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WinStar Telecommunications

Before the
Federal Communications Commission
Washington DC 20554

	)	CC Docket No. 92-237
In the Matter of	)	
	)	
Administration of the North American Numbering Plan	)	
Carrier Identification Codes (CIC's)	)	
	)	

Comments of
WinStar Communications, Inc.

"WinStar Communications, Inc. on behalf of itself and its operatings affiliates, as a provider of competitive local exchange and interexchange communications services, offers the following comments in response to the Commission's Further Notice of Proposed Rulemaking and Order[1] in the above captioned matter:

1. Expansion of CIC Format. The Commission in a Second Report and Order released April 11, 1997 affirmed the tentative conclusion that an industry plan to expand Feature Group D CIC's from three to four digits in anticipation of all three digit codes being assigned was a reasonable way to ensure that future demand for CIC's could be met. The Commission further determined that the transition (permissive dialing period) should end no later than January 1, 1998 having allowed a sufficient time frame for the industry to make a total conversion to the new format. WinStar concurs with the Commission recommendation. The January 1, 1998 time frame does permit sufficient time for all entrants to make the necessary conversion. In addition, and significantly, the implementation of four digit CIC's (seven digit CAC's) as the standard encourages competition. Most new entrants to the local and interexchange telecommunications market have received four digit CIC's because the supply of three digit CIC's has been substantially depleted. These entities, in order to secure casually dialed InterLATA and IntraLATA traffic must train potential customers to use the 101XXXX format to place their calls. This procedure, although part of the current permissive period, is not generally recognized as a standard. Therefore, customers are unaware of the procedure, or reluctant to use it because its use has not been commonplace. Further delay of the four digit CIC as the standard has the effect of preventing new entrants from full participation in the competitive market. Hence no further delay of this transition should be entertained.
2. New Uses for Feature Group D Carrier Identification Codes. As the Commission has indicated, CIC's no longer serve the sole purpose of enabling LEC's to identify customers of access services. Many other innovative uses have been found for CIC's including, but not limited to, facilitating: consolidated LEC billing of carrier services; the efficient management of high capacity digital trunk groups; the efficient and cost effective transport of data and voice over a large end user network; and the establishment of a universal identity number for a large end user. WinStar supports such innovative use of CIC's in the belief that such innovative uses will result in: enhanced competition and ultimately lower prices; new and beneficial services for consumers; and more efficient operation of the switched public network. Nonetheless, WinStar believes that the industry and the Commission must make clear that the primary purpose for the establishment and continuance of the CIC resource is the identification of access customers to the LEC for billing purposes. Codes should be made available for other purposes as long as the resource is not in jeopardy. However, when the North American Numbering Plan Administrator (NANPA) determines that the resource is in jeopardy (i.e. in danger of being exhausted), the issuance of codes should be based exclusively upon the need for a vehicle to provide identification to the LEC of an access customer. An appeal mechanism should be built into this process to account for applications which show a bona fide need which cannot be satisfied through any other method. This appeal process should be administered first by the NANPA, with decisions reviewable by the Commission should the applicant desires

[1] Released: October 9, 1997 (FCC 97-364).

a further appeal. The case for an exception in times of jeopardy should be compelling, and the granting of an exception should be rare.

3. Definition of an Entity. Section 1.3 of the CIC Assignment Guidelines defines an "entity" as "a firm or group of firms under common ownership or control." The definition goes on to address the franchiser - franchisee relationship, providing that the franchiser will be considered the entity for purposes of CIC assignment while allowing franchisees to use CIC's obtained by the franchiser. WinStar believes that this definition, if properly enforced, provides the most balanced and most responsible method to define entities. Such proper enforcement would include clearer parameters as to what comprises "control". The Commission proposes to amend the definition of an "entity" by eliminating the "control" element. This approach has the potential to become problematic in several ways:

   A) The current definition addresses the issue of franchise operations, preventing franchisees from depleting the resource while operating under the same corporate name and advertising. The language in Section 1.3 of the CIC Assignment Guidelines addressing franchises was inserted to prevent large end user corporations with unaffiliated members (e.g. florists, pizza delivery companies, pest control companies) as well as Interexchange carriers who franchise their names, from placing disproportionate strain on the resource. The proposed new definition, because it only addresses ownership, removes this safeguard. Frequently a franchiser has no ownership interest whatsoever in its franchisees and vice versa. Therefore, an entity with 500 franchisees could theoretically request and receive 1000 codes.

   B) Common Ownership, as proposed, could also lead to substantial disputes and an unreasonable limitation of resource assignments to some applicants. It is entirely possible that via investment accounts, pension plans, and other fiduciary instruments, one corporation may have an incidental (token) ownership in another company who is, in reality, a competitor. Therefore, WinStar recommends a threshold of 30% as a definition of ownership. This threshold provides a clearer vision of what constitutes "control". If ownership falls below the 30% threshold, ownership would not be deemed to be common. Using this 30% threshold, warrants, stock options, and convertible debentures should be treated as if the rights underlying them had been fully exercised for purposes of determining ownership.

