

they were being presented with telephone numbers, there was no statistically significant difference.

It would therefore appear that concerns over injury to these groups by the imposition of ten-digit dialing are somewhat exaggerated. This hypothesis is further confirmed by experience in the state of Maryland, the first area of the country to receive overlay area codes. The transition there to mandatory ten-digit dialing proceeded without incident and continues successfully after nearly five years. The results in newer overlay area codes is comparable.

WinStar advocates the imposition of mandatory ten-digit dialing for three distinct reasons. First, mandatory ten-digit dialing introduces the possibility of opening zero and one as appropriate values for the so-called "D" digit or first digit in the NXX code. In the present seven-digit system, these values must be reserved as special access codes for long distance signaling and operator services. In theory, this expansion would open 200 additional NXX codes in each NPA. As a practical matter, WinStar believes that zero always will and should be identified as the means to reach an operator. Therefore, the practical effect would be an increase of 100 NXX codes per NPA. Nonetheless, this represents a 12 percent increase in efficiency of utilization of the resource.

Second, the imposition of mandatory ten-digit dialing removes the chief obstacle to the introduction of overlay NPA relief, the opposition to change from seven-digit dialing. This blind adherence by some constituencies to seven-digit dialing, and hence to geographic NPA splits, has led to the implementation of geographic splits in areas where they clearly are inappropriate. Two particularly contemporary examples are Arizona and Minnesota, where the state commissions felt compelled to split rate centers in order to avoid separating communities of

interest. The result in Arizona was widespread customer confusion as CLEC customers were effectively put out of service because the CLEC had a presence in the area covered by the new code but lacked a presence there after the split. In Minnesota, incumbents and CLECs will be similarly affected, although the burden will again will fall disproportionately on the CLEC community.

Further complicating matters, the "cure" for this problem is nearly as detrimental as the problem itself. In order to facilitate call completion in the new NPA for affected service providers, it has been necessary to issue NXX codes in the new NPA duplicating those in the old NPA. These service providers would not otherwise need these codes. The result is a premature exhaust of the new NPA configuration. In the Minnesota case, there is a reduction of nearly 25 percent in the life of the 612 NPA to just over three years. Had an overlay been deployed instead of the three-way split, further relief would have been deferred for at least six years. This case is illustrative of the damage arising from unreasonable adherence to seven-digit dialing. Mandatory ten-digit dialing will facilitate a smoother transition to overlay relief where it is most appropriate.

Third, mandatory ten-digit dialing will eliminate customer confusion. In the current "patchwork" system of seven-digit and ten-digit dialing, consumers who live in and are familiar with an area have, for the most part, mastered the challenge of differentiating calls requiring ten digits from those requiring only seven. However, visitors or those who are new to an area lack this somewhat complex and sometimes unsystematic knowledge. They must learn the drill by trial and error and frustration. In a mandatory ten-digit dialing environment, the frustration would be eliminated because the procedure would be uniform.

In sum, WinStar strongly believes that the time has come for mandatory ten-digit dialing. Although the procedure itself makes a comparatively minor contribution to the delay of NANP exhaust, it facilitates a number of other measures which contribute substantially to forestalling number exhaust and to the proliferation of competition.

C. Number Pooling

WinStar believes that the use of pooling is a potentially valid part of a comprehensive solution, in spite of the fact that it is not convinced of the efficacy of the pooling trials which are currently in place in Illinois and New York.²⁴ The evidence which has been circulated throughout interested industry segments is not conclusive, nor is it even especially convincing or reliable.²⁵ WinStar believes that the trials simply are too new to accurately judge whether the administrative procedures and technology are proper, efficient, or competitively neutral. Moreover, these two trials cannot yet estimate the potential harm to new entrants of the loss of 90 percent of the vanity numbers in a pooling area. For example, business customers would understandably shop among service providers for the one with a telephone number which could help to market that business. Since the incumbents currently control the lion's share of the

²⁴ WinStar is somewhat troubled, however, that the Commission's emphasis on number pooling as a sinecure for "one of the causes of area code exhaust" mischaracterizes new entrants as the primary source of exhaust. *NPRM*, ¶ 130. Unhappily, WinStar notes that this theme appears throughout the *NPRM*. It is misleading and unhelpful to point, in the context of misuse or inefficient use of numbers, to a new entrant service provider which may have as few as 10,000 numbers in an NPA, or perhaps even as many as 150,000 numbers, and omit the fact that the incumbent carriers have millions of numbers that they cannot -- or, worse, will not -- make available through pooling.

