launch, and operation of Astrolink's nine GCO Fixed-Satellite Service (FSS) satellites. Lockheed states, the Commission concluded that Astrolink may operate on a non-common carrier basis as well.[160] Therefore, Lockheed argues, Astrolink does not provide telecommunications services within the meaning of the Act and should not be considered a telecommunications service provider for purposes of the neutrality requirements.[161]

46. Lockheed contends that Lockheed Martin Intersputnik (LMI), a joint venture between the Lockheed Martin Corporation and Intersputnik, plans to develop a commercial satellite services business using resources contributed by both the Lockheed Martin Corporation and Intersputnik.[162] The initial business effort of the joint venture may involve the use of one Lockheed Martin Corporation satellite to be launched in late 1998 using a Belarus-filed orbital slot at 75E. The orbital slot does not provide coverage of the United States.[163] According to Lockheed, the proposed services to be provided include broadcast, fixed telecommunications and VSAT services to customers in Eastern Europe, South Asia, Africa, and the Commonwealth of Independent States. LMI's proposed service offering does not implicate the competitive harms the neutrality criteria are to guard against, Lockheed argues. Any potential service of LMI will not be provided directly to end users, will not use NANP resources and can in no way affect Lockheed's neutrality.[164]

47. On September 24, 1997, the NANC Chairman, by letter to the Acting Chief of the Common Carrier Bureau, stated that it is the opinion of all NANC members present at the NANC's September 23, 1997 meeting that neither Lockheed Martin nor any of its affiliates is a telecommunications service provider as defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996. The NANC members participating in that meeting unanimously concluded that Lockheed Martin fulfills the neutrality requirements to serve as the NANPA.[165]

48. Centralization of NANPA Functions. The CaPUC argues that Lockheed's centralization in an east coast office could result in poor service to jurisdictions that are not in the Eastern standard time zone. Further, commenters assert that Lockheed may not be able to hire a sufficient number of personnel in the centralized location to perform NPA relief and CO

[160] *Id.*, *citing* Lockheed Martin Corporation Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, File Nos. 182 Through 186-SAT-P/LA-95, *Order and Authorization*, DA No. 97-973 (May 9, 1997).

[161] *Id.* *See also* Letter from Cheryl A. Tritt, Counsel for Lockheed, to William F. Caton dated September 19, 1997 (Lockheed September 19 ex parte).

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] Letter from Alan C. Hasselwander, NANC, to Richard Metzger dated September 24, 1997.

code functions.[166] California, it says, needs regional expertise because of the high demand for numbering resources, and an "outfit" on the other side of the country cannot properly respond to this demand and properly coordinate with the CaPUC.[167] Also, the CaPUC contends that centralization could impair the ability of CaPUC staff and other western state commissions to participate in relief planning activities if they are held in New York, and could impair the ability of NANPA staff to attend relief meetings in exhausting NPAs around the country.[168]

49. Transfer of Intellectual Property. Commenters express concern that Lockheed's unwillingness to surrender all intellectual property and resources developed for NANPA activities without charge could impede the transfer of numbering administration activities to a new NANPA.[169] PCIA asserts that Lockheed's proposal to allow a new NANPA to use only certain software and systems could force the Commission to continue using Lockheed as the NANPA.[170] PCIA also notes that, if a new NANPA were selected after five years, the industry would either have to pay additional costs to obtain all of Lockheed's systems or pay the new NANPA to redo work Lockheed had already completed. PCIA states that accounting for these costs raises the price of Lockheed's services.[171]

50. Vendor Diversity. Some commenters argue that diversity of suppliers will promote a competitive market for number administration services.[172] They note that Lockheed is presently responsible for local number portability (LNP) administration and operates the SMS/800 Help Desk.[173] CTIA asserts that, because Lockheed already performs other numbering administration functions, it may be able to recreate a monopoly position over administration functions, a risk that is decreased with Mitretek.[174] PCIA notes that one of the requirements in choosing LNP administrators was that they not have a direct material financial interest in the United States portion of the NANP, and number assignments pursuant to the plan. As the

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[166] CaPUC comments at 3. *See also* SBC comments at 8; PCIA reply comments at 4.

[167] CaPUC comments at 5. *See also* SBC comments at 8.

[168] *Id.* at 5-6.

[169] CaPUC comments at 7; PCIA comments at 5-6; WorldCom comments at 4; CaPUC reply comments at 5; WorldCom reply comments at 3.

[170] PCIA comments at 5.

[171] PCIA reply comments at 6. *See also*, however, the PCIA August 18 ex parte, stating that PCIA's concerns have been addressed and that it will support the NANC recommendation of Lockheed as the new NANPA.

[172] AirTouch comments at 8; CTIA comments at 5; CaPUC reply comments at 4.

[173] AirTouch comments at 8; CTIA comments at 5. SBC notes that any potential synergies that could result from Lockheed's operation of the SMS/800 Help Desk will not happen because the SMS/800 Management Team has transferred SMS/800 Help Desk functions to Sykes Enterprises, Inc. SBC comments at 9-10.

[174] CTIA comments at 5-6. *See also* PCIA comments at 5-6; AT&T reply comments at 4-5.

NANPA. PCIA states, Lockheed would have a strong and direct financial interest in the NANP and number assignments, which could prevent it from serving as a neutral LNP administrator.[175]

51. Estimation of Costs/Pricing Issues. PCIA asserts that Lockheed has underestimated the costs involved in NANP administration, and that Lockheed may be expecting additional compensation for certain services, such as services provided during the transition to the new NANPA and the provision of information on how to obtain documents related to CO code administration.[176] Some commenters assert that Lockheed's lower price was the only reason the NANC did not recommend Mitretek, and argue that a lower price is not a reason to select an inferior number administrator.[177] AirTouch states that Lockheed's proposal in fact incorporated the highest cost per person, while Mitretek's cost per person was comparable to other respondents.[178] The CaPUC notes that Lockheed's proposal did not include travel-related expenses, the costs Lockheed would expect for transferring some intellectual property rights, or additional costs for staffing that may be necessary.[179] The CaPUC states that it is likely that the NANPA workload will increase by more than 120 percent, and that the total cost of the Lockheed proposal will increase.[180] AirTouch contends that, because the cost recovery mechanism spreads the cost differential across the industry over five years, the cost differential will have a minimal impact on any given carrier.[181] Omnipoint notes that the Evaluation Team stated that Lockheed perceived that it may further negotiate regarding pricing issues. In Omnipoint's view, the Commission should not rely on a NANPA that cannot provide firm cost figures upon which the industry can depend.[182]

52. Mitretek contends that, in developing the Requirements Document, the NANC did not elect any pricing scheme other than firm, fixed pricing.[183] Mitretek states that on two

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[175] PCIA comments at 8.

[176] PCIA comments at 6-7. *See also* CaPUC reply comments at 3.

[177] AirTouch comments at 8; CaPUC reply comments at 3.

[178] AirTouch comments at 8. *See also* CaPUC comments at 8; Omnipoint comments at 3; SBC comments at 7; Mitretek comments at 5; CaPUC reply comments at 3; Mitretek reply comments at 4.

[179] CaPUC comments at 7. *See also* Omnipoint comments at 3-4.

[180] CaPUC comments at 8. *See also* Omnipoint comments at 3 (because Lockheed proposed the highest cost per person, increases in its staffing, which are likely, will have a disproportionately high impact on its cost as NANPA).

[181] AirTouch comments at 9. AirTouch states that the annual difference between Mitretek's and Lockheed's proposed price constitutes an "immaterial" percentage of total industry annual revenues, and that, for the largest incumbent LEC, the difference is approximately 0.002% of its operating revenues. For smaller carriers, AirTouch contends, the difference will probably be in the hundreds of dollars.

[182] Omnipoint comments at 4. *See also* PCIA reply comments at 2-3, 5.

