or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.[609] The Commission's conclusion in the *Ameritech Order* that Ameritech's proposed wireless-only overlay plan would be unreasonably discriminatory and anticompetitive in violation of Sections 201(b) and 202(a) of the Communications Act of 1934 has also provided guidance to local central office code administrators and state commissions implementing area code relief.[610] We find that the guidelines and the reasoning enumerated in that decision should continue to guide the states and other entities participating in the administration of numbers because these guidelines are consistent with Congress' intent to encourage vigorous competition in the telecommunications marketplace. In addition, we codify in this *Order* the directives of the *NANP Order* that ensure fair and impartial numbering administration.[611]

282. We disagree with the suggestion of some parties that we prohibit or severely restrict the states' right to choose overlay plans. For example, PageNet urges the Commission to impose specific time constraints on states and to require default area code plans if states do not take action within those time constraints. Such restrictions would not be consistent with our dual objectives of encouraging competition through fair numbering administration while at the same time delegating to the states the right to implement area codes.

283. As we note above, states are uniquely situated to determine what type of area code relief is best suited to local circumstances. Certain localities may have circumstances that would support the use of area code overlays. Most significantly, area code overlays do not require any existing customers to change their telephone number, in contrast to geographic splits. Additionally, in some metropolitan areas continuously splitting area codes will result in area codes not covering even single neighborhoods, a situation that can only be avoided by implementing overlays. Finally, area code overlays can be implemented quickly. States may make decisions regarding the relative merits of area code splits and overlays so long as they act consistently with the Commission's guidelines. We emphasize that the burdens created by area code overlays will be greatest during the transition to a competitive marketplace. As competition in telecommunications services takes root, consumers will become more accustomed to ten-digit dialing and to area code overlays and the states will face less resistance in their efforts to implement new area codes than they will in the near term.

284. Nevertheless, we find that it is necessary to clarify the Commission's numbering administration guidelines as they apply to area code relief. Recent action taken by the Texas

---

[609] *Ameritech Order*, 10 FCC Rcd at 4604.

[610] *Id.* at 4608, 4610-12.

[611] *See generally NANP Order*. Although we resolve specific issues relating to area code implementation in this *Order*, many other important numbering administration issues will be addressed in other proceedings. For example, the use of N11 codes, (*e.g.*, 211, 311, 411, 511, 611, 711, 811, 911) will be addressed in *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105.

Commission has demonstrated that state commissions might interpret our existing guidelines in a manner that is inconsistent with those guidelines.[612] Thus, while we conclude that geographic area code splits and boundary realignments are presumptively consistent with the Commission's numbering administration guidelines, we clarify our guidelines with respect to how area code overlays can be lawfully implemented.

285. First, we conclude that any overlay that would segregate only particular types of telecommunications services or particular types of telecommunications technologies in discrete area codes would be unreasonably discriminatory and would unduly inhibit competition. We therefore clarify the *Ameritech Order* by explicitly prohibiting all service-specific or technology-specific area code overlays because every service-specific or technology-specific overlay plan would exclude certain carriers or services from the existing area code and segregate them in a new area code. Among other things, the implementation of a service or technology specific overlay requires that only existing customers of, or customers changing to, that service or technology change their numbers. Exclusion and segregation were specific elements of Ameritech's proposed plan, each of which the Commission held violated the Communications Act of 1934.

286. To ensure that competitors, including small entities, do not suffer competitive disadvantages, we also conclude that, if a state commission chooses to implement an all-services area code overlay, it may do so subject to two conditions. Specifically, we will permit all-services overlay plans only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code; and (2) availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code, to be assigned during the 90-day period preceding the introduction of the overlay.[613] Clarifying the conditions that must exist in order to implement an area code overlay will reduce the likelihood that states will act inconsistently with the Commission's guidelines and the consequent need for the Commission to review area code relief plans.

287. We are requiring mandatory 10-digit dialing for all local calls in areas served by overlays to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. Local dialing disparity would occur absent mandatory 10-digit dialing, because all existing telephone users would remain in the old area code and dial 7-digits to call others with numbers in that area code, while new users with the overlay code would have to

---

[612] As discussed at paras. 304-308 *infra*, we find that the Texas Commission's Order addressing area code relief in Dallas and Houston is inconsistent with the *Ameritech Order*.

[613] One NXX will give each carrier the ability to give at least some of its customers numbers in a familiar area code. Guaranteeing more than one NXX in this situation is difficult because by the time the need for the overlay becomes imminent, few NXX codes remain unassigned in the familiar area code.

dial 10-digits to reach any customers in the old code. When a new overlay code is first assigned, there could be nearly 8 million numbers assigned in the old code, with just a few thousand customers using the new overlay code. If most telephone calls would be to customers in the original area code, but only those in the new code must dial ten-digits, there would exist a dialing disparity, which would increase customer confusion. Customers would find it less attractive to switch carriers because competing exchange service providers, most of which will be new entrants to the market, would have to assign their customers numbers in the new overlay area code, which would require those customers to dial 10-digits much more often than the incumbent's customers, and would require people calling the competing exchange service provider's customer to dial 10-digits when they would only have to dial 7-digits for most of their other calls. Requiring 10-digit dialing for all local calls avoids the potentially anti-competitive effect of all-services area code overlays.

288. Allowing every telecommunications carrier authorized to provide telephone exchange service, exchange access, or paging service in an area code to have at least one NXX in the existing NPA will also reduce the potential anti-competitive effect of an area code overlay. This requirement would reduce the problems competitors face in giving their customers numbers drawn from only the new "undesirable" area codes while the incumbent carriers continue to assign numbers in the "desirable" old area code to their own customers.[614]

289. Incumbent LECs have an advantage over new entrants when a new code is about to be introduced, because they can warehouse NXXs in the old NPA.[615] Incumbents also have an advantage when telephone numbers within NXXs in the existing area code are returned to them as their customers move or change carriers. Thus, to advance competition, we require that, when an area code overlay is implemented, each provider of telephone exchange service, exchange access, and paging service must be assigned at least one NXX in the old NPA.

290. A number of commenters suggested that the Commission permit area code overlays only if permanent number portability has been implemented in the applicable NPA.[616]

---

[614] The new overlay area code may be considered less desirable by customers during the beginning of its life because it is less recognizable. For example, business users that have a telephone number in the overlay area code because they have switched carriers or obtained new telephone lines might be thought to be in a distant location due to the "unrecognized" area code. Thus, incumbent carriers would have a competitive advantage because most of their customers would remain in the old, more recognizable code. This effect would persist until customers become accustomed to the new overlay code.

[615] *See supra* n.573.

