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Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 96-333

In the Matters of	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96-98
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	CC Docket No. 95-185
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	NSD File No. 96-8
Administration of the North American Numbering Plan	CC Docket No. 92-237
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	IAD File No. 94-102

SECOND REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER

Adopted: August 8, 1996 **Released: August 8, 1996**

By the Commission:

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I. INTRODUCTION AND OVERVIEW

1. In February, 1996, Congress passed and the President signed into law, the Telecommunications Act of 1996 (1996 Act).[1] The 1996 Act erects a "procompetitive, de-regulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[2] Section 101 of the 1996 Act adds new section 251 to the Communications Act of 1934. Congress intended that the provisions of this new section would help competition grow in the market for exchange and exchange access and related telecommunications services. It directed the Commission to adopt rules that would implement the requirements of this section no later than August 8, 1996.[3] We note, however, that, under section 251(f), certain rural or small local exchange carriers (LECs) are exempt or may seek relief from the rules we adopt herein.[4]

2. We began this rulemaking proceeding on April 19, 1996.[5] The *First Report and Order*, which addressed issues that were raised in this docket, decided that the Commission should establish national rules implementing section 251.[6] The *First Report and Order* interprets and implements, *inter alia*, section 251(a), (b)(1), (b)(4), (b)(5), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(6). That order promulgates rules to open the local exchange and exchange access markets to competition by eliminating legal and technical barriers to such competition. This *Second Report and Order and Memorandum Opinion and Order* (*Order*) promulgates rules to implement the parts of section 251 that relate to the elimination of certain operational barriers to competition. Specifically, this *Order* addresses local exchange carriers' obligations to provide their competitors with dialing parity and nondiscriminatory access to certain services and functionalities;[7] incumbent local exchange carriers' duty to make

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act), to be codified at 47 U.S.C. § 151 *et. seq.*

[2] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[3] 47 U.S.C. § 251(d)(1).

[4] 47 U.S.C. § 251(f)(1) and (f)(2). We note that the term "United States" means "the several States and Territories, the District of Columbia, and the possessions of the United States, but does not include the Canal Zone." 47 U.S.C. § 153(50).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182 (rel. April 19, 1996) (*NPRM*).

[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-235 (rel. Aug. 8, 1996) (hereinafter *First Report and Order*) at section II.

[7] 47 U.S.C. § 251(b)(3).

network information disclosures;[8] and numbering administration.[9] In this *Order* we also deny the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston that the Texas Public Utility Commission (Texas Commission) filed with this Commission on May 9, 1996.[10] We also address petitions for clarification or reconsideration in the *Ameritech* and *NANP* proceedings.[11]

3. Dialing parity, nondiscriminatory access, network disclosure, and numbering administration issues are critical issues for the development of local competition. As stated in the *First Report and Order*, incumbent local exchange carriers have little incentive to provide access to potential competitors to their networks. In other words, potential competitors in the local and long distance markets face numerous operational barriers to entry notwithstanding their legal right to enter such markets. The dialing parity, nondiscriminatory access, and network disclosure requirements should remove those barriers to entry. The rules we adopt herein will benefit consumers by making some of the strongest aspects of local exchange carrier incumbency -- the local dialing, telephone numbers, operator services, directory assistance, and directory listing -- available to all competitors on an equal basis.

A. Actions to Implement Section 251(b)(3)

1. Dialing Parity

4. Section 251(b)(3) of the 1996 Act directs each local exchange carrier (LEC)[12] to provide dialing parity to competing providers of telephone exchange and telephone toll

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[8] 47 U.S.C. § 251(c)(5).

[9] 47 U.S.C. § 251(e)(1).

[10] *In the Matter of Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas*, Petition for Expedited Declaratory Ruling filed May 9, 1996.

[11] *See In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, IAD File no. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995) (*Ameritech Order*) and *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*).

[12] The 1996 Act defines the term "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c), except to the extent that the Commission finds that such provider should be included in the definition of such term." 47 U.S.C. § 153(26). For purposes of the dialing parity and nondiscriminatory access obligations that we impose pursuant to section 251(b)(3), we find that commercial mobile radio service (CMRS) providers are not LECs. *See infra* para. 29.

service.[13] This requirement means that customers of these competitors should not have to dial extra digits to have their calls routed over that LEC's network. To implement this statutory requirement, we adopt broad guidelines and minimum federal standards that build upon the experiences and accomplishments of state commissions. Although the 1996 Act requires a LEC to provide dialing parity only to providers of telephone exchange and toll services, section 251(b)(3) does not limit the type of traffic or service for which dialing parity must be afforded to those providers. We conclude, therefore, that section 251(b)(3) requires LECs to provide dialing parity to providers of telephone exchange or toll service with respect to all telecommunications services that require dialing to route a call and encompasses international, interstate, intrastate, local and toll services.