[183] Mitretek comments at 18-19.

occasions it formally suggested that, if the NANC was interested in a lower price, it could consider a pricing basis other than a firm, fixed price. Mitretek stated its willingness to adjust the price, not only if it had underestimated the staff required, but also if it has overestimated the staff required.[184] Mitretek alleges that the NANC departed from a firm, fixed pricing requirement and incorporated a price adjustment mechanism in response to the difference in proposed staff levels and perceived future need for additional staff.[185] This changed the price and risk strategy considered and proposed by Mitretek. Also, Mitretek argues that, because the trigger for the price adjustment is the stated assumptions of the respondent, rather than the NANC-stated requirements, the change encourages and rewards understatement of the required staff and cost.[186]

53. Other Concerns. WorldCom states that Lockheed must abide by safeguards to ensure that there is a smooth transition to, and effective management of, the new NANPA. These safeguards should include direction to Lockheed to provide documentation of all transactions and procedures, and to document practices as they are developed to resolve issues.[187] Further, WorldCom asserts that any entity selected as NANPA must assent to investigation by a successor of all files regarding any facet of the business, and to craft a transition plan subject to NANC approval.[188] WinStar, while supporting Lockheed, urges the Commission to build an appropriate "firewall" between Lockheed's dual functions as NPAC vendor and as NANPA. Without proper distance, WinStar argues, information gleaned from LNP applications could be used unfairly to keep a carrier with substantial porting activity from obtaining new NXX resources essential for growth.[189] MCI and WinStar both agree that the Commission should implement Lockheed's selection as quickly as possible, because it is essential to the future of numbering administration and to the future of local telephone competition.[190]

54. In reply comments, Lockheed responds to various concerns raised by commenters. It states that it fully commits to the NANC conditions regarding price adjustment and the transfer of intellectual property upon termination of its services as NANPA.[191] Lockheed states that it will deliver high quality number administration services, including sufficient staffing and expertise, systems, and travel, at the quoted price. Thus, Lockheed asserts, even if it underestimated the costs of NANP administration, any adjustments will not affect the prices paid

[184] *Id.* at 19.

[185] *Id.*

[186] *Id.* at 20.

[187] WorldCom reply comments at 3.

[188] *Id.*

[189] WinStar reply comments at 5.

[190] MCI comments at 8-9. *See also* NEXTLINK reply comments at 3; GTE reply comments at 1.

[191] Lockheed reply comments at 4.

by the industry.[192] Lockheed states that its work load and volume assumptions are firmly grounded in the Requirements Document and industry figures.[193] Lockheed states that the NANC's proposed rule regarding transfer of intellectual property will eliminate unforeseen added costs, such as licenses and transfer costs, and will ensure that the incumbent NANPA enjoys no unfair advantage in future selection processes because of the costs faced by other bidders in developing new systems.[194]

55. Lockheed asserts that its approach to numbering administration partly depends on streamlining the administration process through use of advanced technologies. This streamlining would increase staff productivity, which decreases the number of staff required to perform the functions.[195] Lockheed adds that cost and technology economies will be realized through leveraging an existing Lockheed Communications Industry Services infrastructure.[196] Further, Lockheed states that it will be able to attract qualified and experienced staff, and notes that, in developing the NPAC SMS system for local number portability, it has attracted the best subject matter experts in their fields.[197] Lockheed states that for NANPA, it is hiring number administration experts from all segments of the industry, and is recruiting experts in CO code administration, NPA relief planning, and carrier identification code administration. It notes that, to facilitate the hiring of quality staff, it will assign its NANPA personnel to three existing Lockheed offices across the nation.[198]

(2) Comments on NANPA Billing and Collection Agent.

56. Several commenters agree that NECA should be selected as the B&C agent, provided that NECA creates an independent board as described in the recommendation.[199] MCI notes that NECA has expertise in cost recovery and experience in telephone industry billing, and that NECA's price, which assumes the same staffing levels, is still lower than those of the other respondents.[200] MCI states that the Commission should state that if NECA does not administer

[192] *Id.* at 5.

[193] *Id.* at 7.

[194] *Id.* at 6.

[195] *Id.* at 7.

[196] *Id.* at 8.

[197] *Id.* at 9.

[198] *Id.*

[199] AirTouch comments at 1; MCI comments at 19-21; GTE reply comments at 4.

[200] MCI comments at 19. *See also* NTCA comments at 2.

B&C activities impartially, aggrieved carriers may seek Commission redress, and that the Commission will act quickly by enforcing the rules recommended by NANC.[201]

57. NTCA asserts that the proposed neutrality cure for NECA is unnecessary. In NTCA's view, NECA should have the discretion to create an advisory board or oversight council instead of a separate subsidiary. Creation of a separate board to oversee only the B&C functions will be costly and inefficient, and will not yield public benefits. NTCA argues that an advisory council such as the USAC can as easily cure neutrality concerns.[202] Similarly, NECA itself suggests that it form a B&C oversight council to provide independent oversight exclusively for the NANPA B&C functions. The council would oversee NECA's operation. via its USAC subsidiary, of the NANPA B&C functions. NECA states that the council could consist of the USAC Board and others in the NANP community, and one or more international representatives.[203] The NANPA B&C functions and financial management would be conducted separately and independently from NECA's or USAC's other administrative responsibilities. Creation of the council, instead of a separate corporate entity, would lower administrative costs while preserving neutrality.[204] In response to WorldCom's arguments that NECA cannot be neutral because of its ties to the incumbent LECs,[205] NECA states that its proposal assures neutral administration of the billing and collection functions. Further, NECA alleges that WorldCom fails to recognize NECA's successful administration of the Commission's interstate TRS fund and its recent selection as interim administrator of the Commission's new universal service funds.[206]

58. WorldCom opposes the selection of NECA as the B&C agent, alleging that, even with the "cosmetic" modifications NECA proposes, NECA cannot operate in a competitively neutral fashion.[207] The creation of an independent board will not change the historical incumbent LEC leanings of NECA, WorldCom argues.[208] WorldCom states that NECA does have some experience in B&C activities in the NANP environment, but that it nullifies its eligibility by refusing to accommodate shortfalls in collections, a stated requirement for the B&C agent. Further, NECA does not have billing experience in a competitive and contentious environment.[209]

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[201] *Id.*

[202] NTCA comments at 2.

[203] NECA comments at 2-3.

[204] *Id.* *See also* NECA reply comments at 2.

[205] *See* para. 58, *infra.*

[206] NECA reply comments at 4.

[207] WorldCom comments at 6-7, reply comments at 3.

[208] *Id.* at 7. *See also* WorldCom reply comments at 4.

[209] *Id.*

WorldCom urges the Commission to select Lockheed or another neutral entity as the B&C agent.[210] WorldCom argues that an advisory board or oversight council, as suggested by some commenters, lacks the authority of an independent board of directors and would be unable to supervise NECA to guard against anticompetitive actions.[211] WorldCom states that an independent board would have bias problems, but that an oversight council would be completely ineffective in keeping check on NECA's partiality.[212] WorldCom contends that, if NECA is the B&C agent, at a minimum its activities must be supervised by a specific branch of the Commission.[213] WorldCom asserts that rules should be codified to ensure that: (1) NECA is required to balance its board of directors completely with non-ILEC interests; (2) membership in NECA is open to all interested parties, including IXCs and CLECs; (3) the board has authority over the hiring of professional staff and other personnel; and (4) NECA is required to comply fully with the neutrality principles articulated by the NANC.[214] Other parties, in their reply comments, also disagree with comments that an advisory board or oversight council is sufficient.[215] AT&T argues that any cost savings NECA would realize by overseeing B&C functions through USAC, rather than through a separate B&C board, would be trivial.[216]

d. Discussion

(1) NANPA

59. We accept NANC's recommendation of Lockheed as the new NANPA and codify NANC's proposed conditions regarding transfer of intellectual property and pricing adjustment.[217] The record demonstrates that Lockheed offers substantial savings compared to Mitretek, and can bring efficiency and synergy advantages to number administration activities. We note that the record demonstrates that Lockheed has worked to address the concerns of parties opposing its selection as the NANPA.[218] The conditions the NANC recommends, which we are imposing on Lockheed and all future NANPAs, persuasively address the concerns of those parties opposing Lockheed because of its proposed estimation of costs and it initial unwillingness

[210] *Id.*

[211] WorldCom reply comments at 4.

