costs and benefits of a change or the feasibility of a change. Instead, a "definite decision" is reached when the incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes the first step toward implementation of the change within its network.[488]

218. We recognize that many changes to an incumbent LEC's network that are subject to disclosure under section 251(c)(5) can be fully implemented less than twelve months after the make/buy point. Accordingly, if the service using the network changes can be initiated within twelve months after the make/buy date, public notice must be given on the make/buy date, but at least six months before implementation of the planned changes.

219. We agree with several commenters that competing service providers should not require a full six months to respond to some categories of relatively minor network changes and that we would needlessly slow the pace of technical advance were we to require a full six months notice in such a case. As evidence of this fact, several commenters have submitted or referred us to industry guidelines developed by ICCF, which detail recommended notice periods of 45 days to six months for certain network changes.[489] Based on the record before us, we agree that six months may be too long a minimum in some circumstances. We conclude, however, that neither the ICCF guidelines nor any other categorization scheme adequately encompasses every potential change affecting interconnection that an incumbent LEC may wish to make to its network. In addition, for changes that can be implemented in less than six months, the length of time required for notice to be considered "reasonable" may vary considerably based on advances in technology, the specific implementation plan developed by an incumbent LEC, the particular capabilities of interconnecting carriers to adapt, and the willingness of the incumbent LEC to be forthcoming with information. Based on these considerations, we find that a fixed timetable for such short-term notices would not be appropriate.

220. Accordingly, with respect to changes subject to section 251(c)(5) disclosure that the incumbent LEC wishes to implement on less than six months' notice, we require that the incumbent LEC's Commission filing, whether certification or public notice, also include a certificate of service: (1) certifying that a copy of the incumbent LEC's public notice was served on each provider of telephone exchange service that interconnects directly with the incumbent LEC's network a minimum of five business days in advance of the filing; and (2) providing the name and address of all such providers of local exchange service upon which the notice was served. Such filings must be clearly titled "Short Term Public Notice (or Certification of Short-Term Public Notice) Pursuant to Rule 51.333(a)."

221. The Commission will issue a public notice of such short-term filings separate from its public notice of other section 251(c)(5) filings. Unlike six-month or twelve-month

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[488] *Cf. Phase II Order*, 2 FCC Rcd at 3087.

[489] ICCF *Recommended Notification Procedures*. *See supra* note 466.

notices, certain interested parties will have an opportunity to file objections to such short-term public notices. Specifically, short term notices will be deemed final on the tenth business day after the release of the Commission's public notice unless a provider of information services or telecommunications services that directly interconnects with the incumbent LEC's network files an objection to the change with the Commission and serves it on the incumbent LEC no later than the ninth business day following the release of the Commission's public notice. Such an objection must state: (1) specific reasons why the objector is unable to implement adjustments to accommodate the incumbent LEC's changes by the date the incumbent LEC has specified, including specific technical information, questions, or other assistance required that would allow the objector to accommodate those changes; (2) specific steps the objector is taking to implement changes to accommodate the incumbent LEC's changes on an expedited basis; (3) the earliest possible date by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the assistance requested in item (1) (not to exceed six months from the date the incumbent LEC gave its original public notice); (4) the affidavit of the objector's president, chief executive officer, or other corporate officer or official with suitable authority to bind the corporation and knowledge of details of the objector's inability to adjust its network on a timely basis that he or she has read the objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay; and (5) any other information relevant to the objection. Because the power to interpose such objections could vest competing service providers with extensive power to delay implementation of changes, we caution competing service providers that we will not hesitate to intervene where necessary to ensure that objections are not posed merely to delay implementation of incumbent LEC network changes and that abuse of the Commission's processes for such a purpose would expose a competing service provider to sanctions.[490]

222. If one or more objections are filed, the incumbent LEC will have five additional business days (*i.e.*, until no later than the fourteenth business day following the release of the Commission's public notice) within which to file a response to the objection(s) and serve it on all objectors. Such a response shall: (1) include information responsive to the allegations and concerns identified by objectors; (2) state whether the implementation date(s) proposed by the objector(s) would be acceptable; (3) indicate any specific technical assistance that the incumbent LEC is willing to give to the objector(s); and (4) state any other information relevant to the incumbent LEC's response. In the case of such contested short-term public notices, the Common Carrier Bureau will issue an Order fixing a reasonable public notice period. In the alternative, if the incumbent LEC does not file a response within the five-day time period allotted, or if the response accepts the latest date stated by an objector in response to item (3) of its objection, then the incumbent LEC's public notice shall be deemed amended to specify implementation on the latest date stated by an objector in item (3) of its objection without further Commission action.

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[490] *See* 47 C.F.R. §§ 1.17, 1.52.

223. At the make/buy point, incumbent LEC plans should be sufficiently developed that the incumbent LEC could provide adequate and useful information to competing service providers. At earlier stages of the planning process, options are still being explored and alternatives weighed. Disclosure at such an early stage could cause interconnecting carriers to waste resources in an effort to respond to network changes that may not occur or that occur ultimately in a significantly different way. As the process of implementing the planned changes into the network goes forward, specific information may also require revision. Accordingly, we require an incumbent LEC to keep its public notice information complete, accurate, and up-to-date in whatever forum it has chosen for disclosure.

224. We agree with several commenters that incumbent LECs should not make preferential disclosure to selected entities prior to disclosure at the make/buy point. Accordingly, we prohibit disclosure to separate affiliates, separated affiliates,[491] or unaffiliated entities (including actual or potential competing service providers), until the time of public notice.

ii. Other Disclosure Proposals

225. We find that section 251(d)(3) does not require the Commission to preserve state authority over the timing of public notice of changes to the "information necessary for the transmission and routing" of traffic. Section 251(d)(3) prevents the Commission from "preclud[ing] the enforcement of any [state commission] regulation, order or policy," to the extent that such regulation, order or policy "establishes [LEC] access and interconnection obligations,"[492] is "consistent with the requirements of [section 251]"[493] and does not "substantially prevent implementation of this section and the purposes of this part."[494]

226. Public notice requirements that varied widely from state to state could subject both incumbent LECs and potential competing service providers to burdensome, duplicative, and potentially inconsistent obligations that would impermissibly hamper the achievement of the goals of section 251. Such varied filings requirements would obligate incumbent LECs to file in, and potential interconnecting carriers to canvass, a multitude of state-level fora in order to glean information concerning network changes. Incumbent LECs that operate in multiple states could be required to disclose a single network-wide change piecemeal in a variety of state filings; interconnecting carriers would then need to retrieve the information, also piecemeal, from many different locations. Neither section 251(c)(5) nor a fixed disclosure timetable limits the range of network changes an incumbent LEC might make;

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[491] 47 U.S.C. § 274.