[616] Teleport Communications Group, Inc. (TCG) has raised this issue in a petition for declaratory ruling filed with the Commission on July 12, 1996. TCG's petition for declaratory ruling asks the Commission to: (1) require that overlay area code plans may not be implemented unless permanent number portability and mandatory 10-digit dialing exist, and that geographic area code splits must be used absent these conditions; (2) require the implementation of TCG's "Number Crunch" proposal, which would permit NXX assignments across multiple rate centers in blocks of one thousand numbers; and (3) require as part of a BOC's application to provide in-region interLATA services pursuant to section 271 of the 1996 Act a demonstration that numbering resources are

We decline to do so. We recognize that the implementation of permanent service provider number portability will reduce the anticompetitive impact of overlays by allowing end users to keep their telephone numbers when they change carriers. Requiring the existence of permanent service provider number portability in an area before an overlay area code may be implemented, however, would effectively deny state commissions the option of implementing any all-services overlays while many area codes are facing exhaust. While permanent number portability is being implemented, end users will be allowed to keep their telephone numbers when they change carriers, under the Commission's mandate of interim number portability.[617]

291. If a state acts inconsistently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, parties wishing to dispute a proposed area code plan may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission. Pursuant to section 5(c)(1) of the Communications Act of 1934, as amended,[618] authority is delegated to the Common Carrier Bureau to act on such petitions. We expect that with the clarifications we provide in this *Order*, there will be a reduced need for such petitions. Unless it becomes necessary to do so, we decline to follow the recommendations of parties urging that we enumerate more specific procedures to be invoked if states fail to follow our numbering guidelines. We expect that the need for our review of any state commissions' actions with respect to area code relief should diminish as states gain more experience with the area code relief process generally and with area code overlays in particular, particularly as states become more familiar with the Commission's guidelines in this area.

292. Finally, we address petitions for clarification or reconsideration that were filed in the *Ameritech* and *NANP* proceedings. On February 22, 1995, Comcast Corporation filed a Petition for Clarification or Reconsideration of the *Ameritech Order* regarding the Commission's jurisdiction over numbering administration.[619] In its petition, Comcast seeks clarification of the *Ameritech Order* to the extent that it implies the Commission does not have broad statutory authority over the assignment of numbering resources, and seeks reconsideration of any implication in the *Ameritech Order* that the Commission's authority is

---

available to competing local carriers. We will address TCG's petition in a separate proceeding. *See Petition for Declaratory Ruling to Impose Competitively Neutral Guidelines for Numbering Plan Administration*, filed by Teleport Communications Group, Inc. (July 12, 1996).

[617] *See Number Portability Order.*

[618] 47 U.S.C. § 155(c)(1).

[619] *See Petition for Clarification or Reconsideration*, filed by Comcast Corporation (February 22, 1995). PageNet and Nextel Communications, Inc. ("Nextel") filed Comments in support of Comcast's petition.

limited by or subordinate to state interests.[620] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, any uncertainty about the Commission's and the states' jurisdiction over numbering administration that may have existed prior to the 1996 Act has now been eliminated. In light of the enactment of section 251(e)(1), Comcast's request that the Commission reconsider its conclusion in the *Ameritech Order* that the Commission does not retain plenary jurisdiction over numbering issues in the United States is moot. Accordingly, we dismiss Comcast's petition.

293. In the *NANP Order* the Commission discussed the states' authority over area code changes and central office code administration. In response the National Association of Regulatory Utility Commissioners filed a Request for Clarification and the Pennsylvania Public Utility Commission filed a Petition for Limited Clarification and/or Reconsideration.[621] NARUC and the Pennsylvania Commission have asked the Commission to clarify that, while the Commission intended in the *NANP Order* to transfer the incumbent LEC functions associated with CO code assignment and area code exhaust to the new NANP Administrator, the Commission did not intend to alter the role of the States in overseeing those functions.[622] Because section 251(e)(1) gives the Commission exclusive jurisdiction over numbering matters in the United States, and because we clarify the role of the states in numbering administration in this *Order*,[623] we dismiss the petitions of NARUC and the Pennsylvania Commission as moot.

---

[620] Comcast Petition at 1. According to Comcast, footnote 18 of the *Ameritech Order* explicitly overruled *dicta* in a prior Commission decision that stated that the Commission had plenary jurisdiction over CO code allocation. *Id.* at 3.

[621] *See Request for Clarification*, filed by the National Association of Regulatory Utility Commissioners (NARUC Petition) (August 28,1995); *Petition for Limited Clarification and/or Reconsideration*, filed by the Pennsylvania Commission (Pennsylvania Commission Petition) (August 28, 1995). Nextel filed Comments in response to the petitions.

[622] *See* NARUC Petition at 5; Pennsylvania Commission Petition at 3. The Pennsylvania Commission also seeks clarification or reconsideration of the Commission's *NANP Order* to the extent that it suggests the Commission would interfere with or preempt a state's ability to address local number portability. *Id.* at 3-4. We do not address the states' role with respect to number portability here because this issue has already been addressed by the Commission. *See Number Portability Order* at para. 5.

[623] *See supra* paras. 281-291, and *infra* paras. 309-322.

3. Texas Public Utility Commission's Area Code Relief Order for Dallas and Houston

a. Background

294. On May 9, 1996, the Texas Commission filed two substantively identical pleadings: (1) a petition for expedited declaratory ruling pursuant to 47 CFR § 1.2; and (2) an application for expedited review pursuant to 47 CFR § 1.115.[624] The Texas Commission states that in July 1995, MCI petitioned it for an investigation into numbering practices of Southwestern Bell Telephone Company (SWB)[625] related to exhaustion of telephone numbers in the 214 area code serving the Dallas metropolitan area.[626] SWB proposed to relieve numbering exhaustion by implementing all-services overlays, which would require ten-digit local dialing within Houston and Dallas metropolitan areas.[627] In October 1995, an administrative law judge heard evidence regarding numbering relief plans and issued a written proposal for decision in November 1995. In December 1995, the Texas Commission determined that public comment on the matter was necessary; in January 1996 it conducted public forums in both Dallas and Houston.[628] In March 1996, the Texas Commission issued an Order setting out an area code relief plan.[629] On May 17, 1996, we released a public notice establishing a pleading cycle for comments on the Texas Commission's pleadings.[630]

---

[624] The Texas Commission explains that it is filing both pleadings simultaneously, hoping that the Commission will find one or the other an appropriate vehicle by which to determine expeditiously whether a Texas Commission order (*PUCT Order*) pertaining to a proposed area code relief plan is acceptable. For ease of reference, all citations will be to the Texas Commission petition (PUCT petition) unless citations to both pleadings are needed for clarification. In this order, we are ruling on the PUCT petition. Therefore, action on the Texas Commission's application, a procedurally distinct but substantively identical pleading, is unnecessary.

[625] We note that, although SWB was the LEC proposing the originally disputed area code relief plan, SBC filed comments on the Texas Commission's proposed plan. SWB is a subsidiary of SBC.

[626] PUCT petition at 2. The Texas Office of Public Utility Council filed a similar petition in August 1995 regarding SWB's numbering practices related to the exhaustion of telephone numbers in the 713 area code in Houston. The Texas Commission consolidated the petitions into Texas Public Utilities Commission Docket No. 14447 because similar issues were presented.