[212] *Id.*

[213] *Id.*

[214] *Id.* at 6-7.

[215] WorldCom reply comments at 4; AT&T reply comments at 5-6.

[216] AT&T reply comments at 5.

[217] *See* para. 20, *supra.*

[218] *See* PCIA August 18 ex parte (After numerous discussions with Lockheed, PCIA feels its concerns have been addressed and will support the NANC recommendation of Lockheed as the new NANPA).

to transfer intellectual property rights. Concerns regarding Lockheed's projected staffing levels are addressed by the record, as discussed below.

60. We are not persuaded that Lockheed, as compared to Mitretek, is "so wholly" understaffed as to be unable to discharge its NANPA functions.[219] Such a conclusion would be inconsistent with the finding of the NANPA Evaluation Team, which reached consensus to recommend *both* Lockheed and Mitretek as "preferred choices for the new administrator."[220] We agree with MCI that it is inconceivable that the Evaluation Team, characterized by the very parties opposing Lockheed on this point to be the "most informed and knowledgeable body" in the evaluation process, would have made such a recommendation if Lockheed were unable to fulfill its duties as NANPA because of inadequate staffing.

61. As MCI has noted in the record in this proceeding, personnel levels alone are not dispositive of service quality.[221] Lockheed's commitment is not limited to providing a particular number of employees to perform specific NANPA functions, such as NPA relief planning, but rather to performing the specific service of NANP administration and to assign however many employees are needed to fulfill that commitment.[222] To the extent that staffing concerns are actually concerns relating to Lockheed's ability to perform its NANPA functions in a timely, efficient manner we note that Lockheed's performance will be closely monitored by the NANC and the Commission. If Lockheed fails to fulfill its responsibilities, this will become quickly evident and be swiftly remedied. Under the NANC's proposed rule, which we are codifying as Section 52.12(d) of our rules, the NANC will monitor the performance of the NANPA and, at the direction of the Commission, implement any remedial action necessary to correct identified problems. As we have stated many times, numbers are the means by which businesses and consumers gain access to, and reap the benefits of, the public switched network. Sections 251(e) and 251(b) of the Telecommunications Act of 1996 are no less clear as to the importance of fair and efficient numbering administration, and require Commission diligence to ensure that numbers are made available on a nondiscriminatory basis. NANC itself, we further note, has put any future NANPA on notice that failure to meet its responsibilities in this area will mean removal; we conclude that Lockheed would be unwilling to risk losing commercially valuable opportunities through poor performance in this very critical and public arena.[223]

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[219] *See, e.g.*, SBC comments at 7.

[220] MCI reply at 3.

[221] Letter from Mary Brown, MCI, to Marian Gordon dated July 28, 1997 (MCI July 28 ex parte) at 2.

[222] *Id. See also* AT&T reply comments at 3.

[223] *See* NANC's Proposed Rule 52.12(e).

> Termination. "If the Commission determines at any time that the NANPA . . . substantially or materially defaults in the performance of its obligations, the Commission shall advise immediately the NANPA . . . of said failure or default, request immediate corrective action, and permit the NANPA . . . reasonable time to correct such failure or default. If the NANPA . . . is unwilling or unable to take corrective action, the Commission may, in a manner consistent with the

62. We further note that Lockheed, in response to concerns that its proposed centralization of NANPA functions might hinder its ability to hire qualified staff, has already replied that it will assign its NANPA personnel to three existing Lockheed offices, located on the East Coast, West Coast, and in the Mid-West, to facilitate the hiring of the best staff available.[224] In addition, Lockheed has affirmatively stated that it will anticipate and adjust proactively its staffing needs to provide the necessary service levels.[225] We note that the new NANPA will assume its responsibilities gradually, which will provide Lockheed sufficient time to obtain the necessary staff to carry out its new functions.[226] Finally, while many NANPA functions undoubtedly require human judgment, Lockheed's innovative approach to numbering administration relying in part on the effective use of advanced technologies should streamline some administration processes and reduce staffing needs in general.[227] Current industry efforts, encouraged by the Commission and state public utility commissions to reduce the rate of depletion of number resources, may reduce work demands on NANPA as well. Also, in the *Local Competition Second Report and Order*, we stated that states may assume responsibility for initiating NPA relief planning.[228] While we do not know at this point how many states will actually take on that function, those that do will reduce the workload of the NANPA.

63. Regarding the transfer of intellectual property, we are not persuaded that NANC's recommendation should be rejected because Lockheed is unwilling to surrender all intellectual property and resources developed for NANPA activities. Responding to the Evaluation Team's concern that Lockheed had not committed to freely transfer intellectual property it developed in its role as NANPA should another NANPA be selected, NANC imposed the condition that any NANPA must freely transfer intellectual property to the NANC or a

requirements of the Administrative Procedure Act, take any action that it deems appropriate, including termination."

[224] Lockheed reply comments at 9 n.21.

[225] Lockheed comments at 9.

[226] The transition schedule calls for the current NANPA's functions to be transferred to the new NANPA no later than 90 days after selection of the new NANPA. The CO code assignment functions will be transferred to the new NANPA no more than 18 months after the new NANPA has assumed all of the current NANPA functions. The order in which the current CO code administrators will transfer their responsibilities to the new NANPA has not yet been determined. We emphasize that the current CO code administrators shall continue to be responsible for their current functions for up to 18 months after the new NANPA assumes Bellcore's current functions.

[227] *See* Lockheed reply comments at 7.

[228] *Local Competition Second Report and Order* at 19532. We stated that those states wishing to perform functions relating to initiation and development of area code relief plans must notify the new NANPA within 120 days of the selection of the new NANPA. Area code relief initiation and development functions will be transferred to and performed by the new NANPA for those states that do not seek to perform such functions. *Id.* at 19532-33. By letter dated June 4, 1997, the Indiana Utility Regulatory Commission (IURC) informed Ameritech Indiana, the Commission's Common Carrier Bureau, and the NANC that the IURC wishes to assume the role of initiating and planning NPA relief.

successor NANPA selectee.[229] Lockheed has clarified on the record that, while it considers its existing "telecommunications infrastructure," which is based on "off-the-shelf" technology, to be its own, it considers the "NANPA system," Lockheed's application for numbering administration that makes use of its "telecommunications infrastructure," to be proprietary to the NANPA and will transfer it to a new NANPA free of charge.[230] We conclude, therefore, that Lockheed has addressed all concerns regarding the transfer of its intellectual property.

64. Responding to Mitretek's argument that NANC departed from its firm, fixed price requirement by crafting a condition regarding price adjustment, we find no procedural irregularity. NANC was free to develop its own evaluation procedures and to attach conditions to its recommendation so long as they applied to all respondents. The record demonstrates that Lockheed and Mitretek were treated equally in terms of their communications with NANC, the NANPA Working Group, and the Evaluation Team. Both had equal opportunities to make presentations to the NANC and to justify the contents of their respective proposals and forecasts. We agree with Mitretek that the NANC incorporated a price adjustment mechanism because of the difference in proposed staff levels and perceived future need for additional staff. Reasonably, in attempting to balance its concerns regarding Lockheed's minimal staff against its concerns regarding Mitretek's significantly higher price, NANC determined that the price adjustment condition was necessary. Mitretek is mistaken, however, in its assertion that NANC's price adjustment condition "changed the price and risk strategy considered and proposed by Mitretek" and "encourages and rewards understatement of the required staff and cost."[231] In preparing its proposal, Lockheed had no more notice than Mitretek that the NANC would develop the price adjustment condition and thus had no incentive to underestimate its staff and cost projections. Further, the price adjustment condition applies to both the Lockheed and the Mitretek proposals, and does not unfairly benefit one respondent over another. Because the price adjustment condition will be codified in our rules, future applicants for the role of NANPA could have incentive to underestimate staff and cost projections in proposals. Again, however, the price adjustment rule, and any advantages resulting from that rule, would apply to all applicants equally, and all applicants would be on an "equal footing" when preparing proposals.