[492] 47 U.S.C. § 251(d)(3)(A).

[493] 47 U.S.C. § 251(d)(3)(B).

[494] 47 U.S.C. § 251(d)(3)(C).

rather incumbent LECs remain free to make any otherwise permissible change upon appropriate notice. Accordingly, particularly with respect to entities whose operations span several states, clear, national rules are essential to the uniform implementation of network disclosure.[495]

227. Several commenters argue that a fixed disclosure timetable will needlessly or arbitrarily delay the introduction of technical advances or new services. It is our intention in this proceeding, however, to develop disclosure rules that minimize unnecessary delay by providing competing service providers with adequate, but not excessive, time to respond to changes to an incumbent LEC's network that affect interconnection. The primary concern reflected in section 251(c)(5) is continued interconnection and interoperability. If proper planning occurs, however, the delay associated with this goal should be minimal.

228. At least one commenter argues that, because incumbent LECs and competing service providers have a common interest in ensuring that their networks function together properly -- an interest that removes incentives to withhold vital interconnection information and obviates the need for fixed, enforceable advance disclosure obligations[496] -- any fixed timetables for disclosure should be negotiated between carriers as part of individual interconnection agreements. We disagree. The mere fact that interconnection failures can adversely affect both an incumbent LEC and a competing service provider does not remove the incumbent LEC's incentives to delay release of information concerning network changes solely in order to inconvenience its competitors. The impact of such failures would fall disproportionately on the competing service provider because, at least in the near term, the incumbent LEC's network will connect most of the customers in its service area directly, without using any facilities of a competing service provider. Indeed, we believe that this is the reason that Congress chose to place this obligation on incumbent LECs only and not on all LECs. In addition, notice of network changes provided to an interconnecting carrier, pursuant to a privately negotiated agreement, will not necessarily be provided to members of the *public* who are not parties to the specific agreement.[497] Accordingly, while carriers may negotiate individual notice arrangements (consistent with the preferential disclosure prohibitions discussed in paragraph 224, above) as part of private interconnection agreements, we are unable to rely on such private notice to satisfy section 251(c)(5)'s duty to provide reasonable *public* notice.

229. Although advance disclosure periods will place competing service providers on notice of certain products and services the incumbent LECs intend to bring to market, we do

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[495] *See* NCTA comments at 12.

[496] Ameritech comments at 30, reply at 17.

[497] Although the contents of privately negotiated interconnection agreements themselves must be disclosed to the public through state level filings, *see* 47 U.S.C. § 252(h), information exchanged pursuant to the terms of such an interconnection agreement might not be provided at all to this Commission, state commissions or the public.

not believe that this information will automatically translate into a competitive advantage for the competing service providers. The incumbent LEC's network disclosure obligations are intended to allow competing service providers to make required changes to their own networks in order to maintain interoperability and uninterrupted, high quality service to the public. These obligations are designed to prevent incumbent LECs from using their currently substantial percentages of subscribers and highly developed networks anticompetitively to prevent the entry of potential competitors.

230. Several commenters have argued that existing practices under industry issued, ICCF guidelines[498] or the Commission's "all carrier" rule,[499] satisfy the requirements of section 251(c)(5) and that no further Commission action is necessary. We disagree. The guidelines that commenters bring to our attention are neither compulsory nor enforceable at the Commission. We cannot rely on continued goodwill among carriers that soon may be locked in competition to assure timely disclosure of network changes. Similarly, we cannot trust in the "mutually satisfactory arrangements for timely information exchange" that GVNW alleges IXCs and small LECs reached to ease the conversion to equal access.[500] Our new rules, and the new market dynamics, may not produce such agreements.

231. While we are aware of no specific complaints concerning the functioning of the "all carrier rule," the advent of competition for basic telephone service in the local market will require rules that are specific, easily enforced and very clear. In this respect, we believe that the all carrier rule standard lacks adequate specificity to function efficiently in the section 251 context. Requiring carriers to litigate the meaning of "reasonable" notice through our complaint process on a case-by-case basis might slow the introduction and implementation of new technology and services, and burden both carriers and the Commission with potentially lengthy, fact-specific enforcement proceedings. A fixed timetable will create a clear, specific standard that will be more easily and quickly enforceable and that will better facilitate the development of competition and serve the public interest.

232. At least one commenter urges us to adopt the *Computer III* timetable merely as a "safe harbor" provision.[501] If we were to do so, however, we would open the notice process to many of the same risks that lead us to reject the all carrier rule. Under "safe harbor" rules, competing service providers' notice complaints could become bifurcated into an initial inquiry as to whether an incumbent LEC met the safe harbor provisions of the timetable. If the answer were in the negative, a second, fact-specific inquiry as to whether notice was nevertheless reasonable, would then follow. The delay in resolving such disputes would not

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[498] ICCF *Recommended Notification Procedures*. *See supra* note 466.

[499] *See supra* n.383.

[500] GVNW comments at 5.

[501] PacTel comments at 6.

serve the public interest. We believe the better course is to adopt a binding, fixed standard applicable to notice by all incumbent LECs.

233. MFS's proposed regulatory structure based on a tripartite scheme, classifying changes as "major," "location," or "minor," subject to advance disclosure of 18 months, 12 months, and according to industry standards, respectively, is flawed in several respects. Initially, section 251(c)(5) disclosure applies to a broad spectrum of potential network changes and we are not confident that MFS's definitions, or any similar definitions, could adequately capture and clarify every potential alteration affecting interconnection that an incumbent LEC could make to its network. Categorization debates would inevitably arise among carriers concerning the status of specific, planned changes. Reasonable public notice is a function of the length of time an incumbent LEC will take to implement a change and the length of time an interconnecting carrier will need to respond. Fixed 18-month and 12-month disclosure periods will not be flexible enough to take advantage of advances in technology that may permit increasingly rapid implementation of and reaction to network changes. Also, we find that the extended notice periods MFS proposes are too long. MFS provides no evidence or explanation to support its assertion that competing service providers will need a minimum of 18 months notice of major changes,[502] and the record contains broad support for the 12 month notice period from *Computer III*.[503] While we intend that competing service providers have adequate notice of planned network changes, we acknowledge the valid concerns of some commenters that overextended advance notification intervals could needlessly delay the introduction of new services, provide the interconnecting carrier with an unfair competitive advantage, or slow the pace of technical innovation.[504]

iii. Application to Network Changes in Progress

234. On the effective date of the rules implementing incumbent LECs' network disclosure obligations under section 251(c)(5), some incumbent LECs may be implementing network changes that the new rules otherwise would have required them to disclose. With respect to these changes, we do not perceive a need to delay implementation, and no commenter has requested that we do so. We do require, however, that incumbent LECs give public notice of such changes as soon as it is practical, and that notice in accordance with the section 251(c)(5) network disclosure rules be given: (1) before the incumbent LEC begins

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[502] *Cf.* NYNEX reply at 10-11 (Such a long notice period would "hamstring technological progress and deny customer benefits"); U S WEST reply at 2-3.