²⁵ See generally Illinois Number Pooling Trial Within NPA 847 Interim Report (April 26, 1999); New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures (filed Feb. 19, 1999).

telephone number resource, they also control the vanity numbers which are a part of each NXX -
- which is a grossly unfair competitive advantage that accrues to incumbent service providers.

Another major concern WinStar has regarding pooling is that *if* implemented, it must be implemented nationally, using nationally promulgated rules and guidelines. States must not be given the authority to design their own version of pooling (or any other optimization method). Absent a nationally designed system, the cost to service providers operating on a nationwide basis of implementing 50 different pooling methods would be astronomical and prohibitive. Finally, WinStar strongly urges the Commission to undertake a thorough review of the true value and true costs of pooling before it permits pooling to proceed any further.

1. Any Effective And Procompetitive Number Pooling Plan That May Be Implemented Must Be Established And Implemented On A National Level.

The NANC Report proposed two different types of number pooling as a partial solution to the numbering crisis: thousands-block pooling, in which carriers receive numbering resources in blocks of 1000, and individual telephone number (“ITN”) pooling, in which carriers receive telephone numbers one at a time.²⁶ Both of these measures, as the Commission notes, rely on local number portability. In addition, the NANC Report proposed a numbering optimization method known as unassigned number porting (“UNP”), which also uses LNP technology to route calls. The Commission has sought comment on which, if any, of these LNP-based number optimization methods should be adopted.²⁷

²⁶ NPRM, ¶ 134.

²⁷ NPRM, ¶¶ 138, 141-42.

First, the Commission has noted that “with little exception,” the industry has acknowledged that “a nationwide thousands-block pooling architecture could make more efficient use of NXX codes already allocated and those awaiting allocation.”²⁸ WinStar agrees that thousand-block pooling could be an effective and procompetitive optimization method, but *only* if the Commission *first* implements thousands-block pooling on an expedited and nationwide basis. WinStar notes that New York and Illinois already have begun pooling trials, and that they appear to be technically successful (WinStar would debate that they are in fact successful in conserving numbers), but as other states -- such as Arizona -- are permitted to begin pooling proceedings, it is crucial that there be uniform standards that carriers can follow.

There has been substantially less unanimity of opinion, however, regarding the other two optimization methods. Indeed, WinStar has serious concerns about the implementation of UNP, and entirely agrees with the Commission’s tentative conclusion that ITN should not be pursued at this time.²⁹ With regard to UNP, the Commission has sought comment on whether the agency should permit service providers to port unassigned numbers among themselves by mutual agreement, and whether state commissions should be authorized to make the determination as to whether service providers may use UNP in their own jurisdictions.³⁰ It is WinStar’s opinion that ILECs have been porting unassigned numbers among themselves for many years, and hence that the issue of whether it should be permitted now is practically moot. However, if the FCC decides to permit UNP on a nationwide basis, then WinStar does not believe there is any reason

²⁸ NPRM, ¶ 138.

²⁹ NPRM, ¶ 141.

³⁰ NPRM, ¶ 142.

why a state commission could not make the decision for an area within that state. However, WinStar also believes that too many state commissions have shown themselves *not* to be competitively neutral -- nor even technically very savvy -- and WinStar is concerned that competitors would be harmed as a result of UNP implementation. If UNP is to be permitted at all, then the FCC must establish national rules which then could be enforced by the states.³¹

NANC has estimated that four to six years probably would be necessary to implement ITN or UNP. WinStar agrees with the NANC estimate, and, further believes that pursuit of ITN and UNP should be delayed until hard and fast guidelines and administrative methods and procedures are in place to prevent gaming and other abuses of the resource. Moreover, WinStar believes that deployment of ITN would be prohibitively costly in general, and, more specifically, that the administrative costs of managing individual telephone numbers for new-entrant CLECs would be a barrier to competition. Furthermore, UNP is the most vulnerable to unscrupulous service providers and should only be permitted when there is mutual agreement between two service providers. For all of these reasons, WinStar submits that neither ITN nor UNP should be implemented in the near term.

