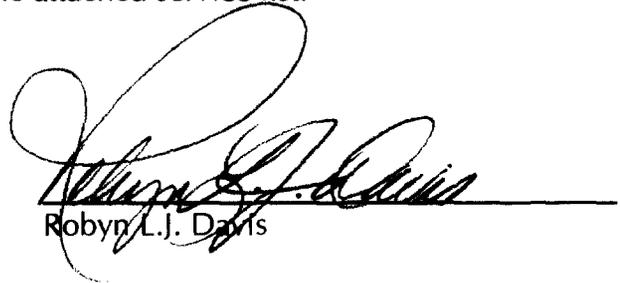
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**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on June 3, 1996 reply comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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