[503] *See, e.g.,* AT&T comments at 24-25 (Noting that the time periods from *Computer III* are familiar to incumbent LECs and a one-year minimum for certain changes would be sufficient advance notice to alternative LECs); MCI comments at 16 (agreeing 12 months advance notice is sufficient); Cox comments at 11 ("The proposal in the [*NPRM*] represents the minimum possible standard for disclosure").

[504] *Cf. Phase II Order*, 2 FCC Rcd at 3087 ("[W]hile we believe enhanced service providers are entitled to receive network information on a timely basis, we are also concerned that premature disclosure of this information could impair carriers' development efforts and inhibit network innovation").

offering service using the changes to its network; and (2) no later than 30 days after the effective date of the rules adopted in this Order.

235. We similarly find no need to adopt rules obligating incumbent LECs to make any formal, initial public disclosure of comprehensive information concerning their networks to provide background information against which connecting carriers could then evaluate changes. In the *First Report and Order*, we have concluded that, under section 251(c)(2), incumbent LECs are under an obligation to provide, interconnection for purposes of transmitting and routing telephone exchange traffic alone, exchange access traffic alone, or both.[505] Implicit in this obligation under section 251(c)(2) is the obligation to make available to requesting carriers information indicating the location and technical characteristics of incumbent LEC network facilities. Accordingly, actual or potential competing service providers needing this type of baseline information may request it from the incumbent LEC under section 251(c)(2); subsequent changes to this information will be addressed by the section 251(c)(5) rules we adopt today.

iv. Small Business Considerations

236. We have considered the impact of our rules on small incumbent LECs. We agree with GVNW that many network changes may not require twelve months advance disclosure. Accordingly, we have provided for six month, or shorter, notice periods, when such changes can be accomplished quickly. In addition, we note that, under section 251(f)(1), certain small incumbent LECs are exempt from our rules until (1) they receive a *bona fide* request for interconnection, services, or network elements; and (2) their state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the relevant portions of section 254. In addition, certain small incumbent LECs may seek relief from our rules under section 251(f)(2).[506]

C. Relationship with other Public Notice Requirements and Practices.

1. Relationship of Sections 273(c)(1) and 273(c)(4) with Section 251(c)(5).

a. Background

237. Section 273(c)(1) requires each BOC to maintain and file with the Commission "full and complete information with respect to the protocols and technical requirements for connection with and use of its telephone exchange facilities," in accordance with Commission

[505] *First Report and Order* at section IV.

[506] For a discussion of the implications and operation of section 251(f), *see First Report and Order*, section XII.

rules.[507] Section 273(c)(4) obligates the BOCs to provide timely information on the planned deployment of telecommunications equipment to interconnecting carriers providing telephone exchange service.[508] We sought comment in the *NPRM* on the relationship between these sections and the network disclosure obligations contained in section 251(c)(5).[509]

b. Comments

238. Ameritech states that the requirements of section 251(c)(5) "should be reconciled with [the] related obligations" set forth in section 273(c)(1) and 273(c)(4)."[510] Bell Atlantic suggests that sections 251(c)(5) and 273(c)(1) cover the same type of technical information.[511] Bell Atlantic further recommends that we find that "timely" release of the information covered by section 273(c)(4) means that the information should be made available "a sufficient time in advance that the competing service providers may make any necessary changes to their networks."[512] SBC comments that the disclosure obligations imposed by sections 251(c)(5), 273(c)(1), and 273(c)(4) are "substantially similar."[513] MCI argues that section 273(c)(1) imposes on the RBOCs substantially the same information disclosure obligations that 251(c)(5) imposes on the incumbent LECs in general, with the exception that 273(c)(1) explicitly obligates the RBOCs to file the information with the Commission.[514] MCI further argues that section 273(c)(4)'s "timely" disclosure requirement goes beyond that contained in section 251(c)(5).[515]

239. USTA suggests that "there is no basis to impose different requirements on the BOCs for purposes of compliance with section 273(c)(1) than those they are required to follow for section 251(c)(5). This is in fact one area in which uniformity would provide a benefit to the industry and would be administratively simple."[516] In contrast, the Rural Tel.

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[507] 47 U.S.C. § 273(c)(1). The Commission will address section 273 in a separate rulemaking proceeding.

[508] 47 U.S.C. § 273(c)(4).

[509] *NPRM* at para. 193.

[510] Ameritech comments at 31.

[511] Bell Atlantic comments at 12.

[512] *Id.* Bell Atlantic advocates the same "reasonable advance notice" standard for use in connection with section 251(c)(5).

[513] SBC comments at 13-14.

[514] MCI comments at 19.

[515] *Id.*

[516] USTA comments at 13.

Coalition argues that the requirements of section 273 apply only to the BOCs and "are not expected to correlate with the requirements of 251(c)(5) that apply to all incumbent LECs."[517] The Rural Tel. Coalition states that the Commission should fashion flexible notice requirements under these sections, recognizing differences in size, market power, and ability to impact competing service providers' operations that exist among the BOCs and independent LECs, and competing service providers.[518] AT&T also disagrees with USTA, arguing that the Commission filing contemplated by section 273(c)(1) is more detailed than the disclosure mandated in section 251(c)(5).[519]

c. Discussion

240. Because the BOCs clearly meet the 1996 Act's definition of an "incumbent LEC,"[520] the minimum disclosure requirements of section 251(c)(5) apply to the BOCs. We will address the specific implications of section 273, including the question whether section 273 imposes additional disclosure requirements on the BOCs, in a separate rulemaking proceeding.

2. Relationship of Sections 251(a) and 251(c)(5) with Section 256.

a. Background

241. Section 251(a) sets forth general duties of telecommunications carriers, including the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and the duty not to install network features, functions or capabilities that do not comply with the guidelines and standards established pursuant to section 255[521] and 256.[522] Section 251(c)(5) sets forth the duty of all incumbent LECs to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using the incumbent LEC's network.[523] The goal of section 256, entitled "Coordination for Interconnectivity," is "to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service" and defines the

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[517] Rural Tel. Coalition comments at 4.

[518] *Id.* at 4-5.

[519] AT&T comments at 24, reply at 28.