65. We also disagree with arguments that the NANC gave too much weight to the monetary difference between the Lockheed and Mitretek proposals. Costs are important, particularly to the carriers that will bear larger shares of the costs for numbering administration. Unquestionably the price difference between the two proposals is substantial. Although some commenters note that the unit price per staff member was fairly consistent between the two

[229] *See* Proposed Rule 52.13(f) The proposed condition pertaining to transfer of intellectual property states that the NANPA must make available any and all intellectual property and associated hardware resulting from its activities. This property shall include systems and the data contained therein, software, interface specifications and supporting documentation. The NANPA shall make such property available, free of charge, to whomever the NANC directs. Further, Lockheed must specify any intellectual property it proposes to exclude from the condition based on the property's existence before Lockheed's selection as NANPA.

[230] Lockheed reply comments at 5-6.

[231] Mitretek comments at 19-20.

proposals, the fact remains that Mitretek's proposal would cost the industry over $22 million more than Lockheed's would, an obviously important factor to a majority of the NANC members. The NANC's consideration of the prices of the two proposals was reasonable, and we do not disturb its overall recommendation on the basis that it gave too much weight to the issue of price.

66. We recognize that vendor diversity for number administration services has advantages for the industry because it prevents the industry from being captive to a single, monopolistic provider for these services. We conclude, however, that there will continue to be adequate vendor diversity if Lockheed is the new NANPA as well as an administrator for local number portability (LNPA). The NANC recommended that Lockheed be the LNPA in only four out of seven regions. Therefore, even though Lockheed has been selected as a LNPA, there will be another provider of LNPA services.[232] Further, Lockheed will no longer be the administrator for the SMS/800 Help Desk.[233] On this basis, we conclude that there will be adequate vendor diversity for number administration services. PCIA also argues that, if Lockheed is selected as the NANPA, it would have a financial interest in the NANP and number assignments which could prevent it from serving as a neutral LNP administrator. We conclude that the financial interest Lockheed would have in the NANP by virtue of its role as NANPA is not of the sort contemplated by the NANC when it solicited proposals for the LNP administrator.

67. We find that the NANC process for selection of the new NANPA was open and fair, and included the opportunity for participation from all segments of the telecommunications industry. We will not reject the NANC's recommendation because of its failure to reach consensus on that recommendation for the new NANPA. Unlike most telecommunications fora and standards bodies, the federal advisory committee process does not require consensus. We note that the NANC recommended Mitretek as the alternate NANPA, and we accept this recommendation formally. If Lockheed defaults on its obligations as NANPA, or if the NANC determines that Lockheed does not perform those functions in a satisfactory fashion, Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process.

(2) Billing and Collection Agent

68. We also accept the NANC recommendation and select NECA as the NANPA B&C Agent, subject to the neutrality conditions outlined below.[234] The record demonstrates that NECA has relevant experience in cost recovery and billing and collection in the

[232] On May 1, 1997, the NANC recommended that Lockheed be the LNPA for four regions and that Perot Systems, Inc. be the LNPA for three regions. On August 18, 1997 we released an order adopting the NANC's recommendations with some modifications. Telephone Number Portability, *Second Report and Order*, CC Docket No. 95-116, FCC 97-289 (rel. Aug. 18, 1997).

[233] On June 2, 1997, the SMS/800 Management Team (SMT) announced that Sykes Enterprises, Inc. (Sykes) had been selected to provide services for the SMS/800 Help Desk. The SMT has transferred SMS/800 Help Desk functions from Lockheed to Sykes.

[234] See paras. 82-91, *infra*.

telecommunications industry, and has offered to perform the services at a significantly lower price than Lockheed. Although it did express some reservations about NECA's selection, particularly because of NECA's willingness to handle shortfalls in collections, the NANC determined on balance that NECA's experience with cost recovery and its lower price made NECA the better candidate for the B&C Agent. We will not disturb that judgment. We will, however, formally name Lockheed as the alternate B&C agent. If NECA defaults on its obligations as the NANPA B&C Agent, is unable or unwilling to comply with the neutrality cure we impose below, or does not perform the NANP B&C Agent functions in a satisfactory fashion, Lockheed will have the opportunity to assume NANPA B&C responsibilities, if it still wishes to do so, without its undergoing another evaluation process.

2. Neutrality

a. Description of Neutrality Definition

69. The Requirements Document defined "neutrality" as follows:

1) a respondent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996. "Affiliate" is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (i) an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10%) percent or more of the total outstanding equity interests in the other person, or (ii) the power to vote ten (10%) percent or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person; or (iii) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person, by contract (including but not limited to stockholder agreement partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise;

2) a respondent and any affiliate thereof may not issue a majority of its debt to, nor it may derive a majority of its revenues from any telecommunications service provider. "Majority" shall mean greater than 50 percent, and "debt" shall mean stocks, bonds, securities, notes, loans, or any other instrument of indebtedness; and

3) notwithstanding the Neutrality Criteria set forth in 1) and 2) above, a respondent may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities. NANC may conduct an evaluation to determine whether a respondent meets the undue influence criterion.

b. Discussion

(1) NANP Administrator

70. Mitretek's September 4, 1997 letter raises questions concerning whether any affiliates of Lockheed Martin IMS are telecommunications service providers. The Act defines "telecommunications" and "telecommunications service" as follows:

> The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.[235]

> The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[236]

71. We previously concluded that inclusion of the phrase "directly to the public" in the definition of telecommunications service limits the reach of that term to telecommunications services provided on a common carrier basis.[237] Federal precedent holds that a carrier may be a common carrier if it holds itself out "to service indifferently all potential users."[238] We have found, however, that such users are not limited to end users. Common carrier services include services offered to other carriers, such as exchange access service, which is offered on a common carrier basis and provided primarily to other carriers.[239] Therefore, whether any affiliate of Lockheed Martin IMS is a telecommunications service provider does not depend on whether those affiliates provide services directly to end users. The question is, instead, whether they have been authorized to offer services indiscriminately to the public, and are, therefore, providing services on a common carrier basis.

72. Astrolink. It is clear that the Lockheed Martin Corporation's Astrolink system will be operating on a non-common carrier basis and will not provide telecommunications services within the meaning of the Act. In its application, the Lockheed Martin Corporation

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[235] 47 U.S.C. § 153(43).

[236] 47 U.S.C. § 153(46).

[237] Universal Service Order Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997), at para. 785.

[238] *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*). *See also* CABLE & WIRELESS, PLC, Application for a License to Land and Operate in the United States a Private Submarine Fiber Optic Cable Extending Between the United States and the United Kingdom, *Cable Landing License*, File No. SCL-96-005, FCC 97-204 (rel. June 20, 1997), at para. 12.

[239] *See* 47 C.F.R. § 69; *see generally* MTS and WATS Market Structure, Phase I, *Third Report and Order*, CC Docket No. 78-72, 93 FCC 2d 241, paras. 13, 23 (1982) (access charges are regulated services and include "carrier's carrier" services).

stated that it proposed to offer services on a non-common carrier basis.[240] In granting its application, we authorized the Lockheed Martin Corporation to operate on a non-common carrier basis.[241]

73. Globalstar. It also is clear that Globalstar will be operating on a non-common carrier basis and will not provide telecommunications services within the meaning of the Act. In its application, the Loral/Qualcomm Partnership (LQP) stated that it did not intend to hold itself out to provide mobile satellite services indifferently to the public.[242] We authorized LQP to operate on a non-common carrier basis.[243]

74. Loral SKYNET. Loral SKYNET offers at least some of its services on a common carrier basis. In October 1996, AT&T Corporation (AT&T) and Loral SpaceCom Corporation (Loral) filed an application for authority to assign AT&T's licenses for Telstars 302, 303, 401, 402R, 5, and 6, and associated earth stations and common carrier authorizations, to Loral.[244] As discussed below, three of these are now operational. Loral proposed to maintain continuity in SKYNET's service offerings, which include satellite services provided on a common carrier basis.[245] The International Bureau, acting on delegated authority, granted the assignment application.[246]

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[240] *See* Lockheed Martin Corporation Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, File Nos. 182 through 186-SAT-P/LA-95, *Order and Authorization*, DA No. 97-973, 1997 WL 232167 (May 9, 1997).