   C) The concept of "Control"—within the guidelines suggestion in subsections A) and B) above–should be left to the discretion of the NANP Administrator. However, it should not be deleted entirely from the definition. As in the case of "A)" above, without a mechanism for adjudication of control, an entity could enter into a series of "management agreements" or other control instruments with smaller or even "shell" entities for the purpose of gaining access to CIC's. Without a reference to control, there would be no way to prevent this type of abuse of the resource from occurring.

   D) In the course of assigning CIC Codes there likely will be situations which justify assignment of codes in excess of the established minimum. These situations would include but not be limited to corridor codes, subsidiaries (e.g. cellular, interexchange) which operate separately or in different geographic areas and require separation of traffic for reporting, billing, or regulatory purposes, and unique technology applications for which the applicant can demonstrate that there is no feasible technical solution which permits the use of a code already being used for another purpose. In granting such exceptions, the NANP Administrator should ensure that the application for which the exception is requested is viable and that the assigned code is being used solely for that application. If the code is later used for another application, the Code Holder should be required to justify the new use. If such justification cannot be made, the code should be subject to reclamation.

In line with the Commission request, WinStar suggests the following to define an "entity" as:

- A firm or group of firms under common ownership or control. For purposes of this section, a firm is considered to be under common ownership if another entity owns or holds options, debentures, or other financial instruments which comprise 30% or more of the voting shares in the entity. Further, if the entity is a franchisee, sub franchisee, or is similarly affiliated with another organization, the franchiser or parent company is the entity who is to be granted a code under these guidelines. The franchisee does not qualify for a separate code under these guidelines.

4. CIC Sharing Arrangements. The Commission discusses the possible sharing of Carrier Identification Codes by applicants and even among entities. To the extent that such sharing is feasible, it should be encouraged by the Commission and by the industry. However, the instances where such sharing can be accomplished are significantly limited by currently available technology. In the following paragraphs, WinStar will discuss its position on each of the factors where comment has been requested by the Commission:

   A) Transport. Since transport is provided by a Local Exchange Carrier (LEC) entity, it is a discreet function of the CIC. The currently accepted CABS (Carrier Access Billing System) utilizes the CIC for both order placement and billing of CIC services. Therefore, transport would be unaffected in an environment where transport costs are shared or are apportioned in the same manner every month between two entities under common ownership. However, if there were a compelling need for an application to be billed actual transport usage rather than a proportional share, such an accounting would be impossible under a code sharing arrangement. These same limitations would apply to Code Sharing between providers who are not commonly owned. In fact, where common ownership does not exist, the issue becomes more problematic because the subordinate entity may have to produce usage reports without ready access to original records, and may have to rely upon the dominant entity to resolve any billing problems or disputes. In many cases, this arrangement is less than optimal and may in the extreme prove to be unworkable. Finally, shared transport relies on a shared location within a given LATA. (This will be discussed in more detail under "Switching and Routing.")

B) Switching and Routing. End Users who subscribe to services which rely upon CIC's expect that calls which they place will be completed in a timely and accurate manner. In order to ensure this in a shared code environment, several criteria are essential. First, because of the technical limitations of LEC switching and billing equipment, as well as the terms and conditions of most current Access Service tariffs, an entity may establish only one Point of Presence (POP) per LEC Access Tandem. Therefore, if a carrier is offering two discrete services within the same tandem serving arrangement (e.g. facilities based long distance, and value added resale long distance), the only currently available method to route traffic correctly to the proper service is through the use of separate CIC Codes. In the same way, a sharing arrangement between two carriers would only be feasible if both carriers utilize the same facilities in the same location subtending a given Access Tandem. Since LEC Switching is dependent upon one Point of Presence per tandem, there is currently no means to route to distinguish traffic belonging to one carrier from that belonging to another. This arrangement would therefore assume a carrier resale arrangement, and in such an arrangement, Code Sharing could work if the entities agree upon items such as apportionment of Non Recurring and fixed Recurring Charges, accounting for variable elements, and responsibility for maintenance and trouble resolution. However, if both carriers need to be facilities based and need or want to subtend the same access tandem, code sharing is not feasible.

C) Billing. Since billing is driven, to a large degree, by transport, switching and routing, many of the comments detailed in A and B above apply also to billing. Once again, to the extent that entities can rely upon their agreements, internal tracking systems, and ILEC bills to apportion transport rate elements, switching charges and measured or metered rate elements, billing can be accomplished in a shared code environment. However, problems arise if actual rather than proportional rating is required for rate elements or if carriers need to house facilities in two or more locations but need to subtend the same access tandem. In such an instance, accurate billing would not be possible.