Finally, the Commission has sought comment on what entity should decide whether to implement pooling in any area, and, specifically, whether the agency should permit the state commissions to order number pooling where those commissions have determined that the

³¹ In addition, WinStar notes that the Commission has indicated that UNP -- unlike thousands-block pooling and ITN -- does not require administration by a neutral, third-party pooling administrator. *NPRM*, ¶ 134. WinStar, however, submits that unless there is a neutral intermediary between service providers, UNP is entirely unacceptable, unless it is a wholly voluntary choice between consenting service providers.

benefits of number pooling outweigh the costs.³² On a superficial level, it may seem appropriate to delegate authority to the state commissions to order thousands-block pooling. Ostensibly, as the Commission has recognized, those state commissions have a more intimate knowledge of their constituents and their needs than the FCC does and might therefore be more likely to make a well-informed and balanced decision about the relative merits and costs of pooling.³³

However, experience has shown that in the absence of federal guidelines and rules, too many of the state commissions are making clumsy attempts at number conservation which, at best, have unproven efficacy, and, at worst, have failed miserably.³⁴

For these reasons WinStar respectfully submits that the FCC must be the ultimate authority for deciding whether and when to implement number pooling, and that delegating this

³² *NPRM*, ¶¶ 146-47.

³³ *See Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 214, and 717*, NSD File No. L-97-42; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Memorandum Opinion and Order on Reconsideration (rel. Sep. 28, 1998), ¶ 32 (“*Pennsylvania Order*”).

³⁴ The NANC Oversight WG has pointed to the expensive, wasteful geographic split in Arizona as the primary example of how *not* to provide area code relief. In December of 1996 rate centers in the Phoenix area were consolidated into one large rate center which followed the traditional boundaries established by the incumbent carrier, U S West. Rate center consolidation is an effective and easily implemented form of area code relief and it was initially successful in this area. However, as number resources began to exhaust, the Arizona Corporation Commission ordered a three-way geographic split in the 602 area which included those rate centers which had already been consolidated, but still continued to maintain the wire center boundaries established by the incumbent. *In the Matter of the Generic Investigation into the Recommendation of the Numbering Plan Administrator for an Area Code Relief Plan in the 602 Area Code*, Order of the Arizona Corporation Commission, Docket No. T-00000F-97-0693, Decision No. 61301 (adopted Dec. 22, 1998). Despite protests from service providers and Commission staff, the Commissioners ordered the split which continues to pose expensive technical hurdles and will likely not provide significant relief since duplicate codes had to be issued to prevent customers from forced ten-digit telephone number changes. *See In the Matter of Emergency Joint Petition of ALTS, ELI, GST, MCI WorldCom, and WinStar for Suspension of Phoenix Area Code Relief Plan or, in the Alternative, Other Relief*, CC Docket No. 96-98 (filed April 1, 1999).

authority to some other entity, including any state commission, would be extraordinarily unwise. WinStar does not disagree that the state commissions may have a more immediate view of their state's number optimization requirements, but WinStar submits that national rules are crucial to provide a uniform, consistent, and cost-effective pooling system.

2. Pooling Roll-Out and Implementation Timeframes

As the Commission correctly notes in the *NRPM*, thousands-block pooling relies on the same network architecture that makes LNP possible.³⁵ The Commission required ILECs to implement LNP within the 100 largest MSAs in switches for which a CLEC had requested LNP capability by December 31, 1998. Since January 1, 1999 CLECs have been able to request ILECs to implement LNP in switches outside the 100 largest MSAs within six months of the request. The degree of deployment, therefore, of LNP is greatest in switches located within the 100 largest MSAs. Accordingly, the Commission tentatively has concluded that any deployment schedule for thousands-block pooling should initially be tied to the 100 largest MSAs.³⁶ WinStar agrees that number pooling, if determined to be an effective number conservation method, should first be implemented within the top 100 MSAs. WinStar believes that implementing number pooling initially within the top 100 MSAs is a rational means for achieving an orderly rollout of number pooling, and would permit the most efficient use of pooling and number resources. However, WinStar urges the FCC to order pooling, if it is determined to be effective, only in the top 100 MSAs, and to prohibit it elsewhere. Piecemeal state efforts to implement number pooling would dilute federally mandated number conservation measures. Again,

³⁵ *NPRM*, ¶ 133

³⁶ *NPRM*, ¶ 144.