[627] *Id.*

[628] *Id.*

[629] *Id.*

[630] *See Pleading Cycle Established for Comments on Public Utility Commission of Texas' Petition for Expedited Declaratory Ruling and Application for Expedited Review of Area Code Plan for Dallas and Houston*, Public Notice, DA 96-794 (rel. May 17, 1996). Comments were due June 6, 1996, and reply comments were due June 21, 1996. Nineteen parties filed comments, and twelve parties filed replies, in response to the Texas Commission's petitions.

b. Petition and Comments

295. The Texas Commission ordered a plan that combines an immediate landline geographic split with a prospective wireless overlay in the Dallas and Houston metropolitan areas.[631] In its pleadings to the FCC, the Texas Commission alleges that it specifically considered the *Ameritech Order* in crafting its plan.[632] The Texas Commission's Order required SWB to request new area codes from the NANP administrator (Bellcore) for the prospective wireless overlays. Bellcore refused to supply the new area codes unless ordered to do so by the FCC.[633] According to the Texas Commission, Bellcore incorrectly relied on the *Ameritech Order* to support a position that wireless overlays are, *per se*, invalid and wasteful.[634]

296. On March 21, 1996, Bellcore sent a letter to the Network Services Division of the Common Carrier Bureau, FCC, explaining its view that the Texas Commission plan violated the *Ameritech Order*.[635] In that letter, Bellcore asserts that the *Ameritech Order* is controlling precedent because § 251(e)(1) confers exclusive jurisdiction over numbering administration on the Commission. Bellcore further opposes use of NPAs for service-specific overlays, because such assignments, it says, are inefficient, wasteful, and potentially discriminatory.[636] The Network Services Division responded to the letter on April 11, 1996, agreeing that the *Ameritech Order* forbids service-specific overlays such as those ordered by the Texas Commission and supporting Bellcore's decision, as acting NANP Administrator, not to make the requested NPA assignments for use in Dallas and Houston as a wireless-specific overlay.[637]

---

[631] PUCT petition at 2-3.

[632] *Id.* at 3. In the *Ameritech Order*, the Commission held that three elements of a proposed wireless-only overlay each violated the prohibition in section 202(a) of the Communications Act of 1934 against unjust or unreasonable discriminiation, and also represented unjust and unreasonable practices under section 201(b). Those objectionable elements were: (1) Ameritech's proposal to continue assigning NPA 708 codes (the old codes) to wireline carriers, while excluding paging and cellular carriers from such assignments (the "exclusion" proposal); (2) Ameritech's proposal to require only paging and cellular carriers to take back from their subscribers and return to Ameritech all 708 telephone numbers previously assigned to them, while wireline carriers would not be required to do so (the "take back" proposal); and (3) Ameritech's proposal to assign all numbers from the new NPA (630) to paging and cellular carriers exclusively (the "segregation" proposal). *See Ameritech Order*, 10 FCC Rcd at 4608, 4611.

[633] PUCT petition at 3.

[634] *Id.*

[635] PUCT petition, Attachment B.

[636] *Id.*

[637] PUCT petition at 3-4.

297. The Texas Commission acknowledges that the FCC has exclusive jurisdiction over numbering pursuant to § 251(e)(1) of the 1996 Act.[638] The Texas Commission states that the *NPRM* might provide additional clarification on these issues, but that, currently, it is uncertain whether the FCC intended to preempt the Texas Order, and asks that the Commission consider the specific facts of this matter.[639] It contends that it carefully deliberated the issues and made a balanced and equitable decision that is consistent with the *Ameritech Order*. Therefore, it insists, any preemption is unwarranted.[640]

298. According to the Texas Commission, the *Ameritech Order* does not, on its face, prohibit all service-specific overlays.[641] Instead, it says, the *Ameritech Order* requires a fact-specific examination of each situation to determine whether the proposed numbering plan violates the statutory prohibition of unreasonable and unjust discrimination.[642] Further, in the Texas Commission's view, its Order "strikes the optimal balance" and is "evenhanded" in its effect on carriers and customers.[643] The Texas Commission alleges that it weighed different proposals offered by several parties, and that, although a geographic split was found superior

---

[638] *Id.* at 5.

[639] The Texas Commission argues that the April 11, 1996, letter did not rule directly on the validity of its Order. Moreover, noting that, in the *NPRM*, the Commission references the April 11 Common Carrier Bureau letter, Texas says that the *NPRM* states that the Commission (rather than the Network Services Division) agreed with Bellcore's decision not to make the area code assignments requested by SWB. *NPRM* at para. 257, n.358. Therefore, in Texas' view, the Common Carrier Bureau letter is an action taken pursuant to delegated authority that affirmatively adopts Bellcore's decision and preempts its order. The Texas Commission argues that this action should be reviewed by the Commission. PUCT petition at 4.

[640] PUCT petition at 5. In its petition for declaratory ruling, the Texas Commission requests that we declare: (1) that the refusal of the Chief, Network Services Division, Common Carrier Bureau, to direct the NANP administrator to assign area codes to SWB for use as wireless overlays in Dallas and Houston was erroneous; (2) that the NANP administrator is directed to assign such codes to SWB; and (3) that the Texas Commission's March 13, 1996 Order directing a combination wireline area code split and wireless overlay in Dallas and Houston is lawful. *Id.* at 10. In its application for expedited review, it requests that we: (1) review and reverse the Network Services Division's action in its letter to the NANP administrator; (2) order the NANP administrator to assign the requested area codes for use as wireless overlays in Dallas and Houston; and (3) uphold the Texas Commission's Order pursuant to analysis of Commission precedent. PUCT application at 10.

[641] PUCT petition at 5-6.

[642] *Id.* at 6.

[643] *Id.* at 6-9. In the *Ameritech Order*, we stated that any area code relief plan that becomes effective should strike an optimal balance among three objectives Ameritech had identified: (1) an optimal dialing plan for customers; (2) as minimal a burden as feasible; and (3) an uninterrupted supply of codes and numbers. We further found that the optimal balance must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction. *Ameritech Order*, 10 FCC Rcd at 4611.

to an all-services overlay, neither plan alone was found to be the best solution.[644] For this reason, it chose a two-step, integrated relief plan involving a landline geographic split and a prospective wireless overlay.[645] The Texas Commission argues that its plan permits intra-NPA seven-digit dialing, unlike an all-services overlay, which would have required ten-digit intra-NPA dialing. Also, it says that its plan will reduce customer confusion and provide greater competitive fairness to service providers.[646]

299. Many parties contend that the Texas Commission's plan violates Commission policy as outlined in the *Ameritech Order* and request its clarification.[647] Still others argue that the plan violates § 201(b) or § 202(a),[648] as well as § 251(e)(1), which confers exclusive jurisdiction over numbering administration on the Commission that we have not assigned to any other entity.[649] Still others argue that the plan violates § 253, which provides that no state requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service.[650]

300. In Sprint Spectrum's view, for example, the proposed wireless overlays will undermine the ability of telecommunications carriers to provide service because they allow existing customers of wireless incumbents to retain 7-digit dialing for most calls if they do not switch to a new entrant. Similarly, it says, current customers of wireline incumbents will retain 7-digit dialing to businesses and residences in either the suburban or metropolitan area, unless they switch to a new wireless provider.[651] Sprint Spectrum maintains that, by creating a distinction between services offered by incumbent providers and those seeking entry into the market using wireless technology, the Texas Commission has created a disincentive for new

---

[644] PUCT petition at 7.

[645] *Id.*

[646] *Id.*

[647] *See, e.g.*, AT&T comments at 5; Century Cellunet comments at 3-4; Cox comments at 3-4; GTE comments at 8-14; HCTC comments at 3-10; MCI comments at 3-4; Nextel comments at 3-6; PageNet comments at 6-10; PCIA comments at 4-6; ProNet comments at 7-14; Sprint comments at 4-5; Sprint Spectrum comments at 5-11; Teleport comments at 4-12; US West comments at 9-10; Vanguard comments at 2-3; SBC comments at 5-12.