5. With respect to toll service, we further find that section 251(b)(3) requires, at a minimum, that customers be entitled to choose different presubscribed, or preselected, carriers for both their intraLATA and interLATA toll calls. In states, like Alaska and Hawaii, that have no LATAs,[14] customers must be able to choose different presubscribed carriers for both their intrastate and interstate toll calls. Based on this finding, we adopt a rule requiring all LECs to implement intraLATA and interLATA toll dialing parity, using the "full 2-PIC" presubscription method.[15] The toll dialing parity requirement we adopt is defined by LATA boundaries given that the Bell Operating Companies' (BOCs') operations are likely to be shaped by LATA boundary restrictions for a period of unforeseeable duration. Given that implementation of the 1996 Act over time may diminish the significance of LATA boundaries, however, we permit states to redefine the toll dialing parity requirement based on state, rather than LATA, boundaries where a state deems such a requirement to be pro-competitive and otherwise in the public interest.[16]

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[13] According to the 1996 Act, the term "dialing parity" means "that a person that is not an affiliate of a local exchange carrier is able 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 to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)." 47 U.S.C. § 153(15).

[14] 47 U.S.C. §153(25). According to the 1996 Act, a LATA is a "local access and transport area." It is a "contiguous geographic area--

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission."

[15] We note that the abbreviation "PIC" in the past has stood for the term "primary," or "preferred, interexchange carrier." While we retain the acronym "PIC," we define the term to include any toll carrier for purposes of the presubscription rules that we adopt in this *Order*. For a discussion of the full 2-PIC presubscription methodology, *see infra* section II.B(4).

[16] To illustrate, if the presubscription requirement were based on LATA boundaries, a customer would be entitled to choose a primary carrier for all intraLATA toll calls and a separate, or the same, primary carrier for all interLATA toll calls. If the presubscription requirement were based on state boundaries, a customer would be

6. In order to facilitate the orderly implementation of toll dialing parity, we require each LEC, including a BOC, to submit a plan to the state regulatory commission for each state in which it provides telephone exchange service setting forth the LEC's plan for implementing toll dialing parity, including the methods it proposes to enable customers to select alternative providers. In the event that a state elects not to evaluate such a plan sufficiently in advance of the date on which a LEC is required to implement toll dialing parity, we require the LEC to file its plan with the Commission. The Commission will act upon such a plan within 90 days of the date on which it is filed with the Commission.

7. Under the toll dialing parity implementation schedule we adopt, we require each LEC, including a BOC, to implement toll dialing parity no later than February 8, 1999. In addition, we require a LEC, including a BOC, to provide toll dialing parity throughout a state coincident with its provision of in-region, interLATA or in-region, interstate toll services in that state. LECs, other than BOCs, that are either already offering or plan to begin to provide in-region, interLATA or in-region, interstate toll services before August 8, 1997, must implement toll dialing parity by August 8, 1997. We note that smaller LECs, for which this implementation schedule may be unduly burdensome, may petition their state commission for a suspension or modification of the application of this requirement.[17]

8. Those states desiring to impose more stringent presubscription methodologies, *e.g.*, multi-PIC or smart-PIC,[18] will retain the flexibility to impose such additional requirements. We also announce our intention to issue a Further Notice of Proposed Rulemaking addressing the technical feasibility and nationwide availability of a separate presubscription choice for international calling based on the use of multi-PIC or smart-PIC technologies.

9. Pursuant to the local dialing parity requirements of section 251(b)(3), we require a LEC 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. We decline at this time to prescribe additional guidelines to address the methods that LECs may use to accomplish local dialing parity given our finding that local dialing parity will be achieved upon implementation of the number portability and interconnection requirements of section 251, as well as the provisions requiring nondiscriminatory access to telephone numbers found in section 251(b)(3).

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entitled to choose a primary carrier for all intrastate toll calls and a separate, or the same, primary carrier for all interstate toll calls.

[17] 47 U.S.C. § 251(f)(2).

[18] The multi-PIC or smart-PIC presubscription method would enable subscribers to select multiple carriers for various categories of toll traffic. For a discussion of multi-PIC and smart-PIC presubscription methodologies, *see infra* section II.B(4).

10. We also decline to adopt federal consumer education programs or procedures that would inform consumers of the existence of competitive telecommunications providers. Instead, we leave decisions regarding consumer education and carrier selection procedures to the states. We conclude that, in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity implementation costs.

11. Section 271 of the 1996 Act requires BOCs to provide intraLATA toll dialing parity throughout a state coincident with the exercise of their authority to offer interLATA services originating within the state.[19] BOC entry into the interLATA market is conditioned upon their offering "nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3)."[20]

2. Nondiscriminatory Access

12. Section 251(b)(3) also requires all LECs to permit competing providers of telephone exchange service and toll service "nondiscriminatory access to telephone numbers, operator services, directory assistance and directory listings."[21] We conclude that "nondiscriminatory access," as used in section 251(b)(3), encompasses both: (1) nondiscrimination between and among carriers in rates, terms and conditions of access; and (2) the ability of competing providers to obtain access that is at least equal in quality to that of the providing LEC. This definition of "nondiscriminatory access" in section 251(b)(3) recognizes the more general application of that section to all LECs, whereas section 251(c) places more specific duties upon incumbent LECs in terms of nondiscriminatory access. We conclude that the term "nondiscriminatory access to telephone numbers" requires all LECs to permit competing providers access to telephone numbers that is identical to the access the LEC provides to itself.