WinStar would emphasize that the haphazard deployment of number pooling will be costly to carriers and consumers alike.

The Commission seeks comment on whether the agency has the authority, and can delegate that authority to other entities, to implement LNP for number utilization purposes.³⁷ The Commission also has sought comment on whether an entity other than a LEC could be permitted to request that a specific switch or group of switches be made LNP capable for the sake of thousands-block pooling both within and without the top 100 MSAs.³⁸ Similarly, the Commission seeks comment on whether requests that a carrier become LNP-capable could be made by an entity other than a LEC -- such as a state commission -- and whether requirements for requiring LNP-capability should be more stringent for a switch where LNP is not already in place.³⁹

The Commission clearly has the authority to order LNP in the manner it deems best serves the public interest. In fact, its recent order permitting wireless carriers to defer LNP until 2002 demonstrates the Commission's authority to order LNP capability, and WinStar encourages the Commission to continue to assert its jurisdiction in this area.⁴⁰ WinStar also believes that requests for LNP capability could be made by an entity other than a LEC, such as a state commission, in areas outside of the top 100 MSAs, under certain conditions. For example, state commissions should not have the authority to request LNP capability in preparation for number

³⁷ *NPRM*, ¶ 145.

³⁸ *NPRM*, ¶ 145.

³⁹ *NPRM*, ¶ 145.

⁴⁰ *Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone*
(continued...)

pooling unless there is convincing evidence that the area to be included in the pool is in some apparent danger of exhausting its numbering resource. Moreover, state commissions should not have the authority to request LNP capability in preparation for number pooling unless other, more efficient means of number optimization, including rate center consolidation (with the caveat that a geographic split following the consolidation would be expressly prohibited), have been implemented.

In addition, with regard to whether requirements for requiring LNP-capability should be more stringent for a switch where LNP is not already in place, WinStar continues to object to the notion that LNP requirements should be made less stringent for *any* switch. While acknowledging the technical hurdles which must be overcome to make equipment LNP-ready, WinStar believes that permitting certain carriers to go “under the wire” in order to compete in this marketplace for the one commodity all carriers need is patently unfair and anticompetitive.

Finally, for similar reasons, WinStar urges the FCC not to continue granting forbearance from LNP requirements to CMRS providers, which prevents CMRS providers from participating in number pooling. Although WinStar concedes that there are technical issues involved with CMRS provider participation in number pooling, it submits that these technical problems are no more insurmountable for these providers now than they were for the wireline carriers when the Commission initially ordered LRN-LNP. Plainly, all carriers that use the same numbering resources, including CMRS carriers, should be required to follow the same rules and participate in the same number optimization measures.

(...continued)

Number Portability, Memorandum Opinion and Order, WT Docket No. 98-229 and CC Docket No. 95-116, FCC 99-19 (rel. Feb. 19, 1999), ¶¶ 1, 39.

3. Pooling and Non-LNP Capable Carriers

The Commission notes in the *NPRM* that because thousands-block pooling and other pooling methods are based on LRN architecture, carriers that have not yet deployed LRN architecture to support LNP cannot participate in number pooling.⁴¹ The Commission therefore has sought comment on how the implementation of number pooling would affect non-LNP capable carriers, and, specifically, whether those carriers should be required to participate in pooling.⁴² As explained above, WinStar concurs with the opinion of the state regulators and the NANPA that the continued forbearance of CMRS carriers from LNP requirements is wasteful and costly, and that CMRS providers should be required to participate in number pooling as soon as possible. WinStar believes that full participation in number optimization measures by all industry segments using the same numbering resources is crucial if the life of the NANP is to be extended to the fullest extent possible.

As discussed, WinStar is fully aware of the technical obstacles that service providers must overcome in order to provide LRN-LNP, but WinStar does not believe that it is equitable for any industry segment to be exempted from participating in a process of number conservation when the entire industry is competing for the same set of numbers. Further, WinStar questions the assertion that because CMRS carriers have such high utilization rates, it is more efficient for the industry as a whole that CMRS providers be exempted from pooling and permitted to receive full NXX codes. WinStar also objects to the argument that CMRS carriers are entitled to an exemption from number pooling merely because they operate in a limited number of rate areas.

⁴¹ *NPRM*, ¶ 159.

⁴² *NPRM*, ¶ 159.