[648] *See, e.g.*, AT&T comments at 5; HCTC comments at 3-10; PageNet comments at 9; ProNet comments at 1; Sprint comments at 4-5; Sprint Spectrum comments at 6-11.

[649] *See, e.g.*, Century Cellunet comments at 4; GTE comments at 7; PCIA comments at 6-7; U S WEST comments at 4-5. *See also* Teleport comments at 13.

[650] Sprint Spectrum comments at 4.

[651] Sprint Spectrum comments at 4-5 and 11-12.

wireless providers to seek entry into these telecommunications markets.[652] Similarly, PageNet argues that this interference with customer choice, and the inhibition of wireline/wireless competition, are contrary to the objectives stated in the *Ameritech Order*, and urges the Commission to expressly declare the Texas Commission's plan prohibited.[653]

301. Twelve reply comments were received. The Texas Commission contends that it had jurisdiction to issue its order containing its proposed area code relief plan, and the 1996 Act does not deprive the Texas Commission of that jurisdiction.[654] The Texas Commission argues that the exclusion, segregation, and take-back facets of the wireless-only overlay proposal should not be considered separate and independent grounds for finding an NPA relief plan unlawful.[655] The Texas Commission maintains that we should not order an alternative form of relief such as an all-services overlay,[656] and that we should not find unlawful the Texas Commission's proposed consideration of take-back of wireless numbers during the geographic split if the wireless overlays are deemed unlawful.[657]

302. The Texas Public Utility Counsel filed reply comments in support of the Texas Commission's proposed area code relief plan. The Texas Public Utility Counsel maintains that the proposed wireless-only overlay is neither discriminatory nor unreasonable under sections 202(a) and 201(b) of the Communications Act of 1934.[658] Further, the Texas Public Utility Counsel claims that the wireless carriers' interpretation of the *Ameritech Order* is unreasonably strict and would preclude all forms of area code relief.[659]

---

[652] *Id.* at 12.

[653] PageNet comments at 6-10. *See also* SBC comments at 12-16.

[654] Texas Commission reply at 2-7.

[655] *Id.* at 7-8.

[656] *Id.* at 9-10.

[657] *Id.* at 10-11.

[658] Texas Public Utility Counsel reply at 9-11.

[659] *Id.* at 12-15.

303. In reply, several parties continue to maintain that the Texas Commission's proposed prospective wireless-only overlay is unlawful.[660] Most of these commenters contend that an all-services overlay can be an appropriate method of area code relief.[661]

c. Discussion

304. We conclude that the Texas Commission's wireless-only overlay violates our *Ameritech Order* on its face. It is also inconsistent with our clarification of the *Ameritech Order* contained in this *Order*, wherein we specifically prohibit wireless-only overlays.

305. The Texas Commission itself admits to the presence of exclusion and segregation in its plan.[662] In the *Ameritech Order*, we clearly indicated that the presence of any one of the following elements including: (1) exclusion; (2) segregation; or (3) take-back, renders a service-specific overlay plan unacceptable and violative of the Communications Act.[663] Texas' plan features all these elements. Like the plan proposed in the *Ameritech Order*, the Texas Commission's plan would unreasonably discriminate against wireless carriers. It is thus unreasonably discriminatory under section 202(a) and would constitute an unreasonable practice in violation of section 201(b) of the Communications Act of 1934. Moreover, in this *Order*, we have clarified the *Ameritech Order* by prohibiting all service-specific and technology-specific area code overlays. Service-specific and technology-specific overlays do not further the federal policy objectives of the NANP. They hinder entry into the telecommunications marketplace by failing to make numbering resources available on an efficient, timely basis to telecommunications services providers. As we describe in detail above, service-specific overlays would provide particular industry segments and groups of

---

[660] *See, e.g.*, CTIA reply at 2-3; Vanguard reply at 1-4; MCI reply at 3-5; ProNet reply at 1; Sprint reply at 1-2. SBC states that the Texas Commission overlays are unlawful, and argues that we should expressly state that service-specific overlays are *per se* unlawful. SBC reply at 1.

[661] ProNet reply at 2-4; BellSouth reply at 2-6; U S WEST reply at 1-6; SBC reply at 2-4.

[662] The record also indicates that the plan also calls for some take-back of existing wireless numbers. The Texas Commission states that two groups of wireless customers will experience take back due to the geographic split. Those with Type 1 cellular and Type 1-like paging connections will experience take-back for "technical and practical implementation-related reasons. *PUCT Order* at 12 n.9. In addition, the Texas Commission envisions that after the date on which NXX codes are activated for the prospective wireless overlay, wireless carriers holding NXX codes from the prior area codes will not be allowed to assign any additional numbers from those prior area codes, regardless of the fill factor of the NXX codes. Remaining unused numbers in those NXX codes will be returned to the NPA administrator. *PUCT Order* at 6.

[663] *See Ameritech Order,* 10 FCC Rcd at 4608. "[W]e find as a matter of law that *each* of these three Ameritech proposals violates the prohibition in the Act against unjust or unreasonable discrimination." (Emphasis added). *See also id.* at 4611. In discussing whether Ameritech's plan constituted an unjust or unreasonable practice and therefore violated § 201(b) of the Act, we stated that three facets of Ameritech's plan -- its exclusion, segregation, and take-back proposals -- would *each* impose significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers.

consumers an unfair advantage. We have also stated that administration of the NANP should be technology neutral; service-specific overlays that deny particular carriers access to numbering resources because of the technology they use to provide their services are not technology neutral.

306. We find the Texas Commission's arguments in support of its proposed wireless-only overlay unpersuasive. It argues, for example, that the wireless overlay will extend the life span for the area code relief plan. What extends the life span of a relief plan, however, is not so much the wireless overlay as the introduction of a new NPA with its 792 additional NXXs. This being the case, the Texas Commission provides no compelling reason for isolating a particular technology in the new NPA. The Texas Commission also states that there will be less confusion regarding NPA assignments, but a plan calling for overlay for one service and a split for another is likely to lead to increased customer confusion regarding NPA assignments, because parties making calls would have to be aware of what type of service the party being called has in order to know whether to dial the ten-digit number or just the last seven digits. The Texas Commission also argues that its plan allows for continued seven-digit dialing for intra-NPA calls, but we note that the same would be true if a geographic split for all services and technologies was imposed. Although an all-services overlay would have required ten-digit intra-NPA dialing, there would not be discrimination based on technology.

307. Several parties raise concerns about dialing disparity resulting from the implementation of the Texas Commission's plan. It is these concerns about dialing disparity in the context of an overlay that have led us to require mandatory ten-digit dialing as part of any all services overlay plan.

308. Some parties also advance concerns about the Texas Commission's statements that, if the proposed wireless-only overlay were found to be unlawful, it would consider a mandatory pro-rata take-back of wireless numbers under the geographic split plan in order to balance the remaining burdens of inconvenience and confusion caused by the number changes necessitated by a split. We do not take action here to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan. In a geographic split, roughly half of the customers in the existing NPA, including wireless customers, will have to change their telephone numbers. We recognize that wireless customers may need to have their equipment reprogrammed to change their telephone number, and that this will inconvenience wireless customers to some extent. This illustrates the fact that geographic splits also have burdensome aspects. Our goal is to have technology-blind area code relief that does not burden or favor a particular technology. Requiring approximately half of the wireless customers and wireline customers to change telephone numbers in a geographic split is an equitable distribution of burdens. This is the kind of implementation detail that is best left to the states.