[241] *Id.*

[242] *See* Application of Loral/QualComm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands, *Order and Authorization*, 10 FCC Rcd 2333, 2336 (1995) *aff'd*, 11 FCC Rcd 18502 (1996).

[243] *Id.*

[244] *See* AT&T Corp. and Loral SpaceCom Corporation, Application for Authority to Assign the Licenses for Telstars 302, 303, 401, 402R, 5, and 6, and Associated Earth Stations and Common Carrier Authorizations. *Order and Authorization*, DA 97-125, 1997 WL 20687 (Jan. 17, 1997).

[245] *Id.* We note that we have adopted a policy permitting satellite operators in the Fixed-Satellite Service to elect to operate on a common carrier basis or a non-common carrier basis. Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, IB Docket No. 95-41, 11 FCC Rcd 2429, 2436 (1996).

[246] *See* AT&T Corp. and Loral SpaceCom Corporation, Application for Authority to Assign the Licenses for Telstars 302, 303, 401, 402R, 5, and 6, and Associated Earth Stations and Common Carrier Authorizations, *Order and Authorization*, DA 97-125, 1997 WL 20687 (Jan. 17, 1997).

75. Telstar 302 is no longer in operation.[247] Telstar 303 was launched and began service under common carrier regulation in August 1985.[248] Its ten-year license term expired on August 7, 1995, and since that time, it has been operating under special temporary authority.[249] In September 1996, the International Bureau, acting on delegated authority, permitted the satellite to operate until December 31, 1997, or until the date of the transfer of traffic from Telstar 303 to its replacement satellite, whichever occurred sooner.[250] Loral recently filed an application to modify the license for the Telstar 303 satellite to extend the license term until December 31, 1998, or, alternatively, for special temporary authority to continue to operate Telstar 303 from December 31, 1997 until a license modification is granted.[251] Telstar 303 is nearing the end of its projected operational life.[252]

76. Telstar 401, which may have offered some services on a common carrier basis, is no longer in operation, having experienced a catastrophic failure in early 1997.[253] On May 23, 1997, the International Bureau, acting on delegated authority, authorized Loral to launch and operate Telstar 5 on a non-common carrier basis as an emergency replacement for Telstar 401.[254] Telstar 5 is in operation on a non-common carrier basis.

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[247] Letter from George F. Wazeter, Loral SpaceCom Corp., to William F. Caton dated September 11, 1997.

[248] AT&T Corp. Application for Modification of the TELSTAR 303 Domestic Fixed-Satellite, File No. 54-SAT-ML-95, 80-SAT-ML-96, 81-SAT-STA-96, 142-SAT-STA-96, *Order and Authorization*, DA 96-1499, 11 FCC Rcd 10570, 10571 (1996).

[249] *Id.*

[250] *Id.* at 10573.

[251] *See* Application to Modify the License for the Telstar 303 Satellite to Extend the License Term, filed Sept. 19, 1997. Loral notes in that application that on April 11, 1997, it filed an application to extend the construction and operation dates for the satellite (now called Telstar 6) that will replace Telstar 303 as a result of the catastrophic failure of Telstar 401. *Id.* at 3 n.7.

[252] Projections for the operational lives of satellites vary between ten and fifteen years, depending on the design of the satellites and how much fuel they have left at a given time.

[253] Loral SpaceCom Corp. Application for Special Temporary Authority to Launch Telstar 5, File No. 58-SAT-LA-97, *Order*, File No. 58-SAT-LA-97, DA 97-1099, 12 FCC Rcd 6743 (1997). In 1990, AT&T was granted authority to sell a portion of the C-band transponders and a portion of the Ku-band transponders on its Telstar 401 and 402 satellites on a non-common carrier basis, and to operate the remainder of the satellites' capacity on a common carrier basis.

[254] *Id.* The International Bureau, acting on delegated authority in 1996, previously had granted AT&T authority to launch and operate Telstar 5 and 6 satellites on a non-common carrier basis. Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, Application of American Telephone and Telegraph Company, File No. 62-SAT-AMEND-95, 63-SAT-P/LA-95, 64-SAT-P/LA-95, 65-SAT-P/LA-95, *Order and Authorizations*, DA 96-713, 11 FCC Rcd 13788, 13789 (1996). *See also* Application of AT&T Corp. for Authority to Construct, Launch, and Operate Space Stations in the Domestic Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 96-1942, 1996 WL 671150 (rel. Nov. 21, 1996).

77. The third operational SKYNET service satellite is Telstar 402R and a portion of its services appear to be offered on a common carrier basis. In 1990, AT&T was granted authority to sell up to 12 of the 48 C-band transponders and up to 12 of the 48 Ku-band transponders on its Telstar 401 and 402 satellites on a non-common carrier basis.[255] AT&T also was granted authority to operate the remainder of the Telstar 402R capacity on a common carrier basis.[256] AT&T was required to continue to adhere to all applicable Commission requirements with respect to its common carrier operations.[257] When AT&T and Loral applied for consent for assignment of AT&T's licenses, Loral proposed to honor all of AT&T's existing contracts and other obligations with respect to its licensed facilities. The parties structured the acquisition to enable Loral to maintain uninterrupted service to AT&T's customers and to avoid disruption, inconvenience, and confusion to the AT&T customers.[258]

78. We conclude that Lockheed Martin IMS is an affiliate of a "telecommunications service provider," and is in technical violation of a portion of the NANC's proposed neutrality criteria. Section 52.12 (a)(1)[259] provides in part that the NANPA shall not be an affiliate of any telecommunications service provider as defined in the Communications Act, as amended. Lockheed, through its 16 percent ownership of Loral Space, is an affiliate of a telecommunications service provider, Loral SKYNET, which currently provides certain services on a common carrier basis through its operation of Telstar 303 and Telstar 402R.

79. We also find, however, that the violation of section 52.12(a)(1) is *de minimis*. The customers of these SKYNET services constitute a discrete, specific group of former AT&T customers. Moreover, it appears that, because the Telstar satellites are used, among other things, to provide video teleconferencing and broadcast video distribution, many customers of the Telstar 303 and Telstar 402R common carrier offerings do not use North American Numbering Plan resources and, therefore, the service offerings do not jeopardize the neutrality of Lockheed Martin IMS as the NANPA.[260]

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[255] Letter from Richard M. Firestone, Chief, Common Carrier Bureau, to Leonard J. Monize dated February 8, 1990 (Firestone letter) at 2.

[256] *Id.*

[257] *Id.*

[258] AT&T Corp. and Loral SpaceCom Corporation, Application for Consent to Assignment of Licenses and Section 214 Authorizations and for Any Necessary Approvals Pursuant to Section 310(b)(4) and Request for Expedited Treatment, filed October 9, 1996, at 7-8.

[259] 47 C.F.R. § 52.12 (a)(1).