13. We conclude that the term "operator services," for purposes of section 251(b)(3), means any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Such a definition includes busy line verification, emergency assistance, operator-assisted directory assistance, and any other such services used to arrange for the billing and/or completion of telephone calls. We further conclude that any customer of a telephone service provider that provides operator services should be able to obtain these services by dialing "0" or "0-plus the desired telephone number." If a dispute arises regarding

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[19] 47 U.S.C. § 271(e)(2)(A).

[20] 47 U.S.C. § 271(c)(2)(B)(xii). We decline to address section 271(c)(2)(B) issues in this *Order*. We will consider each BOC's application to enter in-region, interLATA services pursuant to section 271(c)(2)(B) on a case-by-case basis to determine whether the BOC has complied with section 271(c)(2)(B)(xii).

[21] 47 U.S.C. § 251(b)(3).

a competitor's access to operator services, the burden will be upon the providing LEC to demonstrate, with specificity, that it has permitted nondiscriminatory access and that any disparity is not caused by network elements within its control. To the extent that operator services use any information services and adjuncts that are not "telecommunications services," of which resale is required under 251(b)(1), LECs are required to make available such services to competing providers in their entirety as a requirement of nondiscriminatory access under 251(b)(3).[22] Finally, we find that the refusal of a LEC providing nondiscriminatory access to comply with reasonable requests of competing providers to "brand" resold operator services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to operator services.

14. We conclude that the requirement in section 251(b)(3) of nondiscriminatory access to directory assistance means that LECs that provide directory assistance must permit access to this service to competing providers that is at least equal in quality to the access that the LEC provides to itself. We impose obligations upon all LECs to satisfy the requirement of nondiscriminatory access to directory listings. If a LEC provides directory assistance, that LEC must permit competing providers to have access to its directory assistance, so that any customer of a competing provider can access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider. Further, we require LECs to share directory listings with competing service providers, in "readily accessible" tape or electronic formats, upon request, and in a timely manner. To the extent that all or part of directory assistance services are not "telecommunications services," of which resale is required under 251(b)(1), LECs must make available such services in their entirety as part of their obligation to permit nondiscriminatory access to competing providers.[23] This requirement thus extends to any information services and adjuncts used to provide directory assistance. Finally, as with the branding of resold operator services, we find that the refusal of a LEC providing nondiscriminatory access to directory assistance to "brand" resold directory assistance services as those of the reseller, or to remove its brand, creates a presumption that the LEC is unlawfully restricting access to directory assistance.

15. We also conclude that section 251(b)(3)'s requirement of nondiscriminatory access and its prohibition of unreasonable dialing delays applies to both the provision of local and toll dialing parity. We conclude that the dialing delay experienced by customers of a competing provider should not be greater than that experienced by customers of a LEC providing dialing parity or nondiscriminatory access, for identical calls or call types. Finally, we conclude that the statutory obligation to avoid unreasonable dialing delays places a duty on LECs that provide dialing parity, or nondiscriminatory access to operator services or directory assistance, to process all calls from competing providers on the same terms as calls from its own customers.

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[22] *Id.*

[23] *Id.*

B. Actions to Implement Section 251(c)(5)

16. In addition to the duties imposed by section 251(b)(3) on all LECs, new section 251(c)(5) imposes upon incumbent LECs the duty to "provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities or networks."[24] We adopt broad guidelines to implement section 251(c)(5). We also specify how public notice must be made whenever an upcoming change may affect the way in which a competing service provider transmits, routes, or otherwise provides its services.

17. We conclude that "information necessary for transmission and routing" in section 251(c)(5) means any information in the incumbent LEC's possession that affects a competing service provider's performance or ability to provide either information or telecommunications services. We define "interoperability" as the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

C. Actions Taken to Implement Section 251(e)

18. New section 251(e)(1) restates the Commission's authority over matters relating to the administration of numbering resources by giving the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[25] This section also requires the Commission to "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."[26] Finally, section 251(e)(2) provides that the cost of establishing telecommunications numbering administration arrangements "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[27] In this *Order*, we address whether further action is required to create or designate an impartial entity to administer telecommunications numbering. We clarify the states' role in number administration, and provide direction to states wishing to use area code overlay plans. We also clarify how cost recovery for numbering administration will occur. We deny the petition for expedited declaratory ruling filed by the Texas Commission based on

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[24] An incumbent LEC, with respect to an area, is defined under the 1996 Act as "the local exchange carrier that: (A) on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and (B)(i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)." 47 U.S.C. § 251(h)(1).

[25] 47 U.S.C. § 251(e)(1).

[26] *Id.*

[27] 47 U.S.C. § 251(e)(2).

our finding that the Texas Commission's wireless-only area code overlay plan violates the guidelines set forth in our *Ameritech Order*. We authorize Bellcore and the incumbent LECs to perform number administration functions as they did prior to the enactment of the 1996 Act until such functions are transferred to the new North American Numbering Plan Administrator.

19. We conclude that we have taken appropriate action to designate an impartial number administrator pursuant to section 251(e)(1). We further conclude that the Commission should retain its authority to set policy with respect to all facets of numbering administration to ensure the creation of a nationwide, uniform system of numbering that is essential to the efficient delivery of interstate and international telecommunications services and to the development of a competitive telecommunications services market. While we retain this policy-making authority, we authorize the states to resolve matters involving implementation of new area codes subject to the guidelines set forth in this *Order*.