4. Delegation of Additional Numbering Administration Functions

a. Background

309. In the *NANP Order*, we transferred CO code administration to the new NANP administrator. We stated that a "requirement that CO code administration be centralized in the NANP administrator simply transfers the functions of developing and proposing NPA relief plans from the various LEC administrators to the new NANP Administrator" and that "[s]tate regulators will continue to hold hearings and adopt the final NPA relief plans as they see fit."[664]

310. In the *NPRM*, we tentatively concluded that, pursuant to Section 251(e)(1), the Commission should authorize states to address matters related to implementation of new area codes, and we are doing so in this *Order*. In the *NPRM*, we also sought comment on whether the Commission should authorize states or other entities to address any additional number administration functions. We address this issue here.

b. Comments

311. Some commenters raise issues about the proper role of the states in number administration both before and after transfer of number administration functions to the NANP. BellSouth, for example, argues that we should authorize states to address additional number administration functions until their transfer to the NANP. Specifically, BellSouth recommends that states should take active oversight in CO code implementation activities, including the power to allow for cost recovery.[665]

312. SBC expresses concern regarding the expeditious transfer and centralization of CO code administration into the new NANP. In SBC's view, such transfer is appropriate, but before it can take place, all relevant issues must first be fully addressed and resolved. SBC states that code administrators need local knowledge of authorized carriers, service areas, and toll and local calling areas for the transfer to be effective. SBC asserts that, because CO code administration has significant impacts on local areas in terms of relief plans and dialing plans, state regulatory commissions should be included in any decision.[666] In reply, MFS, stating that the Commission should not "be swayed" by SBC's singular concerns about the complexity of CO code assignments and the need for state involvement, argues against any potential delay in the transfer of numbering responsibilities.[667] Similarly, WinStar, stating that

---

[664] *NANP Order*, 11 FCC Rcd at 2622.

[665] BellSouth comments at 20.

[666] SBC comments at 11-13.

[667] MFS reply at 4.

such delay would be contrary to the letter and spirit of the 1996 Act, argues against any delay in transferring numbering administration from the LECs to the NANP administrator.[668]

313. Some parties argue that, when the new NANP administrator is established, the Commission should allow state commissions to handle the current functions of the LEC, including development of area code relief plans and assignment of CO codes.[669] According to the Florida Commission, if the state commissions do not decide to handle these functions, the NANP administrator should be responsible for these processes.[670] Cox, however, does not support delegation of CO code assignment responsibility to the states and contends that if the Commission does authorize the states to perform this function, it should adopt specific policies for CO code assignment requiring that such assignments be made on a non-discriminatory basis.[671] The Pennsylvania Commission states that, after the new NANP administrator assumes LEC administrative responsibilities, the Commission should allow states to continue their regulatory oversight role. Specifically, the Pennsylvania Commission asserts that the Commission should delegate to state commissions regulatory oversight of CO code assignment, including local number portability and local dialing parity measures.[672]

314. In the Indiana Commission Staff's view, we should authorize state commissions to make decisions regarding the implementation or changing of dialing patterns consistent with non-discriminatory and competitive guidelines, and changes in dialing patterns should be incorporated into the area code relief planning process. The Indiana Commission Staff asserts that states are in a better position to determine what impact changes in dialing will have on the local area.[673] Conversely, Vanguard argues the Commission should satisfy its Congressional mandate by establishing national numbering and dialing parity guidelines.[674]

---

[668] WinStar reply at 15-16.

[669] See, e.g., Florida Commission comments at 6-7; Indiana Commission Staff comments at 6.

[670] Florida Commission comments at 6-7.

[671] Cox states that the policies should state that carriers and states currently administering CO codes are not permitted to deny codes to new entrants, and are not permitted to levy "code opening" charges to avoid imposing barriers on the entry and expansion of new competitors. Cox comments 8-9. In its reply, Cox notes that incumbent LECs have argued that there is no need for Commission intervention in the assignment of CO codes. Cox argues that, in practice, despite the existence of "neutral" CO code assignment guidelines, significant potential for discriminating against new entrants remains. Until an impartial entity is responsible for assigning CO codes, Cox contends, there is a need for specific Commission rules preventing discrimination. Cox would prefer that CO codes be administered by a neutral administrator, and believes that the possibility that a neutral administrator will lack some local knowledge does not form an insurmountable barrier to a swift transition from the current regime. Cox reply at 10-11.

[672] Pennsylvania Commission comments at 7.

[673] Indiana Commission Staff comments at 7.

[674] Vanguard reply at 2-3.

c. Discussion

315. We conclude that the states may continue to implement or change local dialing patterns subject to any future decision by the Commission regarding whether to require uniform nationwide dialing patterns.[675] The Commission will retain broad policy-making jurisdiction over numbering. We further conclude that states that wish to be responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so now and after transfer of CO code administration from the LECs to the new NANP administrator. Again, because of the need to avoid disruption in numbering administration, we find good cause to make this authorization effective immediately pursuant to 5 U.S.C. § 553(d)(3). We decline, however, to delegate to the states on a permanent basis oversight of CO code administration. Finally, we decline to authorize states to handle CO code assignment functions.

316. Currently, state commissions are responsible for determining the number of digits that must be dialed for intra-NPA toll calls and inter-NPA local calls.[676] For example, while most states require 1 plus 10-digit dialing for all intra-NPA toll calls, California and New Jersey permit such toll calls to be completed with 7-digit dialing. Illinois requires 7-digit dialing for all intra-NPA calls, whether local or toll. Similarly, a number of states, including the District of Columbia, Maryland, and parts of Virginia require 10-digit dialing for all inter-NPA local calls and permit 10-digit or 1 plus 10-digit dialing for all intra-NPA local calls.

317. States are in the best position at this time to determine dialing patterns because of their familiarity with local circumstances and customs regarding telephone usage. For example, one state commission might want to allow its residents to dial 7-digits for all intra-NPA calls, whether toll or local, whereas another state commission might wish to require 10-digit dialing for intra-NPA calls to ensure that its residents recognize that they are making a toll call rather than a local call. Therefore, states may continue to implement appropriate local dialing patterns, subject to the Commission's numbering administration guidelines, including the Commission's requirement in this *Order* of 10-digit dialing for all calls within and between NPAs in any area where an area code overlay has been implemented.

318. Two state commissions specifically ask the Commission to authorize states to perform functions associated with initiating and planning area code relief, as distinct from

---

[675] Uniform nationwide dialing, which would require uniform dialing patterns throughout the United States, was raised in the *NANP NPRM*, Docket No. 92-237, 9 FCC Rcd 2068, 2075 (1994), but was not addressed in the *NANP Order* and remains unaddressed by the Commission.