[260] See, e.g. American Telephone and Telegraph Company, Supplemental Information In Support of Application for Authorization to Construct, Launch, and Operate Replacement Satellites to be Used as Part of the AT&T/GSAT Domestic Satellite System, filed May 16, 1980, at A-4-1, indicating that both video and audio services would be provided with these satellites. *See also* American Telephone and Telegraph Company, Application for Authority to Construct, Launch and Operate a Domestic Fixed-Satellite Service System, filed September 15, 1987, at 21. AT&T states in that Application: "The TELSTAR satellites to be replaced are projected to operate at or near capacity for

80. Further, section 52.12(a)(2)[261] provides that neither the NANPA nor any of its affiliates may issue a majority (i.e. more than 50 percent) of its debt to, or derive a majority of its revenues from, any telecommunications service provider. Nothing in this record suggests that Loral Space owns more than 50 percent of the debt instruments issued by the Lockheed Martin Corporation. Further, it appears that the revenues that the Lockheed Martin Corporation received as a result of its affiliation with Loral Space represent only a small portion of the revenues of the Lockheed Martin Corporation. According to the Form 10-K that was filed with the Securities and Exchange Commission for the period from April 1 through December 31, 1996, Loral Space and Communications Ltd. acquired Skynet Satellite Services on March 14, 1997, at a price of $478 million.[262] Lockheed Martin's equity interest in Loral is 16 percent, or approximately $76.5 million of Loral's investment.[263] In 1996, Lockheed Martin reported total assets of $29.257 billion in its consolidated Balance Sheet.[264] Therefore, its equity interest in Skynet represents approximately 0.26 percent (0.0026) of its total assets.

81. In addition, section 52.12 (a)(3) of our rules,[265] provides that, even if the NANPA does not satisfy the neutrality criteria stated in sections 52.12 (a)(1) and (2), the Commission nonetheless may find that the NANPA is neutral and not subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities. Our rule further provides for the NANC in the first instance to evaluate such cases and to submit its recommendation to the Commission. In the instant case, the NANC, whose membership includes a diverse group of industry experts, reviewed the ex parte filings of Mitretek and Lockheed and recommended that we find that Lockheed is neutral for purposes of assuming the functions of the NANPA. We agree that Lockheed will not be subject to undue influence by parties with a vested interest in the outcome of numbering administration, as a consequence of its current interest in Loral SKYNET. In sum, in view of the *de minimis* nature of the common carrier services currently offered by Loral SKYNET, the extremely small financial stake of the Lockheed Martin Corporation in Loral SKYNET relative to the Lockheed Martin Corporation's overall assets, and the conclusion of the NANC that Lockheed is neutral, we conclude that Lockheed may serve as the NANPA without compromising the purposes of the statute and the resulting neutrality criteria. To any extent that the Lockheed Martin Corporation or its affiliates in the future offer common carrier services that are more than *de minimis* in nature, we would

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the remainder of their useful lives. They are used to provide off-shore MTS and WATS services; digital private line services; switched digital services; video teleconferencing; and broadcast video distribution."

[261] 47 C.F.R. § 52.12 (a)(2).

[262] Form 10-K, Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Transition Period from April 1, 1996 to December 31, 1996, Loral Space and Communications Ltd., Commission file number 1-14180, at 27.

[263] Lockheed September 11 ex parte at 3 n.11.

[264] Lockheed Martin 1996 Annual Report at 1.

[265] 47 C.F.R. § 52.12 (a)(3).

reconsider the issue of Lockheed's neutrality under section 52.12 and consider taking action disqualifying Lockheed as the NANPA.[266]

(2) Billing and Collection Agent

82. We agree with NANC's conclusion that NECA, as currently structured, is not neutral. We further find merit in NANC's proposed cure that NECA create an independent board exclusively for the B&C Agent and that such board: (i) be neutral and impartial; (ii) not advocate specific positions to the Commission in non-administration-related proceedings; (iii) not be aligned or associated with any particular industry segment; and, (iv) not have a direct financial interest in the support mechanisms established by the Commission.[267] NANC correctly observes that these criteria are consistent with those recommended by the Universal Service Joint Board to assure the neutrality of a permanent administrator of the new universal service support mechanisms.[268]

83. We find NECA's proposal to create a NANPA Billing and Collection "Oversight Council" inadequate to address NANC's neutrality concerns. While NECA states that its Oversight Council would operate separately and independently from NECA or its proposed wholly-owned subsidiary, the USAC, NANC was clear in its directive that the B&C Agent for NANPA was to have its own independent board.[269] NANC's statement that "[NECA's] suggestion of the USAC Board . . . as a cure for its neutrality is considered insufficient and inadequate for the concerns of all parties" underscores this point.[270] The NANC obviously had serious reservations about whether USAC, created for purposes other than numbering administration, could adequately substitute for a board dedicated exclusively to overseeing NANPA billing and collection efforts. The record provides no basis upon which to reject the NANC's judgment. AT&T, for example, states in its reply comments that any cost savings realized by not requiring NECA to create a separate B&C board would be "trivial."

84. Accordingly, we direct that, as soon as possible, NECA create an independent, not-for-profit subsidiary corporation, similar to the USAC model, under the laws of Delaware to be designated the NANPA B&C Agent. We further direct NECA to submit to the Commission

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[266] We note that, on October 7, 1997, Loral announced that it has entered into a definitive agreement to acquire 100% of Orion Network Systems Inc. for Loral common stock. *See* Loral Space & Communications Ltd., News Release, Loral to Acquire Orion Network Systems in Exchange of Stock, Oct. 7, 1997. Orion is currently authorized to offer its services on a non-common carrier basis. Establishment of Satellite Systems Providing International Communications, *Report and Order*, CC Docket No. 84-1299, 101 FCC 2d 1046, 1050 (1985).

[267] NANC Recommendation at 13.

[268] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., *Notice of Proposed Rulemaking and Notice of Inquiry*, CC Docket No. 97-21, 12 FCC Rcd 72 (1997).

[269] NANC states: "The recommended neutrality cure is for the FCC to order NECA to create an independent board exclusively for the Billing and Collection Agent." NANC Recommendation at 13.

[270] *Id.*

for approval proposed articles of incorporation, bylaws, and any documents necessary to incorporate the B&C Agent, by December 12, 1997, in order to ensure that prior to incorporation of the B&C Agent all requirements of this Order have been satisfied. The Commission will approve or modify the proposed documents through a Public Notice. Consistent with NANC's recommendation, we direct NECA to create the separate subsidiary corporation with a board of directors reflecting "broad based representation from the NANP community with at least one international representative."[271] The board of directors and the NECA board of directors shall not have common members. Specifically, mirroring the representational composition of NANC, the board shall be composed of fourteen members: two representatives of domestic interexchange carriers; two representatives of domestic incumbent local exchange carriers; two representatives of the competitive local exchange carriers; two representatives of the wireless carriers; two representatives of non-domestic carriers; two representatives of consumer groups; and two representatives from state and international regulatory bodies.[272] The board shall meet at least quarterly, and more frequently if the board members deem necessary. As discussed below, it shall have an audit of the subsidiary's activities as B&C Agent for the NANPA conducted annually, and shall provide the audit report to the NANC. The board shall also report to the NANC on its activities on at least an annual basis.

85. The establishment of this subsidiary corporation with its own independent board of directors will bring to numbering administration the expertise needed to ensure that billing and collection functions related to numbering resources are administered efficiently. This subsidiary corporation, through its parent company, NECA, will have access to the experience and resources necessary to implement support mechanisms quickly. We expect that this general expertise will enable the NANPA B&C Agent to assume its full responsibilities quickly. This in turn should assure that NANPA will begin to operate on schedule, despite the short implementation periods specified in the *NANP Order*.[273] As stated above, if NECA should be unwilling or unable to perform as directed Lockheed should become the B&C Agent for NANPA. While it projected higher costs for the billing and collection function than NECA did, and does not have NECA's longstanding relationships with telecommunications carriers, Lockheed is considered neutral for purposes of assuming the duties of the B&C Agent.

86. We direct NECA to establish the B&C Agent as a separate subsidiary. This separate subsidiary will have separate directors, pursuant to the requirements set forth above, and will maintain separate books of account from those of NECA's other operations. We direct that the appointment of NECA as the B&C Agent will become effective coincident with NECA's incorporation of the B&C Agent subsidiary. We direct the B&C Agent subsidiary to develop any necessary database systems, to hire and train personnel, and to discuss with contributors the assessment of NANPA cost recovery requirements. In its role as the B&C Agent, this NECA subsidiary may engage only in activities directly related to billing and collection to recover costs for NANP administration. Meetings of the B&C Agent subsidiary's board of directors shall be

[271] *Id.*

[272] We note that the presence of international representatives on the board should address NANC's concern regarding NECA's lack of international experience.