20. In this *Order*, we also prohibit the use of service-specific or technology-specific area code overlay plans. States may employ all-services overlays only if they also mandate 10-digit dialing for all local calls within the area affected by the area code change and ensure the availability of at least one central office code in the existing area code to every entity authorized to provide local exchange service in that area, including CMRS providers.

21. To fulfill the mandate of section 251(e)(2), we require that (1) only "telecommunications carriers," as defined in Section 3(44) of the 1996 Act, shall contribute to the costs of numbering administration;[28] and (2) that such contributions shall be based on each contributor's gross revenues from its provision of telecommunications services reduced by all payments for telecommunications services and facilities that have been paid to other telecommunications carriers.

II. DIALING PARITY REQUIREMENTS

A. In General

22. With dialing parity a telephone customer can preselect any provider of telephone exchange service or telephone toll service without having to dial extra digits to route a call to that carrier's network. Until now, in most states, telephone customers wishing to have their intraLATA toll calls carried by a carrier other than their current provider of telephone exchange service had to dial a five- or seven-digit prefix or access code before dialing the

[28] The term "telecommunications carrier" means "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage." 47 U.S.C. § 153(44).

called party's telephone number.[29] Presubscription to a carrier other than a customer's telephone exchange service provider has not been an option for *interstate*, intraLATA toll calls or in most states for *intrastate*, intraLATA toll calls.[30] In states where intrastate, intraLATA toll dialing parity is available, a customer may presubscribe to a carrier other than his or her provider of telephone exchange service and have all of that customer's intrastate, intraLATA toll calls carried by that selected carrier simply by dialing "1" plus the area code and telephone number of the called party.[31] The section 251(b)(3) dialing parity obligation will foster vigorous local exchange and long distance competition by ensuring that each customer has the freedom and flexibility to choose among different carriers for different services without the burden of dialing access codes.

1. The Need for Minimum Nationwide Dialing Parity Standards

a. Background and Comments

23. Section 251(b)(3) imposes on all LECs the "duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service."[32] In the *NPRM*, we sought comment on whether the Commission should adopt nationwide dialing parity standards and, if so, what those standards should be.[33]

24. A majority of commenters urge the Commission to adopt uniform nationwide dialing parity guidelines, but commenters differ on how detailed such federal rules should be. For example, the Telecommunications Resellers Association maintains that specific national standards are needed to ensure that competing providers are able to utilize common network designs in multiple markets and to prevent incumbent LECs from "gaming" or "manipulating

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[29] Sometimes referred to as "10XXX" or "101XXXX" dialing, callers may reach a long distance carrier in states where such dialing arrangements are authorized by dialing a five-digit carrier access code ("10XXX," with "XXX" representing a three-digit carrier identification code) or a seven digit carrier access code ("101XXXX," with "XXXX" representing a carrier identification code).

[30] An "interstate, intraLATA toll call" is a call that: (1) crosses a state boundary but does not cross a LATA boundary; and (2) is subject to a charge. A call from Philadelphia, Pennsylvania to Cherry Hill, New Jersey (currently handled by Bell Atlantic) is an example of such a call.

[31] It is our understanding that some form of intraLATA toll dialing parity is available or has been ordered in Alaska, Arizona, Connecticut, Florida, Georgia, Illinois, Kentucky, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin and Wyoming. *See Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, July 10, 1996, at 2.

[32] 47 U.S.C. § 251(b)(3).

[33] *NPRM* at paras. 206, 207, 209-213, 218, 219.

the processes" of the states.[34] Ameritech urges the Commission to adopt "broad rules that afford sufficient flexibility to accommodate local conditions."[35] Other commenters, such as Bell Atlantic, opposing the adoption of federal dialing parity standards, assert that the proponents of such standards have failed to demonstrate how they or consumers have been harmed by "locally tailored implementation" of dialing parity in the intraLATA toll markets.[36] Without such a demonstration, argues Bell Atlantic, the Commission should not interfere with states' activities.[37] Cincinnati Bell Telephone Company (CBT) likewise opposes federal standards, maintaining that so long as a state regulatory commission adopts a toll dialing parity arrangement that "offers consumers a choice from at least two carriers, one of which is the local exchange carrier, the requirements of the 1996 Act have been met."[38]

b. Discussion

25. We conclude that the purpose of the statutory dialing parity requirements -- to facilitate the introduction of competition in the local and toll markets -- is best served by the adoption of broad guidelines and minimum federal standards that build upon the states' experiences. We conclude that such minimum nationwide standards will facilitate competition to the extent that new entrants seeking to offer regional or national services will not be subjected to an array of differing state standards and timetables.[39] We note that our conclusion to adopt nationwide dialing parity standards is consistent with our conclusion in the *First Report and Order* that nationwide standards to implement other section 251 provisions are necessary to facilitate competition by serving as a backdrop against which interconnection negotiations and arbitration can occur.[40] We are persuaded that, contrary to the views of Bell Atlantic, the failure to adopt minimum federal standards would harm both new entrants and consumers by delaying the introduction of competition and imposing additional costs on competitors, including small entities, particularly when different network configurations are required in each market. We conclude that uniform standards -- in some cases minimum, uniform standards -- will speed competitive entry by more promptly opening the local and toll markets to competition.