[520] 47 U.S.C. § 251(h).

[521] Section 255, "Access by Persons with Disabilities," will be addressed in a separate rulemaking proceeding.

[522] 47 U.S.C. § 251(a).

[523] 47 U.S.C. § 251(c)(5).

Commission's role in achieving this goal.[524] In the *NPRM*, we sought comment on the relationship of sections 251(a) and 251(c)(5) with section 256.[525]

b. Comments

242. We received few comments on this issue. USTA states that, "in developing oversight procedures for public telecommunications network interconnectivity standards under Section 256, the Commission can assist in alerting the industry to general types of technology changes which may lead to specific upgrades or modifications by individual carriers."[526] In addition, USTA notes that all telecommunications carriers are obligated by section 251(a)(2) to comply with standards prescribed under sections 255 and 256 and, accordingly, cautions that the section 256 process should be conducted with carriers' section 251(a)(2) obligations in mind.[527] USTA therefore suggests the possibility that an industry group could develop a set of uniform guidelines for use by all carriers in providing notice of changes that could affect interconnection or interoperability.[528]

243. Ameritech comments that section 251(c)(5) is only one part of the overall regulatory structure for coordinating network planning by the industry and facilitating interconnection and interoperability.[529] Based on this analysis, Ameritech argues that the notification obligations section 251(c)(5) imposes should be extended to all LECs under section 256.[530]

c. Discussion

244. Section 251(a)(2) imposes a duty on all telecommunications carriers to act in ways that are not inconsistent with any guidelines and standards established under section 256. Section 251(c)(5) imposes network disclosure obligations on incumbent LECs that are related to the goals of section 256, inasmuch as section 251(c)(5) sets forth one specific procedure to promote interconnectivity. We do not decide here whether compliance with section 251(c)(5) is sufficient to satisfy section 256, however. The Network Reliability and Interoperability Council will develop recommendations to the Commission on the implementation of section

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[524] 47 U.S.C. § 256.

[525] *NPRM* at para. 193.

[526] USTA comments at 13.

[527] *Id.* at 13-14.

[528] *Id.* at 14.

[529] Ameritech comments at 31.

[530] *Id.*

256.[531] We intend to address carrier and Commission obligations under section 256 in a future rulemaking proceeding.

D. Enforcement and Safeguards

1. Enforcement Mechanisms

a. Background and Comments

245. In the *NPRM*, we sought comment on what enforcement mechanism, if any, we should use to ensure compliance with the section 251(c)(5) public notice requirement.[532] Bell Atlantic, in conjunction with its advocacy of a flexible disclosure standard based on "reasonableness," suggests that the Commission review complaints of premature implementation on a case-by-case basis and, where necessary, issue cease-and-desist orders.[533] Ameritech and GTE argue that no specific, additional enforcement mechanisms are necessary, because there is no evidence that existing industry practices are producing network conflicts or hardships, or are otherwise not working.[534] U S WEST suggests that, if carriers fail to make timely disclosure, additional enforcement options can be considered in the future.[535] In contrast, NCTA states that we must adopt meaningful sanctions to enforce our new network disclosure rules, including significant monetary sanctions whenever a competitor's service is disrupted because of an incumbent LEC's failure to comply with the notice requirements.[536] Cox argues that any incumbent LEC found to violate section 251(c)(5)'s disclosure requirements should be required to inform all affected customers of interconnecting carriers that the incumbent LEC's actions caused any adverse effects attributable to the improperly disclosed network changes.[537]

246. MFS states that the Commission should adopt rules that would: (1) require each incumbent LEC to respond to Commission questions regarding the information previously

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[531] At its meeting on July 15, 1996, the Network Reliability and Interoperability Council discussed (1) barriers to interconnectivity; (2) how the FCC most efficiently can oversee network planning to assure interoperability; (3) need for standards-setting; and (4) the overall reliability of networks. *See Communications Daily*, June 11, 1996 (announcing July 15 meeting); *Public Notice, NYNEX CEO Seidenberg to Head New Network Reliability and Interoperability Council*, 1996 WL 185795 (F.C.C. Apr. 18, 1996).

[532] *NPRM* at para. 193.

[533] Bell Atlantic comments at 12.

[534] Ameritech comments at 29; GTE reply at 10.

[535] U S WEST reply at 3.

[536] NCTA comments at 12.

[537] Cox comments at 12.

made available regarding any network changes within the scope of section 251(c)(5), and to supplement the information if requested by the Commission; (2) establish a procedure for temporarily blocking any proposed network change until the Commission has time to investigate any alleged violations, with respect to either provision of notice, or the nature of the network change; and (3) allow the Commission, for good cause, to issue an order, without prior notice or hearing, requiring an incumbent LEC to cease and desist from making any specified changes for a period of up to 60 days to permit Commission investigation of alleged violations.[538] Time Warner suggests that any failure to comply with the rules we establish should be addressed through our existing section 208 complaint process.[539]

b. Discussion

247. It is essential to the development of local competition that incumbent LECs comply with the network disclosure obligations of section 251(c)(5). Even if a competing provider of local exchange service had made significant inroads into the incumbent LEC's customer base, it would have to transmit a substantial number of its customers' calls to the incumbent LEC's network for termination. If these calls cannot be terminated reliably, customers will be more reluctant to use the competing provider's services.

248. We recognize the importance of compliance with our network disclosure rules, and note that many of the specific enforcement sanctions offered by commenters may have merit. The commenters' suggestions indicate a belief that the Commission should delay or prohibit the implementation of changes if we receive sufficiently credible allegations of notice violations. Our existing enforcement authority would permit us to impose such a sanction and we will not hesitate to do so in appropriate circumstances. The Commission, however, also has a range of other penalties it could impose to ensure incumbent LEC compliance with the network disclosure rules. The record currently before us does not reveal a need for us to mandate specific enforcement procedures in the section 251(c)(5) context. Rather, we will intervene in appropriate ways if necessary to ensure adequate disclosure of public notice information, should sanctions become necessary to encourage full compliance with our network disclosure rules.[540] In addition, we intend to explore how we can increase the efficiency of the current section 208 formal complaint process in a separate rulemaking proceeding.

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[538] MFS comments at 16. MFS does not explain what type of network change might require Commission investigation or what type or level of allegations we should considered sufficient in issuing cease and desist orders.

[539] Time Warner comments at 11.

[540] *See, e.g.*, 47 U.S.C. §§ 154(i), 154(j), 206-209, 218; 47 C.F.R. §§ 0.91, 0.291.