[273] *NANP Order* at 2632.

open to the public and shall be held in Washington, D.C., because this city is easily accessible and may be particularly convenient for the parties that have offices or representatives in the Washington, D.C. area. We conclude that board members shall be entitled to reimbursement for expenses directly incurred as a result of their participation on the B&C Agent subsidiary board.

87. Intercorporate Transactions. We anticipate that the B&C Agent subsidiary may engage in transactions with NECA. We expect that NECA and the B&C Agent subsidiary will engage in such transactions whenever doing so would minimize the latter's expenses. We direct NECA to provide such services, including lending start-up funds, upon the request of the B&C Agent subsidiary, on reasonable terms. Start-up funds for the B&C Agent subsidiary may not come from the TRS fund or from TRS administrative expense accounts.[274] All transactions that occur between NECA and the B&C Agent subsidiary must be conducted on an arm's length basis. For transactions between NECA and the B&C Agent subsidiary, NECA must comply with the Commission's affiliate transaction rules.[275] We also direct NECA to revise its cost allocation manual (CAM) to reflect the formation of the B&C Agent subsidiary.[276]

88. Accounting and Auditing Requirements. The B&C Agent subsidiary will maintain books of account in accordance with generally accepted accounting principles (GAAP) that are separate from NECA's books of account. We direct that an audit be performed of the B&C Agent subsidiary's books on an annual basis by an independent auditor. The audit period should conform to the time period on which the subsidiary keeps its books. We direct the NANC to make a recommendation to the Commission regarding the nature and scope of such an audit, and request that the NANC make a recommendation consistent with our *Accounting Safeguards Order*, where we established specific audit procedures applicable to separate subsidiaries of the BOCs under section 272(d) of the Act.[277] Because we conclude that oversight of the billing and collection functions is necessary to ensure the integrity of those functions, we apply to the B&C Agent subsidiary audit requirements similar to those contained in section 53.209 *et seq.* of our rules.[278] Before selecting the independent auditor, the B&C Agent subsidiary shall submit to the NANC the former's proposed preliminary audit requirements, including the proposed scope of the audit and the extent of the compliance and substantive testing. The NANC shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. We direct the NANC to submit the preliminary audit requirements to the Bureau, along with any recommended modifications that it deems necessary. After the audit requirements

[274] *See* 47 C.F.R. § 64.604(c)(4)(iii)(H).

[275] *See* 47 C.F.R. § 32.27. *See also* Joint Cost Order, Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, 2 FCC Rcd 1298 (1987), *modified on recon.* 2 FCC Rcd 6283 (1987); Implementation of the Telecommunications Act of 1996: *1996 Safeguards Order*.

[276] *See* 47 C.F.R. § 64.903.

[277] *See* Implementation of the Telecommunications Act of 1996; Accounting Safeguards under the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 17539 (1996) (*1996 Safeguards Order*).

[278] *See* 47 C.F.R. § 53.209 *et seq.*

have been approved by the Bureau, the B&C Agent subsidiary shall engage an independent auditor to conduct an agreed-upon procedures audit following the procedures approved by the Bureau. In making its selection, the B&C Agent subsidiary shall not engage an independent auditor that has been involved in designing the accounting or reporting systems under review in the audit. In addition, the B&C Agent subsidiary shall require the independent auditor selected to develop a proposed audit program based on the final audit requirements as approved by the Bureau, and to submit such audit program to the Bureau staff, which will determine whether any modifications are necessary to conform the proposed audit program to the final audit program approved by the Bureau. This procedure must occur every year.

89. Because the audit program is an agreed-upon procedures audit that will be conducted to assure that the B&C Agent serves the public interest, the B&C Agent subsidiary must require the independent auditor it selects to inform the Bureau, during the course of that audit, of any revisions the auditor makes to the final audit program or scope of the audit. The B&C Agent subsidiary must also require the independent auditor to notify the Bureau of any meetings with the B&C Agent or NECA in which audit findings are discussed, so that the Bureau can ensure that the audit program is conducted in accordance with Commission rules. In addition, the B&C Agent subsidiary must require the independent auditor selected to submit to the Bureau any accounting or rule interpretations that the B&C Agent subsidiary or the auditor makes to complete the audit. By receiving the above information, the Bureau can ensure that the auditor examines areas the Bureau has determined require review and that the Commission's rules are being followed.

90. The B&C Agent subsidiary must require the independent auditor selected, within 60 days after the end of the audit period, but prior to discussing the audit findings with the B&C Agent or with NECA, to submit a draft of the audit report to the Bureau. We conclude that early submission of the audit report to the Bureau allow the Bureau to assess the validity of the report's findings and the adequacy of the work product. If the Bureau staff, upon reviewing the draft audit report, determines that additional audit work is necessary, the independent auditor may request additional time to perform that work. The B&C Agent subsidiary must require the independent auditor selected to submit the final audit to the B&C Agent subsidiary for its response to the audit findings. Within 30 days after receiving the audit report, the B&C Agent subsidiary shall respond to the audit findings and send a copy of its response to the Bureau. The B&C Agent subsidiary also must submit to the Bureau any reply that the independent auditor makes to the B&C Agent subsidiary's response.

91. Nondisclosure of Information. The Commission will have full access to all data received by the B&C Agent subsidiary. Requests for protection from Commission disclosure can be made under section 0.459 of the Commission's rules at the time that the subject data are submitted to the B&C Agent.[279] As required by our rules, such requests for nondisclosure must state reasons for withholding the materials from disclosure (*e.g.*, competitive harm) and the facts supporting that statement. We will require the B&C Agent to keep confidential all data obtained telecommunications service providers, not to use such data except for purposes of billing and

[279] 47 C.F.R. § 0.459.

collection to recover costs for NANP administration, and not to disclose such data in company-specific form unless directed to do so by the Commission.

C. Process for Governance of NANPA and the B&C Agent

1. Description of Recommended Rules

92. The NANC also has recommended our adoption of rules, developed by the NANPA Working Group, to govern how the new NANPA and the B&C Agent conduct their respective operations.[280] The NANC's proposed rules would require the NANPA and the B&C Agent to conduct their operations subject to oversight from the Commission, with recommendations from the NANC.[281] Generally, the rules prescribe: (1) neutrality standards governing both the NANPA and the B&C Agent;[282] (2) the lengths of the terms of administration of both the NANPA and the B&C Agent;[283] (3) how the NANPA and the B&C Agent are to respond to changes to industry regulations, Commission rules, or other guidelines or directives;[284] (4) the performance review process for the NANPA and the B&C Agent;[285] (5) the termination of the tenure of the NANPA and the B&C Agent if either fails to comply with the neutrality requirements or materially defaults in the performance of its obligations;[286] (6) dispute resolution processes;[287] (7) enterprise services that the NANPA may offer;[288] (8) duties of the NANPA;[289] and (9) duties of the B&C Agent.[290] The NANC's proposed rules defined conditions under which the NANPA may seek an adjustment to its price schedule and the scope of the NANPA's

[280] NANC Recommendation, Attachment 2.

[281] *Id.* at 2.

[282] *Id.*

[283] *Id.* at 3.

[284] *Id.*

[285] *Id.*

[286] *Id.* at 3-4.

[287] *Id.* at 4.

[288] *Id.* The Requirements Document states that enterprise services are "services not described elsewhere in this Requirements Document that may be provided by the new NANPA for a specific fee. Enterprise services and their associated fees are subject to prior approval by NANC. Requirements Document at para. 7.0.