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[34] Telecommunications Resellers Association reply at 8-9.

[35] Ameritech reply at *i*.

[36] Bell Atlantic reply at 2.

[37] *Id.*

[38] CBT comments at 5.

[39] We note that section 271(e)(2)(B) precludes most states from requiring a BOC to implement intraLATA toll dialing parity in a state before the BOC has received authority to provide in-region, interLATA services in such state or before three years after enactment of the 1996 Act, whichever is earlier. 47 U.S.C. § 271(e)(2)(B).

[40] See *First Report and Order* at section II.

2. Scope of the Dialing Parity Requirements

a. Background

26. Under section 251(b)(3) a LEC must provide dialing parity only to competing providers of telephone exchange service and telephone toll service.[41] The scope of the obligation to provide dialing parity, however, is not limited to a particular type of traffic or service. Section 251(b)(3) makes no distinction among international, interstate and intrastate traffic for purposes of the dialing parity provisions.[42] The statutory definition of "dialing parity" also contains no such distinctions and, instead, speaks generally in terms of the provision of "telecommunications services" by "a person that is not an affiliate of a local exchange carrier."[43] Based on the absence of any such distinctions in defining the scope of the dialing parity requirements, the *NPRM* tentatively concluded that section 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[44]

b. Comments

27. Numerous parties express support for the Commission's tentative conclusion.[45] Several parties qualify their support for this conclusion, however, by asserting that the duty to provide dialing parity to competing providers of telephone toll service applies to international calls only to the extent that it entitles a customer to route automatically, without the use of an access code, all of the customer's international calls to his or her presubscribed interLATA long distance carrier.[46] These parties maintain that section 251(b)(3) does not require LECs to provide customers a separate presubscription choice for international calling.[47]

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[41] 47 U.S.C. § 251(b)(3).

[42] *Id.*

[43] 47 U.S.C. § 153(15).

[44] *NPRM* at para. 206.

[45] *See, e.g.*, MFS comments at 2; California Commission comments at 3.

[46] *See, e.g.*, Sprint comments at 4-5; SBC comments at 5.

[47] *Id.*

28. A broad range of parties also support the tentative conclusion that section 251(b)(3) imposes a duty on the LEC to provide both local and toll dialing parity.[48] Two parties reject this tentative conclusion, arguing that the dialing parity requirements apply only to local calling and do not extend to toll services.[49] Specifically, Lincoln Telephone and the Pennsylvania Commission contend that Congress addressed toll dialing parity only in section 271(e)(2) of the 1996 Act as it relates to the conditions under which a BOC may enter the in-region, interLATA toll business and question the Commission's authority to implement toll dialing parity requirements.[50] U S WEST similarly argues that section 251(b)(3) imposes only a duty to provide local dialing parity and suggests that the only affirmative obligation to provide toll dialing parity is contained in the equal access provisions of section 251(g) of the 1996 Act, which, U S WEST states, applies only to the BOCs and GTE.[51] Lincoln Telephone makes the additional argument that competitive providers wishing to enter the intraLATA toll market should be required to "share responsibility for serving the entire LATA, rather than simply selecting the lowest cost customers from the most profitable exchanges without regard to that practice's effect on other customers."[52] The imposition of such a requirement, according to Lincoln Telephone, would "reflect a commitment to affordable universal service."[53]

c. Discussion

29. We adopt our tentative conclusion that section 251(b)(3) creates a duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call, and encompasses international as well as interstate and intrastate, local and toll services.[54] We note that section 251(b)(3) does not limit the types of traffic or services for which dialing parity must be provided to competing providers of telephone exchange and telephone toll service. The reference to these types of providers clearly shows that dialing parity must be provided for exchange service and toll service. Nothing in the statutory language limits the scope of the dialing parity obligation to exchange and toll services or distinguishes among the various types of telecommunications services in imposing the dialing parity obligations. This conclusion is further supported by the statutory definition of dialing parity insofar as it refers

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[48] *See, e.g.*, Excel comments at 6; MCI comments at 2; BellSouth comments at 9.

[49] Lincoln Telephone comments at 2-3; Pennsylvania Commission comments at 1-2.

[50] *Id.*

[51] U S WEST comments at 4-5.

[52] Lincoln Telephone comments at 5.

[53] *Id.* at 6.

[54] *NPRM* at para. 206.

to the provision of "telecommunications services" generally without distinction among various types of telecommunications services.[55] In addition, we are not persuaded that section 251(g) relieves certain LECs of the duty to provide toll dialing parity. That section contains no reference or cross reference to dialing parity or to section 251(b)(3). Section 251(g) preserves the equal access obligations already imposed on the BOCs and GTE, but does not exempt them or other LECs from the toll dialing parity requirements. Finally, we note that CMRS providers are not required to provide dialing parity or nondiscriminatory access under section 251(b)(3) because the Commission has not determined that CMRS providers are LECs and section 332(c) of the Communications Act of 1934 provides that a "person engaged in the provision of commercial mobile services . . . shall not be required to provide equal access to common carriers for the provision of toll services."[56]

30. Finally, concerning Lincoln Telephone's proposal to require competitive providers of intraLATA toll service to serve an entire LATA, rather than merely certain low cost customers within a LATA, we note that Lincoln Telephone, in essence, is asking us to condition a carrier's receipt of dialing parity upon that carrier's assuming the obligation of an "eligible" telecommunications carrier.[57] We find neither the language of section 251(b)(3) nor its legislative history supports the conclusion that Congress intended to condition a carrier's right to receive the benefits of dialing parity upon its assuming the obligations of an eligible telecommunications carrier. The issue of encouraging carriers to provide universal service throughout a service territory is beyond the scope of this proceeding.[58] Also, for the Commission to make LATA-wide or state-wide service a precondition of entry into that LATA or state would be to erect a major legal barrier to entry, particularly for smaller telecommunications services providers, that is contrary to the basic thrust of the 1996 Act.