WinStar notes that CLECs also operate in a limited number of rate areas, but that no consideration would be given to granting CLECs an exemption on that basis.

The Commission also has asked for comment on whether the “potential benefits from CMRS participation in pooling earlier than November 2002 would be sufficient to justify the significant added cost and burden that would be borne by CMRS providers.”⁴³ WinStar does not agree with the assumption that CMRS carriers would, in fact, be subject to “significant” added cost and burden. Moreover, WinStar submits that it would be difficult to compare the burden borne by CMRS providers with the burden already borne by wireline carriers in connection with their compliance with the Commission’s local number portability requirements. WinStar respectfully submits that if the respective costs and burdens were fairly compared, CMRS providers could not be viewed as the greater sufferer.

WinStar believes that in order for the Commission to remain competitively neutral, it must be even-handed in its treatment of all carriers and industry segments, both wireless and wireline. Competitive neutrality cannot be realized if certain classes of carriers, like CMRS providers, are given additional time and consideration to participate fully in the number conservation efforts of the industry. Because WinStar believes that all carriers must be treated equally, WinStar submits that CMRS providers must be subject to the same rules that apply to wireline carriers.

⁴³ *NPRM*, ¶ 168.

D. Technical and Administrative Pooling Implementation Issues

As the Commission notes, any nationwide implementation of number pooling will require the establishment of detailed technical and administrative guidelines.⁴⁴ WinStar discusses below several issues of paramount importance to the promulgation and implementation of such guidelines.

1. Thousands-Block Number Pooling Standards

The technical standards for thousands-block number pooling as defined by the Alliance for Telecommunications Industry Solutions ("ATIS") T1S1.6 Working Group currently are in place in the pooling trials in New York and Illinois, and WinStar is an active participant in those trials. WinStar is aware that some technical issues remain unresolved, especially with respect to E911 and certain combinations of some number conservation methods (such as rate center consolidation and number porting), and believes that additional work needs to be done by ATIS to craft solutions to those issues. In part because of the issues yet to be resolved in connection with thousands-block pooling, WinStar feels compelled to reiterate here its firm belief that the FCC must put an immediate stop to all pooling trials, except those currently operating in New York and Illinois, until the impact of the current thousands-block number pooling trials in New York and Illinois, both in terms of efficiency and technical feasibility, has been fully assessed.

2. Selecting a Pooling Administrator

WinStar would be gravely concerned about issues of neutrality if the NANPA were selected as the thousands-block pooling administrator, especially since the same entity manages

⁴⁴ *NPRM*, ¶ 182.

and administers NPAC.⁴⁵ WinStar supports a competitive bidding process for the selection of a pooling administrator because it believes that a competitive environment is the most healthy for the industry and, ultimately, for consumers.

3. Sequential Number Assignment

WinStar believes that sequential number assignment, if carefully designed, could be an effective method of conserving numbers.⁴⁶ However, this method easily could be untenable and anticompetitive if parameters for its use are not cautiously crafted and then applied equitably on a nationwide basis. Service providers use vanity numbers to compete for business.⁴⁷ Incumbent service providers (and certain large CLECs), by virtue of their longer-term existence and larger inventory of numbers, have had access to a greater quantity of vanity numbers than small to medium and relatively new-entrant CLECs.

Further, since vanity numbers are more desirable to customers, these numbers almost always are assigned first. Consequently, the ILECs and large, established CLECs will have contaminated their blocks of numbers by assigning these vanity numbers, and hence the requirement to issue the remaining numbers sequentially would have little impact. Smaller competitors are more likely to have fewer customers and, therefore, more vanity numbers available for assignment. A simple sequential number scheme would unfairly disadvantage these competitors.

⁴⁵ *NPRM*, ¶ 184.

⁴⁶ *NPRM*, ¶ 190.

⁴⁷ An example of a vanity number is NPA-NXX-1000, or NPA-NXX-TAXI (8294).

WinStar notes that there also are technical issues with respect to sequential number assignment which would need to be addressed in any national guidelines adopted. Centrex and PBX customers require that numbers be assigned and programmed in even (hundreds or thousands) blocks, and service providers must have sufficient flexibility to accommodate these customers. WinStar believes that smaller customers may be served equitably using sequential number assignment, but service providers must be able to make those determinations on a case-by-case basis.