2. Protection of Proprietary Information, Network and National Security

a. Background and Comments

249. In the *NPRM*, we sought comment on the extent to which safeguards may be necessary to ensure that information regarding network security, national security and the proprietary interests of manufacturers and others is not compromised by the section 251(c)(5) network disclosure process.[541]

250. BellSouth states that, to address these concerns, the Commission should permit disclosing incumbent LECs to require the recipient of such information to execute a confidentiality agreement, which could be drafted to include liquidated damages, indemnification, or other appropriate remedial provisions.[542] In addition, BellSouth requests that the Commission confirm that incumbent LECs are not obligated to disclose proprietary information of third parties, but may instead require competing service providers to negotiate directly with the third party for access.[543]

251. GVNW suggests that we limit incumbent LEC disclosure only to references to industry and manufacturers' specifications that are widely available, and to other information required to interconnect at the interface, which would reduce the amount of proprietary or sensitive information that would be subject to disclosure.[544] In addition, GVNW and the Rural Tel. Coalition state that an incumbent LEC should not be obligated to disclose the specific location of physical plant facilities except under strict nondisclosure agreements, in order to preserve the LEC's competitive position and protect against potential terrorist disruptions.[545]

252. Noting that the telecommunications equipment market is competitive, Nortel states that a manufacturer would be seriously disadvantaged if its proprietary information were disclosed to competitors.[546] In addition, Nortel argues that, in such a case, manufacturers

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[541] *NPRM* at para. 194.

[542] BellSouth comments at 5. *See* Illinois Commission comments at 63.

[543] *Id.* at 6.

[544] GVNW comments at 5. Ameritech advocates a similar narrowing of the disclosure obligation. Ameritech comments at 26 n.52.

[545] *Id.*; Rural Tel. Coalition comments at 4.

[546] Nortel comments at 3; Motorola, Inc. reply at 5. Citing similar concerns, GTE urges us to strike a balance between the information necessary to ensure seamless interconnection and the protection of proprietary information. GTE comments at 6.

would face substantially reduced incentives to develop advanced products.[547] Motorola, Inc., expresses its agreement with both BellSouth and Nortel[548] and comments that disclosure of proprietary information may undermine the competitive position of U.S. manufacturers in the global market.[549] Motorola, Inc., also asks us to clarify that no disclosure is required of technical information at "testing" or "trial" stages,[550] where typically a carrier is evaluating new technology in the field.[551]

253. Sprint, in *ex parte* comments, states that nondisclosure agreements related to the marketing of new services that will be available from both carriers may be appropriate.[552] Sprint also notes, however, that many routine network upgrades, such as establishment of new central offices, remote offices, or tandems, elimination of tandem locations, changes in the incumbent LEC's SS 7 network, and basic software upgrades, may not require the use of nondisclosure agreements.[553] While agreeing that network and national security issues deserve the highest attention, Teleport expresses concern that proprietary interest claims could be used to keep essential network interconnection information from potential competitors.[554]

b. Discussion

254. Having reviewed the record, we conclude that the judicious use of nondisclosure agreements will help protect incentives to develop innovative network improvements, and will also protect against potential threats to both national and network security by limiting the flow of detailed information concerning the operation of the national telecommunications network.[555] Accordingly, we will permit the use of nondisclosure agreements, subject to certain restrictions.

255. Incumbent LECs have a statutory obligation to provide "reasonable public notice of changes in the information necessary for the transmission and routing of services using that

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[547] *Id.*

[548] Motorola, Inc. comments at n.4.

[549] Motorola, Inc. reply at n.5.

[550] *Id.* at 6.

[551] *Id.*

[552] *Ex parte* letter from Jay C. Keithley, Sprint, to Mr. William F. Caton, Acting Secretary, Federal Communications Commission, filed in CC Docket No. 96-98, June 26, 1996, at 2.

[553] *Id.*

[554] Teleport comments at 12.

[555] Should these agreements prove inadequate for this purpose, we would revisit this issue.

[incumbent LEC's] facilities or network, as well as of any other changes that would affect the interoperability of those facilities and networks,"[556] as defined in this proceeding. Under another provision of the 1996 Act, however, the BOCs and any entities that they own or otherwise control must protect "the proprietary information submitted for procurement decisions from release not specifically authorized by the owner of such information."[557] Thus a rule requiring a BOC to provide change information publicly, without any provision for the use of a nondisclosure agreement, could place a BOC in the position of having to choose between compliance with the Commission's rule and compliance with section 273(e)(5). We also find that requiring disclosure to the public of competitively sensitive, proprietary, or trade secret information without allowing for the possible use of nondisclosure agreements would be inconsistent with section 251(c)(5)'s requirement that incumbent LECs provide "*reasonable* public notice" (emphasis added). It would not be "reasonable" to require such disclosures because they have significant implications with respect to network and national security, as well as the development of competition and innovative network improvements. Accordingly, we find that section 251(c)(5) requires incumbent LECs to provide notice of planned changes to the public sufficient to allow an interested party to assess the possible ramifications of the change and evaluate whether it needs to seek disclosure of additional information. The five categories of information disclosure we mandate here will meet this standard.

256. We do not anticipate that the minimum public notice requirements we are adopting will obligate carriers to disclose competitively sensitive, proprietary, or trade secret information in the public arena. In addition, despite the concerns of Motorola, Inc., Nortel, and others, we do not anticipate that the level of information required by a competing service provider either to transmit and to route services, or to maintain interoperability will, in the ordinary case, include proprietary information. In the event that such information is required, however, an incumbent LEC's public notice must nevertheless identify the type of change planned in sufficient detail to place interested persons on notice that they may potentially be affected, and must state that the incumbent LEC will make further information available to persons signing a nondisclosure agreement. We believe that suitably fashioned nondisclosure agreements can appropriately balance the competing service provider's need for knowledge of network changes with the interests of the incumbent LEC and equipment manufacturers in retaining control of proprietary information.

257. Accordingly, to the extent that otherwise proprietary or confidential information of an incumbent LEC falls within the scope of the network disclosure obligation of section 251(c)(5), it must be provided by that incumbent LEC on a timely basis. If an interconnecting carrier or information service provider requires genuinely proprietary information belonging to a third party in order to maintain interconnection and interoperation with the incumbent LEC's network, the incumbent LEC is permitted to refer the competing service provider to the owner of the information to negotiate directly for its release. While

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[556] 47 U.S.C. § 251(c)(5).

[557] 47 U.S.C. § 273(e)(5).

the incumbent LEC might represent the most expedient source of the required information, third parties would be less able to protect themselves from misuse of their proprietary information and preserve potential remedies if the incumbent LEC were to disclose directly a third party's proprietary information directly in response to a request.