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[55] The issue of whether a separate presubscription choice is required for international, interstate, and intrastate toll calls is discussed more fully in section II.B(2) *infra*.

[56] 47 U.S.C. § 332(c)(8).

[57] An eligible telecommunications carrier is a common carrier that offers all services that are supported by federal universal service support mechanisms under section 254(c) and that uses "media of general distribution" to advertise the availability of those services and its charges for them. 47 U.S.C. § 214(e)(1). The issue of which services should receive support from universal service support mechanisms is being addressed by the Commission and the Federal-State Joint Board on universal service, as required by new section 254 of the Communications Act, as amended by the 1996 Act. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, FCC 96-93, (rel. Mar. 8, 1996) (*Universal Service NPRM)* (proposing rules to implement section 254 of the 1996 Act).

[58] *See Universal Service NPRM.*

B. Implementation of the Toll Dialing Parity Requirements

1. Presubscription Method of Achieving Toll Dialing Parity

a. Background

31. The statutory definition of dialing parity provides that the customer must have the ability to choose "from among 2 or more telecommunications services providers (including such local exchange carrier)."[59] The definition also provides that customers must be able to exercise this choice by being able "to route automatically without the use of access codes, their telecommunications to the telecommunications services provider of the customer's designation."[60] Thus, LECs are precluded from relying on access codes as a means of providing dialing parity to competitive service providers.[61] The 1996 Act, however, does not specify what methods should be used to implement dialing parity. The *NPRM* tentatively concluded that presubscription represents the most feasible method of achieving dialing parity in long distance markets consistent with the statutory definition of dialing parity and sought comment as to this tentative conclusion.[62] In this context, the *NPRM* defined "presubscription" as the process by which a customer preselects a carrier to which all of a particular category or categories of calls on the customer's line will be routed automatically.[63]

32. As stated in the *NPRM*, presubscription to a carrier other than the customer's local exchange carrier has not been available for *interstate*, intraLATA toll calls nor has it been available in most states for *intrastate*, intraLATA toll calls.[64] Instead, LECs automatically carry these calls rather than routing them to a presubscribed carrier of the customer's choice. If the state from which the customer is calling has authorized competition, but has not ordered presubscription in the intraLATA toll market, a customer wishing to route an intraLATA toll call to an alternative carrier typically must dial the carrier access code of the alternative carrier.

b. Comments

33. Nearly all parties concur in the Commission's tentative conclusion that presubscription represents the most feasible method of achieving toll dialing parity consistent

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[59] 47 U.S.C. § 153(15).

[60] *Id.*

[61] *Id.*

[62] *NPRM* at para. 207.

[63] *Id.*

[64] *Id.* at para. 208.

with the statutory definition of dialing parity.[65] PacTel and Lincoln Telephone suggest that presubscription is not required to achieve toll dialing parity so long as customers can reach competing toll carriers through the use of carrier access codes.[66] Finally, BellSouth argues that the toll dialing parity requirement is satisfied by "removing the intraLATA default to the incumbent LEC, thus assuring that no additional digits need to be dialed in order to reach carriers competing with the incumbent LEC for intraLATA toll service."[67] BellSouth further argues that the Commission should confirm that such arrangements are consistent with the statutory dialing parity requirements.[68]

c. Discussion

34. We adopt our tentative conclusion that the dialing parity requirement for toll calling can best be achieved through presubscription because that method would enable customers to route a particular category of traffic to a preselected carrier without having to dial access codes. We note that the use of access codes to route calls among competing providers of telephone toll service is precluded under the statutory definition of dialing parity.[69] Accordingly, we disagree with those parties who contend that toll dialing parity can be achieved through the use of access codes in a manner that is consistent with the statutory definition of dialing parity.[70] We also cannot conclude that the toll dialing parity requirement is satisfied by removing the intraLATA default, as BellSouth maintains.[71] Removing the intraLATA default would not satisfy the toll dialing parity requirement unless the LEC also uses the full 2-PIC presubscription methodology discussed below.[72]

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[65] *See, e.g.*, Ohio Commission comments at 6; NEXTLINK comments at 9.

[66] *See, e.g.*, PacTel reply at 10 ("Toll dialing parity, on the other hand, should mean that customers can reach competing toll carriers on the same dialing basis, including through the use of carrier access codes, with an equal number of digits."); Lincoln Telephone comments at 2-3.

[67] BellSouth comments at 11 n.23.

[68] *Id.*

[69] *See* 47 U.S.C. § 153(15).