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

[290] *Id.* at 6-7.

obligation to transfer intellectual property rights to a successor NANPA that we have already discussed.[291]

93. The NANC recommends that NANPA attempt to resolve disputes relating to number administration using a binder of decisional principles, which the NANC refers to as "NANC guidelines."[292] Initially, it says, the binder will contain: (1) regulatory guidance and orders specifically relating to numbering (e.g., orders and directives of the FCC, state regulators and non-United States governmental bodies); and (2) numbering-related guidelines and related explanatory material that have been formally adopted by standards bodies (e.g., Committee T1, TIA committees) or the equivalent of such bodies (international organizations such as the ITU, Inmarsat or Intelsat), or that reflect the consensus of numbering-related forums and industry committees (e.g., Network Interconnection and Interoperability Forum which formerly included the ICCF, Industry Numbering Committee, Canadian Numbering Committee, etc.).

94. NANC further recommends that the FCC establish processes under which a NANC recommendation will have the authority of an FCC decision, if the Commission does not affirmatively suspend, modify or reject the recommendation within a fixed time period following the release of a public notice announcing that NANC recommendation.

2. Discussion

95. There was very little comment on the NANC's proposed rules. We adopt the rules as proposed by the NANC, with some modifications. The rules set broad guidelines within which the NANPA and the B&C agent must operate to meet the objectives of fair and efficient numbering administration. Because they constitute a minimal set of requirements, the rules should give the industry flexibility to perform number administration so that the industry's needs for numbering resources are met. The NANPA and, to the extent applicable, the B&C Agent, shall follow Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to administration and assignment of numbering resources.[293] If there is a dispute regarding the application of a particular guideline, or if the industry groups developing the guidelines cannot reach consensus regarding what guidelines apply in a given context, the Commission will address the dispute, either initially or after receiving a recommendation from the NANC, and will if necessary codify formal regulations. Parties with disputes or questions regarding industry guidelines, or proposed changes to industry guidelines, are encouraged to seek assistance from the NANC first. We reject arguments that NANC "adds an additional layer to decision-making on numbering issues" and therefore should be removed

[291] *Id.* at 5-6.

[292] NANC Recommendation, Attachment 3.

[293] These guidelines include, but are not limited to: (1) Central Office Code (NXX) Assignment Guidelines (INC 95-0407-008) (dated April 1997); (2) NPA Code Relief Planning and Notification Guidelines (INC 97-0404-016) (dated April 1997); (3) Recommended Notification Procedures to Industry for Changes in Access Network Architectures ICCF 92-0726-004, Revision 2.; (4) NPA Allocation Plan and Assignment Guidelines (INC 96-0308-011) (dated April 1996).

from the arena of resolving numbering disputes.[294] As amply demonstrated by its record thus far, the NANC, proceeding at a rapid pace to resolve technically complex issues that affect the competitiveness of the entire telecommunications industry, has greatly facilitated the Commission's work in numbering. As we have stated many times before, we have carefully balanced the membership of NANC so that it represents the numbering interests of service providers, users, and regulators throughout the countries served by the NANP. The NANC membership, working together to achieve consensus on issues for which time is of the essence, has expedited what would otherwise likely be a much longer process if the Commission were to rely on traditional rulemaking exclusively. For these reasons, we find that NANC operates in the public interest and should continue in operation.

96. We agree with the NANC's recommendation that the NANPA attempt to resolve disputes using the binder of decisional principles. We also agree that the administrator should apply its expertise to interpreting and applying existing decisional principles, but that it should not make policy or create the equivalent of new guidelines, and should not exceed a three-month time period for completing resolution of disputes before it. If the NANPA requires additional time for resolution, it should inform the NANC how much additional time it requires and the reasons why three months is not sufficient. NANC concludes, and we concur, that most disputes will arise because a party disagrees with an administrator's decision, action, or non-action and it will ask the administrator to review the decision.

97. We further agree with the NANC's recommendation that we codify an instruction to the NANC to adopt and use dispute resolution procedures that, for each dispute before the NANC, provide all interested parties: (1) notice of the matters at issue; (2) a reasonable opportunity to make oral and written presentations; (3) a reasoned recommended resolution; and (4) a written report summarizing the recommendations and the underlying reasons. To provide solutions to numbering disputes when time is critical, we further agree to streamline our administrative processes of review and accordingly order that, under authority delegated by the Commission to address number administration, the Common Carrier Bureau, using NANC's initial report, written submissions made to the NANC, and the NANC's final recommendation as a written record, review any NANC recommendation. In addition, we order that, if NANC's recommendation is uncontested by the disputants, it will be deemed affirmed 14 days after the Common Carrier Bureau releases a public notice announcing the NANC's recommendation, unless the Common Carrier Bureau affirmatively suspends, modifies or rejects the recommendation during that time period. The NANC is directed to provide notice of its decision within five days of issuance by filing its recommendation with the Common Carrier Bureau. The NANC should include, at a minimum, the full text of its recommendation, including its decision and opinion. We further order that the NANPA shall not implement a NANC dispute resolution recommendation until passage of the 14-day time period, unless the Common Carrier Bureau affirmatively directs otherwise. Should a disputant wish to contest the NANC's recommendation, it may do so by filing a petition with the Common Carrier Bureau within 14 days after NANC's submission of its recommendation to the Common Carrier Bureau. Filing of such petition will automatically suspend the 14-day regulatory review time period discussed above.

[294] *See* Statement of US West Regarding Continuation of the NANC, to the NANC dated August 14, 1997.

98. MCI noted that the Commission's public notice seeking comment on the NANC recommendations, in its description of the NANC condition regarding price adjustment, contained slightly different language than did NANC's proposed rule.[295] MCI states that the textual difference may raise confusion and undermine the effectiveness of the fixed price guarantee.[296] We are, however, adopting the proposed rule as submitted in the NANC Recommendation.[297]

IV. TOLL FREE NUMBER ADMINISTRATION

A. Background

99. The group within Bellcore that administers the NANP does not administer the toll free number database. The latter is administered separately by Database Service Management, Inc., (DSMI) under the Service Management System (SMS) Tariff. DSMI is a subsidiary of Bellcore, which is currently owned by the RBOCs. In 1995, in the *Toll Free NPRM*,[298] we sought comment on whether DSMI should continue to administer the toll free databases or whether another entity, such as the NANP administrator or another neutral party, should administer the toll free databases.[299] The Commission asked parties to comment on whether independent third parties not affiliated with Bellcore or the RBOCs should perform the administrative database functions instead of DSMI and Lockheed, who currently perform those functions.[300]

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[295] MCI comments at 17. MCI notes that the public notice states that "the entity selected as the NANPA must perform the NANPA functions at the price the entity *submitted in its proposal* to the NANC that formed the basis for the entity's selection by the NANC." The public notice also indicates that the "NANC may grant an adjustment in price" if the tasks "exceed 120 percent of NANPA's assumption for the above tasks made *in the proposal* to the NANC that formed the basis for the entity's selection by the NANC." (Emphasis supplied). MCI states that phrases "submitted in its proposal" and "in the proposal" are troublesome because some respondents' proposals did not include numerical assumptions regarding the specific tasks listed in the proposed rule. It was only after the NANPA Working Group requested each respondent's workload assumptions regarding specific tasks that vendors provided this information. Thus, the initial proposals themselves do not include any assumptions regarding the task workloads. Conversely, the NANC's proposed rule's language of "at the time of selection" would include the assumptions that were provided to the NANPA Working Group.

[296] *Id.*

[297] NANC Recommendation, Attachment 2, proposed rule 52.15(d).

[298] Toll Free Service Access Codes, CC Docket No. 95-155, *Notice of Proposed Rulemaking*, 10 FCC Rcd 13692 (1995) (*Toll Free NPRM*).

[299] *Toll Free NPRM* at 13705.

[300] *Id.* The Commission noted that DSMI is currently the primary administrator of the toll free database. In response to industry concerns, Bellcore established DSMI for the purpose of administering the SMS/800 database and subcontracted functions requiring access to proprietary customer information to a neutral third party, which at one time was Lockheed IMS.