258. We are concerned that protracted negotiation periods over the terms of a suitable nondisclosure agreement, or the payment of fees or royalties, could consume a significant portion of a competing service provider's notice period. The rules we adopt today require that, except under short-term public notice procedures, an incumbent LEC must give public notice of network changes a minimum of either six months or twelve months in advance of implementation. We find that these periods will provide adequate notice to interconnecting carriers and information service providers, to ensure that a high level of interconnectivity and interoperability can be maintained between networks. These periods, however, are not excessive and will not allow excessive time for the negotiation of the terms of nondisclosure agreements. Because section 251(c)(5) places an affirmative obligation on the incumbent LEC to ensure reasonable public notice of changes to its network, we require that disclosure of information designated by the incumbent LEC as proprietary, whether owned by the incumbent LEC or a third party, be accomplished on appropriate terms as soon as possible after an actual or potential competing service provider makes a request to the information owner for disclosure. Specifically, upon receipt by the incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled to allow the interested parties to agree on suitable terms for a nondisclosure agreement. This tolling is consistent with the incumbent LEC's public notice obligations and will preserve the competing service provider's ability to implement required changes in its own network to accommodate those planned by the incumbent LEC. In accordance with its obligation to keep the public notice information complete, accurate, and up-to-date, the incumbent LEC must, if necessary, amend its public notice: (1) on the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and (2) on the date the nondisclosure agreement is finalized, to specify a new implementation date.

259. Given these incentives, we conclude that it is unnecessary either to adopt a precise definition of "competitively sensitive" or "proprietary" information, or to mandate the terms of nondisclosure agreements. The *Computer III* rules, upon which we have modeled the disclosure timetable for use in the section 251(c)(5) context, explicitly permit the use of nondisclosure agreements in connection with carrier disclosure of planned changes to the enhanced services industry at the "make/buy" point.[558] In that proceeding also, the Commission explicitly rejected requests to prescribe a specific type of agreement, instead holding that:

> we do not think it necessary or helpful for us to dictate the terms of these private agreements. Nondisclosure agreements are widely used in

[558] *Phase II Order*, 2 FCC Rcd at 3092.

telecommunications, as well as in other fields. We believe it better to leave the exact specifications of the terms of such agreement to the parties. We would of course be prepared to intervene should parties bring to our attention evidence of noncompliance with the requirements established in this proceeding.[559]

Although we recognize that legitimate concerns exist regarding the security of proprietary information, the potential exists for some incumbent LECs to use such concerns as either a shield against the entry of competitors into their markets, or a sword to hamper the competitor's business operations. We emphasize that incumbent LECs are required to provide adequate access to even proprietary information if a competing service provider needs that information to make adjustments to its network to maintain interconnection and interoperation.

260. We agree with Motorola, Inc., that market and technical trials are not subject to disclosure under section 251(c)(5). Trials are not considered regular service and, because the validity of the incumbent LEC's trial results rests, in part, on successful interconnection, the incumbent LEC has sufficient incentives ensure that competing service providers receive adequate information. Notice of trials may be given, as needed, on a private, contractual basis.

V. NUMBERING ADMINISTRATION

261. The Commission has repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switched telephone network.[560] In enacting the 1996 Act, Congress also recognized that ensuring fair and impartial access to numbering resources is a critical component of encouraging a robustly competitive telecommunications market in the United States. Congress has required the Commission to designate an impartial administrator of telecommunications numbering and has conferred upon the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that pertain to the United States.[561]

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[559] *Id.* at 3092-93.

[560] *See Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*).

[561] 47 U.S.C. § 251(e)(1).

A. Designation of an Impartial Number Administrator

1. Background

262. Section 251(e)(1) 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."[562] In the *NPRM*, we tentatively concluded that action taken by the Commission in its July 1995 *NANP Order* satisfied this requirement.[563] In that *Order*, the Commission directed that functions associated with NANP administration be transferred to a new administrator of the NANP, unaligned with any particular segment of the telecommunications industry. In the *NPRM*, we sought comment on whether this action satisfied the Section 251(e)(1) requirement that we designate an impartial administrator.

2. Comments

263. There is nearly unanimous agreement that action taken by the Commission in the *NANP Order* satisfies the requirement of Section 251(e)(1).[564] GTE states that the *NANP Order* "will ensure that numbering mechanisms are applied in a carrier-neutral fashion, consistent with the objectives of the 1996 Act."[565] Parties, contending that number administration now performed by Bellcore potentially disadvantages non-BOC providers of telecommunications services by delay or denial of numbering resources to them, nevertheless urge the Commission to move quickly to implement the *NANP Order* fully.[566] Moreover, some argue that to give the *NANP Order* full effect, the North American Numbering Council (NANC) must be convened promptly.[567] CTIA states that until that time, "contentious numbering issues will either go unresolved, leading to additional pressure on already burdened numbering resources, or these issues will be resolved by the remnant of a monopoly era

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[562] *Id.*

[563] *See NANP Order*. The *NANP Order* was initiated in response to Bellcore's stated desire to relinquish its role as NANP administrator. *See* Letter from G. Heilmeier, President and CEO, Bellcore to the Commission (Aug. 19, 1993). Bellcore, however, will continue performing its NANP Administration functions until those functions are transferred to a new NANP administrator pursuant to the *NANP Order*.

[564] *See, e.g.*, Ameritech comments at 22; District of Columbia Commission comments at 1; GCI comments at 5; NYNEX comments at 18; AT&T reply at 2-3.

[565] *See, e.g.*, GTE reply at 34.

[566] *See, e.g.*, CTIA comments at 4; MCI comments at 10.

[567] *See, e.g.*, AT&T comments at 11. The North American Numbering Council (NANC) is a Federal Advisory Committee created for the purpose of addressing and advising the Commission on policy matters relating to administration of the NANP. NANC will provide the Commission advice reached through consensus to foster efficient and impartial number administration.

system."[568] One commenter, Beehive, argues that the *NANP Order* does not meet the requirements of Section 251(e)(1) because it does not address toll free number administration.[569]

3. Discussion

264. We conclude that the action taken in the *NANP Order* satisfies the section 251(e)(1) requirement that the Commission create or designate an impartial numbering administrator. The *NANP Order* requires that functions associated with NANP administration be transferred to a new NANP administrator. In the *NANP Order*, the Commission articulated its intention to undertake the necessary procedural steps to create the NANC.[570] Additionally, it directed the NANC to select as NANP administrator an independent, non-government entity that is not closely associated with any particular industry segment.[571] These actions satisfy section 251(e)(1).