[70] Although the use of access codes to access competing providers of telephone toll service does not constitute dialing parity as defined in 47 U.S.C. § 153(15), we do not intend to preclude their use where a customer wishes to route a call to a carrier other than his or her presubscribed intraLATA toll carrier.

[71] We understand BellSouth's reference to "removing the intraLATA default" to mean that BellSouth would modify its switches so they no longer automatically route all intraLATA toll calls to BellSouth and thus, would permit customers to choose an alternative intraLATA toll carrier.

[72] For a discussion of the full 2-PIC methodology, *see* section II.B(4) *infra*.

2. Categories of Domestic, Long Distance Traffic Subject to Presubscription

a. Background

35. In the *NPRM*, the Commission sought comment as to the categories of long distance traffic (*e.g.*, intrastate, interstate, and international traffic) for which a customer should be entitled to choose presubscribed carriers.[73] The *NPRM* also sought comment on specific alternative methods for implementing local and toll dialing parity, including various forms of presubscription, in the interstate and intrastate long distance and international markets, that are consistent with the statutory requirements set forth in the 1996 Act.[74]

b. Comments

36. Most parties appear to agree that customers should be entitled to presubscribe to two separate carriers for their toll calling.[75] There is a lack of consensus in the record, however, regarding how the Commission should define the presubscription requirement. USTA, for example, argues that "[a]ll telecommunications carriers, including LECs, should be permitted to define the scope of local service and toll service in response to market forces."[76] USTA further argues that the "relevant distinction, for the long term, will be between intrastate and interstate toll traffic."[77] Sprint, on the other hand, argues in favor of maintaining a presubscription requirement based on LATA boundaries and recommends that customers continue to be allowed to choose separate intraLATA and interLATA toll carriers.[78] Sprint urges us to maintain the LATA distinction, asserting that "competition over the past 12

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[73] *NPRM* at para. 210.

[74] *Id.* at para. 209.

[75] *See, e.g.*, Ohio Consumers' Counsel comments at 2; *see also* MCI comments at 3 (recommending that call types subject to presubscription should include: 1-plus/0-plus interexchange, 7-digit interexchange and 1+555-1212 calls); *cf.* GTE comments at 9 (maintaining that decisions regarding appropriate presubscription categories should be left to state regulatory agencies on theory that states are best positioned to balance value of additional carrier choices against higher administrative and network design costs associated with increased number of presubscription choices).

[76] *Ex parte* letter from Charles D. Cosson, USTA, to William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, June 17, 1996, at 2.

[77] USTA comments at 3 n.2; *see also* MFS reply at 12-13 ("The Commission should recognize that rules for intraLATA presubscription are transitory. At some point, when the BOCs and GTE are authorized to provide both interLATA and intraLATA service, the distinctions between interLATA and intraLATA calls will no longer be meaningful, and the Commission should be prepared to revisit and eliminate these distinctions.").

[78] Sprint comments at 4.

years has developed around the LATA concept, and presubscription has for the most part already occurred along these lines."[79]

c. Discussion

37. With respect to toll service, we conclude that section 251(b)(3) requires, at a minimum, that customers be entitled to choose presubscribed carriers for their intraLATA and interLATA toll calls. Because of the variations that exist among LATA boundaries and toll traffic within, and among, the various states, we have also concluded that each state should have the opportunity to determine whether customers should be able to presubscribe to carriers for intrastate toll service and for interstate toll service in lieu of the intraLATA and interLATA toll presubscription dichotomy that we have established as a minimum nationwide standard at this time. Although toll dialing parity typically has been based on LATA boundaries in multi-LATA states where it has been implemented, we do not impose a requirement that toll dialing parity be based only on LATA boundaries given our expectation that implementation of the 1996 Act eventually will diminish the significance of LATA boundaries.[80] We are aware that BOCs remain subject to certain LATA boundary restrictions for at least the near-term and that some BOCs may find it technically infeasible, or otherwise undesirable, to implement toll dialing parity based on state boundaries.[81] We thus conclude that states should be able to take the relevance of those factors into account, where applicable, and have the flexibility to require that toll dialing parity implementation be based on state boundaries where they determine that implementing toll dialing parity on the basis of state boundaries would be pro-competitive and otherwise in the public interest. In Alaska and Hawaii, states with no LATAs, toll dialing parity will continue to be based on state boundaries.

38. We also direct each LEC to submit to the state regulatory commission for each state in which it provides telephone exchange service the LEC's plan for implementing toll dialing parity. That plan must contain detailed implementation information, including the proposed date for dialing parity implementation for that exchange that the LEC operates in each state, and the method it proposes for enabling customers to select alternative providers of

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[79] *Id.* At the same time, Sprint asks that we eliminate the intrastate intraLATA/interstate intraLATA distinction and make all intraLATA toll calls (both interstate and intrastate) subject to a single presubscription.

[80] USTA correctly notes that independent exchange carriers have not been subject to the interLATA line of business restrictions that were imposed on the BOCs pursuant to the AT&T Consent Decree. *See United States v. American Telephone and Telegraph Co.*, 552 F. Supp. 226 (D.D.C. 1982). *See* USTA comments at 3 n.2.