[676] In every state, intra-NPA local calls can be dialed using 7-digits, while all inter-NPA calls require 1 plus 10-digit dialing. For a list of standard and permissible dialing patterns in each state, see *North American Numbering Plan, Numbering Plan Area Codes 1996 Update*, Bellcore (January 1996) at 11-16.

adopting final area code relief plans.[677] We agree that states should be authorized to initiate and plan area code relief. Currently, when an incumbent LEC in its role as CO code administrator predicts that NPA exhaust is imminent, it initiates the NPA relief planning process by holding industry meetings, developing an appropriate area code relief plan or plans, and proposing that plan or several alternative plans for the state commission's consideration and adoption.[678] Thus, state commissions do not initiate and develop area code relief plans,[679] but states adopt, codify or reject the final plan.[680]

319. We conclude that states wishing to become responsible for initiating area code relief planning, a function currently performed by the LECs as CO code administrators, may do so, even after transfer of CO code administration from the LECs to the new NANP administrator. We find that enabling states to initiate and develop area code relief plans is generally consistent with our previous delegation of new area code implementation matters to the state commissions based on their unique familiarity with local circumstances. We make this delegation, however, only to those states wishing to perform area code relief initiation and development. We recognize that many state commissions may not wish to perform these functions because, *inter alia*, the initiation and development of area code relief can require specialized expertise and staff resources that some state commissions may not have. Those states that seek to perform any or all of these functions must notify the new NANP administrator within 120 days of the selection of the NANP administrator. Those states wishing to perform functions relating to initiation and development of area code relief prior to the transfer of such functions to the new NANP administrator must notify promptly the entity

---

[677] Indiana Commission Staff comments at 6-7; Florida Commission comments at 5.

[678] *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94-0315 (Ill. Comm. Comm'n March 20, 1995).

[679] The process of area code relief initiation and development varies by state. In most cases the incumbent LEC (as CO code administrator) declares that the supply of CO codes in a particular area code is about to exhaust, and invites all telecommunications entities with interests in the area code at issue to meet and attempt to reach consensus on a plan for area code relief. Issues before the industry include whether to propose an area code overlay or a geographic split. If the industry can agree on the proposal, it is submitted to the state commission for adoption. If the industry cannot agree, the incumbent LEC may submit a number of alternatives to the state commission from which to choose.

[680] State commissions have, however, recently begun to reject or significantly alter LEC proposals as area code relief has become more controversial. *See, e.g., Illinois Bell Telephone Company Petition for Approval of NPA Relief Plan for 708 Area Code by Establishing a 630 Area Code*, Order, No. 94-0315 (Ill. Comm. Comm'n March 20, 1995); *AirTouch V. Pacific Bell*, Case 94-09-058, *MCI V. Pacific Bell*, Case 95-01-001, Decision No. 95-08-052 (Cal. Pub. Util. Comm'n Aug. 11, 1995); *Petition of MCI Telecommunications Corp. for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 214 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co., Petition of the Office of the Public Utility Counsel for an Investigation of the Practices of Southwestern Bell Telephone Co. Regarding the Exhaustion of Telephone Numbers in the 713 Numbering Plan Area and Request for a Cease and Desist Order Against Southwestern Bell Telephone Co.*, Order on Rehearing, Docket No. 14447 (Tex. Pub. Util. Comm'n. Apr. 29, 1996).

currently performing CO code administration. States should inform the entities of the specific functions upon which the state wishes to take action. Area code relief initiation and development functions will be transferred to and performed by the new NANP administrator for those states that do not seek to perform such functions. We emphasize that, pursuant to our decision to authorize the states to address matters related to the implementation of area code relief, all state commissions will continue to be responsible for making the final decision on how new area codes will be implemented, subject to this Commission's guidelines.

320. While we authorize states to resolve specific matters related to initiation and development of area code relief plans, we do not delegate the task of overall number allocation, whether for NPA codes or CO codes. To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. A nationwide, uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.[681]

321. With specific regard to CO code allocation, two BOCs and one state commission have asked us to delegate oversight of this function to the states on a permanent basis. We decline. In addition to the problems noted in the preceding paragraph, we are concerned that such an arrangement could complicate and increase the NANP administrator's workload, and could also lead to inconsistent application of CO code assignment guidelines. The oversight and dispute resolution process established in the *NANP Order*, whereby for the U.S. portions of NANP administration the NANC will have initial oversight and dispute resolution duties, with the Commission as the final arbiter, provides an adequate process for overseeing CO code administration.[682] This process also guarantees state participation in the oversight process through their representation on the NANC.

322. Finally, we decline to authorize states to perform CO code assignment functions as suggested by the Florida Commission for two reasons set forth in the *NANP Order*.[683] First, centralizing CO code assignment in one neutral entity will increase the efficiency of CO code assignment because it will preclude varying interpretations of CO code assignment guidelines. Consistent application of assignment guidelines will also diminish the administrative burden, which can be a potential barrier to entry, facing those carriers seeking codes in various states that would otherwise have to associate with a number of separate code assignment bodies rather than one. Second, a centralized CO code administration mechanism would allow the Commission and regulators from other NANP member countries to keep abreast of CO code assignments and predict potential problem areas, such as exhaust, sooner than is possible under the current system.

---

[681] *Ameritech Order*, 10 FCC Rcd at 4602.

[682] *See NANP Order*, 11 FCC Rcd at 2605-2610.

[683] *Id.* at 2620-2623.

5. Delegation of Existing Numbering Administration Functions Prior to Transfer

a. Background

323. Prior to the enactment of the 1996 Act, Bellcore, as the NANP Administrator, the incumbent LECs, as central office code administrators, and the states performed the majority of functions related to the administration of numbers.[684] In the *NPRM*, the Commission tentatively concluded that it should authorize Bellcore, the incumbent LECs and the states to continue performing each of their functions related to the administration of numbers as they existed prior to enactment of the 1996 Act until such functions are transferred to the new NANP administrator pursuant to the *NANP Order*.[685] We address this issue here.

b. Comments

324. Several commenters agree with our tentative conclusion to authorize Bellcore, the LECs, and states to continue performing the numbering administration functions they currently perform until such functions are transferred to the new NANP administrator.[686] Generally, these commenters contend that this is the most efficient and least disruptive solution, and that it should be implemented in the interest of numbering administration continuity. Using this approach, NYNEX says, the Commission can intervene and exercise its authority as specific future matters may warrant.[687] AT&T states that current functions should continue until transferred, provided that those functions are not expanded and that the Commission ensures prompt compliance with the *NANP Order*.[688] MFS supports interim delegation of current functions, but asserts that states should have the authority to implement

---

[684] For a discussion of NANP administration functions, *see NANP Order*, 11 FCC Rcd at 2595.

[685] *NPRM* at para. 258.

[686] *See, e.g.*, MFS comments at 9; ACSI comments at 13; Ameritech comments at 24; AT&T comments at 12; Bell Atlantic comments at 9; BellSouth comments at 20; District of Columbia Commission comments at 3; Florida Commission comments at 6; GTE comments at 30; NYNEX comments at 18-19; Pennsylvania Commission comments 6-7; PacTel comments at 25; Texas Commission comments at 6; SBC comments at 9.

[687] NYNEX comments at 18-19. NYNEX asserts that we should reject arguments in favor of implementation of an interim arrangement so that incumbent LECs no longer have responsibility for NXX code administration. Incumbent LECs currently assign the NXXs according to industry standards, and under Commission oversight, NYNEX notes. Therefore, there is no need for a short-lived transfer of the responsibilities to another party.