265. Commenters' arguments that we have not fulfilled our duty pursuant to section 251(e)(1) because the NANC has not been convened and has not selected a new NANP administrator are not persuasive. In the *NANP Order*, we required that there be a new, impartial number administrator and established the model for how that administrator will be chosen. We thus have taken "action necessary to establish regulations" leading to the designation of an impartial number administrator as required by section 251(e)(1).

266. We disagree with Beehive's contention that the *NANP Order* does not meet the requirements of section 251(e)(1) because it does not address toll free number administration. In the *NANP Order*, we directed the NANC to provide recommendations on the following question: "What number resources, beyond those currently administered by the NANP Administrator should the NANP Administrator administer?"[572] Our purpose in directing NANC to address this question was to develop a record with respect to commenters' suggestions that the new administrator assume additional responsibilities beyond those of the current NANP administrator, if necessary, to facilitate competition in telecommunications services. By asking this question and seeking recommendations from the NANC, we set into motion a process designed to foster competition in *all* telecommunications services, including toll free, through neutral numbering administration. While the *NANP Order* outlines broad objectives for number administration for all telecommunications services, the specific details

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[568] *See, e.g.*, CTIA comments at 4.

[569] Beehive comments at 2-4.

[570] *NANP Order*, 11 FCC Rcd at 2608.

[571] *Id.* at 2610, 2614, 2617.

[572] *Id.* at 2610.

of implementation for toll free services are addressed in the ongoing toll free proceeding, CC Docket No. 95-155.

B. Delegation of Numbering Administration Functions

267. In this section, we address the role of state public utility commissions in numbering administration. We authorize states to perform the task of implementing new area codes subject to our numbering administration guidelines contained in the *Ameritech Order* and further clarified in this *Order*. We also incorporate the petition for declaratory ruling, the application for review, and the record in that proceeding and address the Texas Commission's pleadings regarding its plan for area code relief in Dallas and Houston which includes wireless overlays. We view prompt examination of the Texas Commission's plan as necessary because the area codes currently assigned to these cities have already reached exhaust.[573]

1. Delegation of Matters Related to Implementation of New Area Codes

a. Background

268. Section 251(e)(1) confers upon the Commission "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States," but states that "[n]othing in this paragraph shall preclude the Commission from delegating to state commissions or other entities all or any portion of such jurisdiction."[574] In response to this provision, the Commission tentatively concluded in the *NPRM* that it should authorize state commissions to address matters involving the implementation of new area codes so long as they act consistently with the Commission's numbering administration guidelines.[575]

b. Comments

269. Most parties contend that the Commission should "retain [its] plenary authority over all facets of [numbering] administration with delegation to states of only certain limited

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[573] Area code exhaust occurs when nearly all of the NXXs in a given numbering plan area (NPA) have been consumed. Area code exhaust is a subset of number exhaust, which describes the situation in which numbers used for any purpose to support telecommunications services are consumed. NPAs are known commonly as area codes. The second three digits of a telephone number are known as the NXX code or Central Office code (CO code). Typically there are 792 NXX codes available for assignment in an area code (every possible combination of three digits excluding numbers beginning with a 0 or 1 and numbers ending with 11).

[574] 47 U.S.C. § 251(e)(1).

[575] *NPRM* at para. 256.

functions."[576] PageNet urges that any delegation "should be clearly defined as to scope, review standards, and decision time limits."[577] Similarly, Time Warner recommends that any such delegation be accomplished in conformity with the Commission's guidelines.[578] Bell Atlantic/NYNEX Mobile, while stating that states may be in the best position to implement area code relief tailored to the particular needs of their residents, warns that the Commission must intervene promptly when any state "departs from federal numbering policies prohibiting discrimination against any type of carrier."[579]

270. While some commenters argue that the *Ameritech Order* strikes a "proper jurisdictional balance," permitting state commissions to make initial determinations regarding area code administration, subject to Commission review," others request further clarification of the federal and state role in numbering.[580] The Texas Commission specifically requests that the "FCC clarify the states' roles in number administration by expanding on statements in the *Ameritech Order* and elsewhere regarding the balance of authority between the FCC and the states."[581]

c. Discussion

271. We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act. While we retain this authority, we note that the numbering administration model established in the *NANP Order* will allow interested parties to contribute to important policy recommendations.

272. We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration, including the guidelines enumerated in the *Ameritech Order* and in this *Order* as detailed below. We note

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[576] ALTS comments at 8; *See also* Frontier comments at 5; GCI comments at 5; Indiana Commission Staff comments at 3; NYNEX comments at 18.

[577] PageNet comments at 6.

[578] Time Warner comments at 18.

[579] Bell Atlantic/NYNEX Mobile reply at 2.

[580] *See Ameritech Order*, 10 FCC Rcd 4596. *See, e.g.*, AT&T reply at 7; Bell Atlantic comments at 9; Pennsylvania Commission comments at 5; ACSI comments at 12.

[581] Texas Commission comments at 6.

that this authorization for states to resolve matters involving implementation of new area codes is effective immediately. Because of the need to avoid disruption in numbering administration, there is good cause for this action pursuant to 5 U.S.C. 553 § (d)(3). Some states have implemented new area codes prior to our release of this order. We ratify their actions insofar as they are consistent with these guidelines.

2. Area Code Implementation Guidelines

a. Background

273. When almost all of the central office (CO) codes in an area code are consumed, a new area code must be assigned to relieve the unmet demand for telephone numbers. Prior to the enactment of the 1996 Act, state commissions approved plans developed and proposed by the LECs, as CO code administrators, for implementing new area codes. New area codes can be implemented in three ways. Traditionally, states have preferred to implement new area codes through a geographic split, in which the geographic area using an existing area code is split into two parts, and roughly half of the telephone customers continue to be served through the existing area code and half must change to a new area code. States can, however, simply require a rearrangement of existing area code boundaries to accommodate local needs. The third method available to them is called an area code overlay, in which the new area code covers the same geographic area as an existing area code; customers in that area may thus be served through either code.

274. In the *Ameritech Order*, the Commission recognized the states' role in area code relief, attempted to clarify the balance of jurisdiction over numbering administration between the Commission and the states, and enumerated guidelines governing number administration. Additionally, the *Ameritech Order* declared that Ameritech's proposed wireless-only area code overlay would be unreasonably discriminatory and anti-competitive in violation of the Commission's guidelines and the Communications Act of 1934. The *NPRM* sought comment on whether the Commission should reassess the jurisdictional balance between the Commission and the states that was crafted in the *Ameritech Order* in light of Congress' grant to the Commission of exclusive jurisdiction over numbering administration, with permission to assign to the states any portion of that authority.[582] The *NPRM* also sought comment on what action the Commission should take when a state appears to be acting inconsistently with the Commission's numbering administration guidelines.[583]

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[582] *See* 47 U.S.C. § 251(e)(1).