[81] For example, where BOCs receive authority to provide in-region, interLATA services, they are required to provide such services through a separate affiliate for at least three years pursuant to section 272 of the 1996 Act. *See* 47 U.S.C. §§ 272(a)(2), (f)(1). Accordingly, it appears that the LATA distinction will remain relevant insofar as it will continue to define the geographic areas in which a BOC must provide toll services through an affiliate and those in which it may provide toll services directly.

telephone toll service. For a LEC, other than a BOC, the plan also must identify the LATA with which the LEC proposes to associate.[82]

39. We find that the states are best able to evaluate implementation plans in a way that will avoid service disruptions for subscribers and promote competition in the intrastate toll market. A LEC must first obtain state approval of its implementation plan before it implements toll dialing parity. If the LEC determines that a state commission elects not to evaluate the LEC's toll dialing parity implementation plan for that state sufficiently in advance of the date on which a LEC is required to implement toll dialing parity pursuant to the Commission's rules, we direct the LEC to file its plan with the Commission.[83] The Commission will release a public notice of any such LEC filings, in order to give interested parties an opportunity to comment. The LEC's plan will be deemed approved on the fifteenth day following release of the Commission's public notice unless, no later than the fourteenth day following the release of the Commission's public notice, either: (1) the Common Carrier Bureau notifies the LEC that its plan will not be deemed approved on the fifteenth day; or (2) an opposition to the plan is filed with the Commission and served on the LEC that filed the plan. The opposition must state specific reasons why the plan does not serve the public interest.

40. If one or more oppositions are filed, the LEC that filed the plan will have seven additional days (*i.e.*, until no later than the twenty-first day following the release of the Commission's public notice) within which to file a reply to the opposition(s) and serve it on all parties that filed oppositions. The response shall: (a) include information responsive to the allegations and concerns identified by the opposing party; and (b) identify possible revisions to the plan that will address the opposing party's concerns. In the case of such contested toll dialing parity plans, the Common Carrier Bureau will act on the plan within ninety days of the date on which the Commission released its public notice.[84] In the event the Bureau fails to act within 90 days, the plan will not go into effect pending Bureau action. If the plan is not contested but did not go into effect on the fifteenth day after the Commission released its public notice, and the Common Carrier Bureau fails to act on the plan within ninety days of the date on which the Commission released its public notice, the plan will be deemed approved without further Commission action on the ninety-first day after the date on which the Commission released its public notice of the plan's filing.

41. A LEC's plan may not accomplish toll dialing parity by automatically assigning toll customers to itself, to a customer's currently presubscribed interLATA or interstate toll

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[82] States may require a LEC to provide other categories of information in its plan in addition to the information categories stated here.

[83] *See infra* para. 62 , which sets forth the dates by which a dialing parity implementation plan must be filed with the Commission in the event that a state will not be evaluating the plan.

[84] We delegate to the Chief, Common Carrier Bureau, the authority to approve, modify, or require the refiling of each plan that is filed with the Commission pursuant to this requirement.

carrier, or to any other carrier except when, in a state that already has implemented intrastate, intraLATA toll dialing parity, the subscriber has selected the same intraLATA and interLATA presubscribed carrier. Finally, when LATA boundaries encompass parts of two adjacent states, we permit the LEC to implement in each state the procedures that that state approved for implementing toll dialing parity within its borders. If a state commission elects not to evaluate the LEC's intrastate toll dialing parity plan, we direct the LEC to file both its intrastate toll dialing plan and its interstate toll dialing plan with the Commission. The plans will be acted on in accordance with the procedures outlined above.

42. We note that the minimum intraLATA/interLATA toll presubscription requirement that we adopt in this *Order* is necessarily an interim measure. Specifically, we expect that the development of the "multi-PIC" or "smart-PIC" presubscription methodology will enable customers to presubscribe to multiple carriers for various categories of long-distance calling.[85] Thus, in time, we anticipate that service markets, and the presubscription requirement in particular, will be defined by technological, economic and marketing considerations and that LATA or state boundary distinctions will diminish for purposes of the toll dialing parity requirements. As the record before us provides an inadequate basis for adopting more specific requirements now, we intend to monitor developments in this area and issue a Further Notice of Proposed Rulemaking to address these long range considerations so that end users will be able to preselect alternative providers for operator services, directory assistance, international and other services.

3. Separate Presubscription for International Calls

a. Background and Comments

43. The *NPRM* sought comment on whether customers should be entitled to choose a presubscribed carrier for international calls and on what Commission action, if any, is necessary to implement dialing parity for such calls.[86]

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[85] The terms "smart-PIC" and "multi-PIC" have been defined differently in various contexts. For example, GVNW states that the multi-PIC presubscription method would permit customers to choose up to three different toll carriers, which, GVNW suggests, might include an intraLATA toll, interLATA toll and an international service provider. *See* GVNW comments at 6. GVNW states that the smart-PIC presubscription method would allow customers more than three carrier choices, "as when a fourth PIC for interstate, intraLATA is needed." *Id.* In a recent state commission decision, the terms "multi-PIC" and "smart-PIC," deemed to be synonymous, were defined as the ability to "select multiple carriers for various subdivisions of their interLATA and intraLATA toll calls." *Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COL, 164 P.U.R.4th 214 (Ohio Pub. Util. Comm'n Sept. 27, 1995).

[86] *NPRM* at para. 210.