[688] AT&T comments at 12.

interim changes in number administration as long as their actions are consistent with our numbering policy objectives.[689]

325. The California Commission states that it is considering serving as CO code administrator until the NANC has developed its policy on numbering administration. It urges the Commission to allow states with unique number administration problems to resolve these issues in the interim.[690] PacTel states that it has proposed a partial transfer of CO code administration to the California Commission or a third party. In the alternative, it says, the California Commission could serve as an interim CO code administrator until the NANC completes its work, or until the California Commission selects a permanent administrator. In PacTel's view, these options are consistent with our proposal to permit the LECs, Bellcore, and the states to continue performing each of their respective functions related to number administration until those functions are transferred to the new entity.[691] PacTel asserts that California's plan to share code assignment functions between PacTel and the California Commission until the transfer to the new NANP administrator should be identified as a "safe harbor" under the Act.[692]

326. Other commenters oppose the Commission's proposal to authorize Bellcore, the incumbent LECs, and the states to continue performing those numbering administration functions they performed prior to enactment of Section 251(e)(1) on an interim basis until such functions are transferred to the new NANP administrator.[693] They express concern about the appearance of incumbent LEC dominance and discrimination in the assignment and administration of scarce numbering resources. The Indiana Commission Staff recommends that area code planning and implementation be removed from the responsibility of the LECs in favor of state commissions. In its view, delegating the planning and implementation process to state commissions will foster a "more competitive spirit" among the industry. The Indiana Commission Staff envisions that state commissions could obtain periodic reports from the present incumbent LEC administrator as well as Bellcore on projected exhaust dates for area codes.[694] Sprint states that, as long as Bellcore and the LECs serve as NANP and CO code administrators, they should be required to apply identical standards and procedures for

---

[689] By way of example, MFS notes that California is considering sharing CO code assignment with LECs until that function is transferred to the NANP administrator. MFS comments at 9.

[690] California Commission comments at 7-8.

[691] PacTel comments at 25.

[692] PacTel reply at 28.

[693] *See, e.g.*, CTIA comments at 5; Indiana Commission Staff comments at 6; NCTA reply at 10; Teleport comments at 4.

[694] Indiana Commission Staff comments at 6.

processing all numbering requests, irrespective of the identity of the party submitting the request.[695]

327. Cox recommends that, in the event the Commission authorizes the state commissions to handle CO assignment, such assignment must be made on a nondiscriminatory basis, and states or the carriers currently administering the CO codes should not be permitted to deny codes to new entrants or to levy "code opening" charges. In Cox's view, the Commission should adopt specific CO code guidelines because: (a) there is evidence of continued discrimination in CO code assignment; and (b) without Commission guidance, states will develop inconsistent regimes. Cox notes that Commission action is especially important here because CO code assignments have not been transferred to a neutral party.[696] Similarly, several commenters argue in CC Docket No. 95-185 that many incumbent LECs are charging paging carriers and other CMRS providers discriminatory fees for activating CO codes, as well as unreasonable and discriminatory recurring monthly charges for blocks of numbers.[697]

c. Discussion

328. Until such functions are transferred to the new NANP administrator, we authorize Bellcore and the incumbent LECs to continue performing the number administration functions they performed prior to the enactment of the 1996 Act. Again, because of the need to avoid disruption in numbering administration, we find that there is good cause to make these authorizations effective immediately pursuant to 5 U.S.C. § 553(d)(3). We also conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may do so only if it charges the same fee to all carriers, including itself and its affiliates.

329. Numbering administration is a complex task that Bellcore, the incumbent LECs, and, to some extent, the states have been performing for over a decade. It is crucial that efficient and effective administration of numbers continues as the local market opens to competition. This delegation is the most practicable way that numbering administration can continue without disruption. During the transition period, those parties with experience should continue to perform the administrative functions that they have become uniquely equipped to handle. Thus, we authorize Bellcore to continue to perform its functions as the North American Numbering Plan Administrator in the same manner it did at the time of

---

[695] Sprint comments at 14.

[696] Cox comments at 7-9.

[697] With regard to the specific issue of paging carriers being charged recurring monthly fees for blocks of numbers, it is necessary to incorporate the record from CC Docket No. 95-185, *In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*. *See, e.g.*, AirTouch Communications comments, CC Docket No. 95-185, at 22 n.22; Arch Communications Group comments, CC Docket No. 95-185, at 7-8, 15, 23-24; PageNet comments, CC Docket No. 95-185, at 22 and App. C.

enactment of the 1996 Act. We also allow the incumbent LECs to continue to perform the CO code administration functions that they performed at the time of enactment of the 1996 Act. Finally, we allow the states, if they performed any number administration functions prior to enactment of the 1996 Act, to continue to do so until such functions are transferred to the new NANP administrator.

330. Some commenters argue that we should not authorize Bellcore and the incumbent LECs to perform numbering administration functions on a transitional basis because continued administration of numbers by these entities, which are not neutral administrators, will permit discriminatory treatment of the incumbents' competitors with respect to access to number resources. While we recognize these concerns, we see no alternative to the action we take here. Transfer of numbering administration functions will be a complex task, one that cannot be accomplished immediately even on transitional basis. The Commission, for example, does not have the resources to administer numbers on a day-to-day basis.

331. In this regard, we note that a proposal has been made to the California Commission to transfer CO code administration to the California Commission or a third party or, in the alternative, to have the California Commission serve as the interim CO code administrator until the NANC completes its work or until the California Commission selects a permanent administrator.[698] We conclude that the record does not support allowing states to change the way CO code administration is performed during the transition to the new NANP administrator. Uniform CO code administration is critical to efficient operation of the public switched network for proper delivery of telecommunications services. The transfer of CO code administration to the states pending the transition to the new NANP administrator would not foster that consistency because states wishing to assume such responsibilities would lack the necessary experience to perform them with speed and accuracy. The California Commission does not refute this persuasively. We therefore urge parties wishing to alter the administration of certain numbers or to change the assignment of responsibilities for administering numbers pending transfer of these functions to the new NANP administrator to raise these issues with the Commission on a case-by-case basis in separate proceedings. In their filings, these parties should state who would bear the cost of a temporary delegation and how such a delegation could be implemented without confusion to carriers and customers.

332. Some commenters have expressed concern that numbering administration will be performed in a discriminatory and anticompetitive manner as long as interested parties exercise these functions. For this reason, some commenters urge the Commission to adopt guidelines for CO code administration with which the incumbent LECs must comply prior to transfer of CO code administration to a new NANP administrator. Specifically, they ask the Commission to prohibit incumbent LECs from levying disparate "code opening" fees on different carriers. We conclude that charging different "code opening" fees for different providers or categories of providers of telephone exchange service constitutes discriminatory

---

[698] California Commission comments at 7-8.

access to telephone numbers and therefore violates section 251(b)(3)'s requirement of nondiscrimination. Charging different "code opening" fees for different providers or categories of providers of any telecommunications service (not just telephone exchange service) also violates section 202(a)'s prohibition of unreasonable discrimination and also constitutes an "unjust practice" and "unjust charge" under section 201(b).[699] Further, it is inconsistent with the principle stated in section 251(e)(1), which states that numbers are to be available on an equitable basis. Incumbent LECs have control over CO codes, a crucial resource for any competitor attempting to enter the telecommunications market; incumbent LECs must therefore treat other carriers as the incumbent LECs would treat themselves. To ensure that numbering administration does not become a barrier to competition in the telecommunications marketplace prior to the transfer of NANP administration functions to a neutral number administrator, we conclude that any incumbent LEC charging competing carriers fees for assignment of CO codes may only do so if the incumbent LEC charges one uniform fee for all carriers, including itself or its affiliates.