[583] *NPRM* at para. 257.

b. Comments

275. Several commenters request that we clarify the *Ameritech Order* to prohibit service-specific overlays.[584] Others request clarification about all area code overlays, not just service-specific overlays. NCTA, for example, argues that all overlays deter the development of local competition. If competitors are relegated to new area codes, it says, potential customers will be forced to change their telephone numbers to obtain service from competitors.[585] NCTA adds that a customer is unlikely to trade a familiar code for a number that may appear to involve a toll charge, or to purchase additional lines from a competitor if those lines receive a different area code than other lines in their home or business.[586] Customers who do change to competing LECs, it claims, will have to dial ten or eleven digits to place local calls to incumbent LEC customers in the same local calling area. By contrast, NCTA maintains that incumbent LEC customers will be able to reach most other local customers through traditional seven-digit dialing.[587] Sprint agrees that all overlays are anticompetitive and argues that the industry should adopt a geographic split approach.[588]

276. MCI urges the Commission to allow an overlay only when it is the only practical alternative, and suggests that such circumstances might include: (a) exhaust in a small metropolitan area; (b) multiple nearly-simultaneous area code exhausts; or (c) when exhaust is so imminent that a split cannot be implemented quickly enough.[589] Numerous commenters suggest that the Commission should clarify the *Ameritech Order* by imposing conditions on the adoption of area code overlays.[590] Suggested conditions include: (a) mandatory ten-digit dialing for all calls within the overlay area;[591] (b) permanent service provider local number

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[584] *See, e.g.*, Cox comments at 6 n.11; PageNet comments at 23; SBC comments at 11; WinStar reply at 16; Vanguard reply at 5.

[585] NCTA comments at 9.

[586] *Id.*

[587] *Id. See also* MFS comments at 8-9.

[588] Sprint reply at 13. *See also* Cox reply at 3-5; MCI comments at 11; WinStar reply at 17.

[589] MCI comments at 12.

[590] *See, e.g.*, Cox comments at 5, 6 n.12; MFS comments at 8-9; California Commission comments at 8; MCI comments at 12-14; NCTA comments at 10; WinStar reply at 17.

[591] *See, e.g.*, MFS comments at 8-9; California Commission comments at 8; MCI comments at 12-13; WinStar reply at 17; PageNet comments at 8.

portability;[592] and (c) the reservation for each competing LEC authorized to operate within a numbering plan area (NPA) of at least one NXX code from the original area code.[593]

277. Cox asserts that area code overlays should be prohibited until the competitive concerns they raise are addressed by the implementation of number portability.[594] Similarly, PageNet asserts that number portability may render the concept of an area code meaningless; once location portability is feasible, numbers will be ported from one area code to another.[595] When this happens, it says, public preference for a particular area code will disappear.[596]

278. In the view of some, the *Ameritech Order* does not prohibit all area code overlays and they request clarification that overlays are an appropriate response to area code exhaust.[597] In Bell Atlantic/NYNEX Mobile's view, for example, the Commission should not prohibit overlays when they may be the best solution to area code exhaust.[598] PacTel agrees that overlays are valuable and, in some metropolitan areas, are preferable to geographic splits because: (1) overlays do not require existing customers to change their numbers; (2) overlays maintain existing communities of interest in their existing geographical area code boundaries; (3) overlays do not change the boundaries of existing area codes; and (4) overlays take less time to implement than a split.[599] These are significant considerations for states facing number exhaust at an accelerated pace, it says.[600]

279. According to some commenters, issues pertaining to area code relief plans should be addressed in the first instance by state commissions, with the understanding that the

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[592] *See, e.g.*, MFS comments at 8-9; Cox comments at 5; California Commission comments at 8; MCI comments at 12 - 14 (overlays should be conditioned upon the substantial mitigation of the cost of interim local number portability to competing LECs pending the implementation of permanent local number portability); NCTA comments at 10; WinStar reply at 17.

[593] *See, e.g.*, MFS comments at 8-9; MCI comments at 12-13 (*all* remaining NXXs in the old NPA should be assigned to competitors).

[594] Cox comments at 3-4.

[595] The term "port" means the transfer of a telephone number from one carrier's switch to another carrier's switch, which enables a customer to retain his or her number when transferring from one carrier to another. *See Number Portability Order* at n.32.

[596] PageNet reply at 4.

[597] *See, e.g.*, Bell Atlantic/NYNEX Mobile reply at 4-6; BellSouth comments at 20.

[598] Bell Atlantic/NYNEX Mobile reply at 4-6.

[599] PacTel reply at 31-32.

[600] *Id.*

Commission can intervene if necessary.[601] Similarly, the Texas Commission argues that the *Ameritech Order* can and should be interpreted to allow for "innovative" means of area code relief crafted to balance the interests, benefits, and burdens for all interested parties. Should the Commission determine that the *Ameritech Order* does not permit such an interpretation, the Texas Commission requests that the *Ameritech Order* be overruled.[602] By contrast, Vanguard warns against allowing states too much latitude in interpreting the *Ameritech Order*. It argues that, if the Commission does not set boundaries for state action, the Commission's procompetitive objectives will remain unrealized as state regulators deprive Commission initiatives of their effect.[603]

280. Bell Atlantic/NYNEX Mobile states that, if states act inconsistently with Commission guidance on numbering policies, the Commission should intervene promptly.[604] The District of Columbia Commission urges that "on a showing that a particular state is acting in violation of FCC guidelines, the FCC may revoke its delegation of jurisdiction to that state."[605] PageNet says the Commission should impose a strict time limit on state commission review of relief plans.[606] Sprint advises that any party "retains the right to appeal any detrimental state commission mandate to the FCC, and . . . the FCC will act promptly on such appeals."[607]

c. Discussion.

281. In this *Order*, we are authorizing the states to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines.[608] We are reiterating the guidelines enumerated in the *Ameritech Order* and clarifying the *Ameritech Order* to prohibit all service-specific or technology-specific overlays, and to impose conditions on the adoption of an all-services overlay. Existing Commission guidelines, which were originally enumerated in the *Ameritech Order*, state that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor

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[601] *See, e.g.*, NYNEX reply at 12; GTE reply at 34.

[602] Texas Commission comments at 5. See our discussion below at paras. 294-295 for the Texas Commission's proposed means of area code relief.

[603] Vanguard comments at 3-4.

[604] Bell Atlantic/NYNEX Mobile reply at 2.

[605] District of Columbia Commission comments at 2.

[606] PageNet comments at 7-8.

[607] Sprint comments at 15.

[608] *See* para. 272, *supra*.