5. Conservation. WinStar concurs with the Commission's position that a conservation plan will continue to be necessary to limit the number of CIC assignments that may be held by any given entity and to ensure that entities are making proper use of a valuable and finite resource. WinStar also concurs that it is both prudent and proper to eliminate the distinction in the current guidelines which treats CIC assignments made directly by the NANP administrator differently than those made by other means (e.g. merger, acquisition). WinStar believes that this procedure should be administered by the NANP Administrator under regular supervision from the Commission. The current language was originally approved by the Industry Carriers Compatibility Forum in order to obtain industry consensus on a CIC conservation policy. The purpose in approving this language was to give carriers who held more than the allowable number of CIC's time to consolidate their services into a smaller number of CIC's or if this was not possible, to provide justification as to why it was not. As a practical matter, however, this policy has had the effect of allowing some carriers to horde large quantities of codes (in the case of one carrier, more than 100) while depriving new entrants and those who chose to follow the spirit of the guidelines of the opportunity even to obtain a small number of codes necessary to do business. In an effort to balance the competing interests of large consolidated carriers, WinStar recommends the following conservation procedure:

A. Three Digit CIC's should be phased out at the currently scheduled end of the permissive period on January 1, 1998.
B. At that time, CIC's outside the 5XXX and 6XXX pool should be made available for assignment.
C. An entity should be entitled to a maximum of 6 CIC's whether by direct assignment or by other means.
D. Exceptions to the six CIC limit may be made by the NANP Administrator or by the Commission for reasons that encourage competition, facilitate the introduction of new and beneficial technology, or can be shown to be necessary to the entity's continued ability to provide service as detailed earlier in these comments.

E. A "migration" period will be allotted for entities who possess more than 6 CIC's and cannot present a compelling case for exception based on "D" above. This migration period should last until June 1, 2000 at which point any codes which have not received exception treatment must be vacated by the entity and will be reclaimed.

F. An entity which acquires more than 6 codes through means other than direct assignment will be granted a migration period of 30 months from the date of the code acquisition to vacate the code unless an exception is granted. At the expiration of the migration period, the code will be reclaimed unless an exception has been granted.

G. In order to obtain a CIC, an entity must place an order for access service with an authorized Local Exchange Carrier. The access facilities must be activated within 180 days from the placement of the order, or the code will be reclaimed. If service is not activated due to circumstances beyond the immediate control of the entity (e.g. lack of facilities) this period may extended at the discretion of the NANP Administrator or the Commission.

H. Entities will be required to submit quarterly reports to the Commission detailing the monthly quantities of traffic (in minutes of use) traversing the access facilities associated with the CIC.

I. CIC's which show less than 1200 minutes of use per month for a period of 6 months (2 full reporting cycles) will be subject to reclamation. If the entity can show that failure to meet the 1200 minute per month requirement is due to circumstances beyond the entity's control (e.g. delay by the LEC in installing facilities, technical failure of facilities or hardware) an extension may be granted at the discretion of the NANP administrator or the Commission.

6. Reclamation. If a CIC becomes eligible for reclamation, either because it has not been activated or because it has not achieved the minimum usage requirement, the NANP administrator shall serve notice on the entity of its intention to reclaim the CIC. If the entity has not responded within 30 days, the CIC will be reclaimed. If the entity responds and requests the opportunity to cure the deficiency, the NANP administrator may grant a period of up to 60 days to bring the CIC into compliance with the guidelines. If the entity still has not cured the deficiency at the end of the grace period, the CIC will be reclaimed.

7. Reporting. In order to enforce these guidelines as policy, periodic reporting by both the entities and the Local Exchange Carriers is a necessity. Quarterly reports would ensure the integrity of the system without imposing an onerous burden on any LEC or CIC Holder. In fact, such reports are strongly encouraged under the existing guidelines, although the voluntary nature of the reports results in a low compliance level. As an integral part of the policy governing such reports, it is essential that the information furnished in the reports remain proprietary and that report contents be released only with the express written consent of an authorized representative of the entity. Reports should include the following:

A) The name of the entity
B) The main business address of the entity
C) The addresses of all locations where access services related to the CIC are working
D) A summary by month of the Minutes of Use for the CIC during the reporting period

If the entity fails to submit reports during two consecutive reporting periods, the NANP Administrator should serve notice by certified mail requesting that the entity submit a report. If the entity fails to respond to the certified letter, the code should be considered to be abandoned and be reclaimed.

8. Expansion to 5 digit CIC's. Although the capability theoretically exists in the current CAC format for expansion to 5 digit CIC's, this change would be quite foreign to the end user. It would also impose a hardship on many end users by requiring them to replace existing PBX or Electronic Key telephone equipment. While the expansion to 5 digit CIC's should be part of a long term plan for CIC administration, only steps involving planning should be undertaken at this time. Such steps should include a proposed effective date for the expansion which would give the industry time to prepare for implementation.

Summary

In summary, WinStar recognizes the importance and value of the CIC resource. In its present form, the resource is quite fragile and finite. Even after full expansion to four digit CIC's it will be necessary to fairly and effectively manage the resource. WinStar supports efforts to effect this management provided that they are balanced and provide opportunities for fairness to all parties in the industry.

Respectfully submitted,

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WinStar Communications, Inc. in behalf of its affiliated companies

March 6, 1998