333. We are explicitly extending this protection, pursuant to section 202, from discriminatory "code opening" fees to telecommunications carriers, such as paging carriers, that are not providers of telephone exchange service or telephone toll service, and therefore are not covered by Section 251(b)(3).[700] Paging carriers are increasingly competing with other CMRS providers, and they would be at an unfair competitive disadvantage if they alone could be charged discriminatory code activation fees. For the reasons stated above, we explicitly forbid incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers. To the extent that recurring per-number charges represent charges for interconnection, they are governed by the principles set out in the *First Report and Order* in this proceeding. Moreover, the Commission has already stated that telephone companies may not impose recurring charges solely for the use of numbers.[701]

334. We emphasize that incumbent LEC attempts to delay or deny CO code assignments for competing providers of telephone exchange service would violate section 251(b)(3), where applicable, section 202(a), and the Commission's numbering administration guidelines found, *inter alia*, in the *Ameritech Order*, the *NANP Order*, and this *Order*. The Commission expects the incumbent LECs to comply strictly with those guidelines and act in an evenhanded manner as long as they retain their number administration functions. Specifically, incumbent LECs should apply identical standards and procedures for processing all numbering requests, regardless of the identity of the party making the request.

---

[699] 47 U.S.C. § 251(b)(3); 47 U.S.C. § 202(a).

[700] Paging is not "telephone exchange service" within the meaning of the Act because it is neither "intercommunicating service of the character ordinarily furnished by a single exchange" nor "comparable" to such service. See 47 U.S.C. § 153(47).

[701] *See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Memorandum Opinion and Order, 59 R.R.2d 1275, 1284 (1986).

335. Indeed, our delegation of matters related to numbering administration during the transition to a new NANP administrator is generally governed by the Commission's existing objectives and guidelines related to number administration as well as those enumerated in this proceeding. We will monitor closely the actions of Bellcore and the LECs with respect to numbering administration to ensure that they perform their tasks impartially and expeditiously until such tasks are transferred.

C. Cost Recovery for Numbering Administration

1. Background

336. In section 251(e)(2), Congress mandates that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[702] In the *NANP Order*, the Commission: (1) directed that the costs of the new impartial numbering administrator be recovered through contributions by all communications providers; (2) concluded that the gross revenues of each communications provider will be used to compute each provider's contribution to the new numbering administrator; and (3) concluded that the NANC will address the details concerning recovery of the NANP administration costs.[703] In the *NPRM*, we found that we did not need to take further action because the Commission had already determined that cost recovery for numbering administration arrangements must be borne by all telecommunications carriers on a competitively neutral basis.[704]

2. Comments

337. Several parties believe that the Commission should take further action with regard to cost recovery for numbering administration.[705] BellSouth states that, states should have the power to authorize cost recovery in conjunction with oversight of central office code implementation activities, until transfer of numbering administration to the NANP.[706]

338. Telecommunications Resellers Association urges us to reconsider the assessment that the costs associated with the administration of telecommunications numbering should be borne by telecommunications carriers on a competitively neutral basis. It asserts that reliance

---

[702] 47 U.S.C. § 251(e)(2).

[703] *NANP Order*, 11 FCC Rcd at 2627-2629.

[704] *NPRM* at para. 259.

[705] *See, e.g.*, BellSouth comments 20; Telecommunications Resellers Association comments at 10; NCTA comments at 11.

[706] BellSouth comments at 20.

upon gross revenues would result in a double or greater recovery from resale carriers and their customers.[707]

339. Similarly, NCTA urges us to require that companies providing telecommunications services in addition to other services fund NANP administration based on a percentage of their gross telecommunications revenues, and not their revenues from other services. Otherwise, NCTA argues, diversified companies that have relatively little need for NXXs but large gross revenues from other sources may have to fund a disproportionately large share of NANP administration expenses. Also, NCTA notes that the 1996 Act requires "telecommunications carriers" to contribute to cost recovery for number administration, but that the *NANP Order* requires recovery from all "communications providers." NCTA requests clarification that only "telecommunications carriers" as defined by the 1996 Act must contribute to cost recovery for number administration.[708]

340. Other commenters do not believe that it is necessary for the Commission to take additional action with regard to cost recovery for numbering administration.[709] These parties generally agree that the cost recovery approach taken in the *NANP Order* satisfies the 1996 Act's requirements with respect to ensuring nondiscriminatory access to telephone numbers. Several reiterate that the costs of number administration must be borne by all carriers on a competitively neutral basis. GTE states that the *NANP Order* conclusions satisfy the cost recovery requirement of the 1996 Act, if we ensure that those conclusions are implemented in a manner that does not unduly favor or disadvantage any particular industry segment or technology.[710]

341. In its reply comments, PacTel rejects MCI's suggestion that costs of implementing number portability should be reduced or eliminated. In PacTel's view, interim number portability is an essential element of achieving equitable number administration and all parties that benefit from this process should contribute to full cost recovery.[711]

3. Discussion

342. Because of ambiguity between the language of the 1996 Act and language in the *NANP Order*, we are persuaded that further action is necessary to meet the 1996 Act's

---

[707] Telecommunications Resellers Association comments at 10.

[708] NCTA comments at 11.

[709] *See, e.g.*, ACSI comments at 13; ALTS comments at 8; CTIA comments at 8; Frontier comments at 5 n.14; GCI comments at 6; GTE comments at 31; Ohio Consumers' Council comments at 5; PacTel comments at 26.

[710] GTE comments at 31. *See also* PacTel comments at 26.

[711] PacTel reply at 33.

requirement that cost recovery for number administration be borne by all telecommunications carriers on a competitively neutral basis, and to conform the cost recovery requirements specified in the *NANP Order* to the 1996 Act. First, we require that: (1) only "telecommunications carriers," as defined in Section 3(44), be ordered to contribute to the costs of establishing numbering administration; and (2) such contributions shall be based only on each contributor's gross revenues from its provision of telecommunications services.[712] We note that we have considered the economic impact of our rules in this section on small incumbent LECs and other small entities. We conclude that by basing contributions only on each contributor's gross revenues from its provision of telecommunications services (instead of, for example, imposing a flat fee contribution on all telecommunications carriers), we more equitably apportion the burden of cost recovery for numbering administration.

343. Section 251(e)(2) requires that the costs of telecommunications numbering administration be borne by all telecommunications carriers on a competitively neutral basis. Contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, we require all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.[713] It should be noted that this requirement is solely for the purpose of determining a carrier's contribution to numbering administration costs and not for any other purpose, interpretation, or meaning of any other Commission rule such as those contained in Parts 32, 36, 51, 64, 65, or 69 of the Commission's rules.

---

[712] 47 U.S.C. § 251(e)(2) also requires that the cost of establishing telecommunications number portability shall be borne by all telecommunications carriers on a competitively neutral basis. We note that cost recovery for number portability was addressed in the *Number Portability Order*.

[713] See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, Report and Order, 10 FCC Rcd 13512, at 13558-59 (1995) (*Regulatory Fees Order*) In the *Regulatory Fees Order*, we stated that, in order to avoid imposing a double payment burden on resellers, we would permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. *Id.* Our action here is consistent with that taken in the *Regulatory Fees Order*. We note that the gross telecommunications services revenues referenced in this discussion are not limited to gross interstate revenues.