WinStar suggests that part of the guidelines could include the opportunity for a service provider to extract a certain quantity of numbers from each NXX code to be held as vanity numbers and for larger customers requiring even blocks of numbers. For example, in a thousand block of numbers, a service provider might be permitted to assign 20 percent as that service provider deemed appropriate, leaving the remainder to be assigned sequentially.

4. Inventory Levels

WinStar continues to assert that rules must be promulgated by the Commission which are equitably applied to all service providers in order to maintain competitive neutrality. The establishment of inventory levels is another opportunity for the Commission to set a standard for conservation while ensuring that all service providers are competing on a level playing field.

It is far more difficult for a new service provider to predict what its customer growth will be than it is for an established provider, especially when those predictions extend far into the future. Indeed, the concept of future has a very different meaning to a service provider which has been in business for six months, as compared to a provider which has been in business for 60 years. While WinStar would not suggest that there be different inventory levels for different

service providers, it does suggest that the industry standard be sufficiently broad to protect new and small providers, as well as large or more established service providers. WinStar believes that inventory levels of no more than 18 months would be sufficient to protect all classes of service providers.

E. Carrier Choice Of Optimization Strategies

Although WinStar lauds the Commission for its efforts to accommodate the needs and desires of many diverse interests, WinStar is concerned that an approach to number optimization that is too permissive may thwart the objective of conserving the resource and maintaining a competitively neutral environment.⁴⁸ WinStar supports the concept of choice within prudent limits, as discussed below.

1. Rate Center Consolidation

Early in the era of local competition, some CLECs elected to draw rate center boundaries which differed from those of the incumbent carriers in an effort to offer innovative products to their customer bases. This experiment with “inconsistent rate centers” proved highly problematic. From the perspective of a service provider, inconsistent rate centers could not be used effectively for billing and collection. From an end user standpoint, they often led to confusion. Although the service providers’ customers were largely unaffected in terms of billing their outbound calls, administration of inbound calls was very confused. In some instances, an end user of a competing service provider would be billed a toll charge for a call that literally terminated next door.

⁴⁸ *NPRM*, ¶ 216.

As a result of this failed experiment, the industry has reached widespread consensus that all service providers operating in a given LATA, or even in an MSA, must observe the same rate center boundaries, whether those boundaries are expansive or compact. Hence, although WinStar remains a strong supporter of rate center consolidation, WinStar believes that it is an “all or nothing” proposition. Either all service providers in the affected area must observe the same consolidated rate center boundaries, or the concept must not be implemented.

2. Thousands-Block Pooling

Thousands-block pooling also would prove problematic if it is made optional. Although WinStar supports thousands-block pooling trials and full deployment if the trials are successful, WinStar continues to have reservations about some aspects of thousands-block pooling. The most notable of these is the availability of so called “vanity numbers.” By definition, service providers that obtain thousands blocks for initial footprint codes, rather than full NXX codes, have their inventory of so called “vanity numbers” reduced by 90 percent. This is a significant disadvantage in the competition for customers requesting new service and for customers relocating to a new rate center, which in turn requires a telephone number change.

WinStar already has repeatedly expressed its concern, in this and other proceedings, that incumbent providers have an extraordinary advantage because they possess so many full NXX codes. If thousands-block pooling is applied uniformly, much of this advantage is mitigated. On the other hand, if service providers, incumbent or otherwise, are permitted to opt out of thousands-block pooling based on a pledge to achieve certain utilization levels, these service providers will be able to receive and maintain unfairly large inventories. Furthermore, in the absence of stringent audit procedures to ensure compliance, such service providers may be able

to inflate artificially their utilization levels to the detriment of thousands-block users. Such a situation would reward those who possess the greatest quantity of resources. In the interest of fairness, WinStar believes that thousands-block pooling must be deployed by all service providers or none. Any other circumstance would not be competitively neutral.

3. Flexible Alternatives

As noted, WinStar embraces some flexibility in the deployment of optimization measures. Nonetheless, WinStar believes that a different approach is needed to achieve flexibility. WinStar supports using the industry process for traditional NPA relief as a model for such flexibility. At this time, when NPA relief is determined to be necessary, members of the industry meet and discuss alternatives in an effort to reach consensus on the most workable alternative. In a similar manner, industry members could meet to discuss the other number optimization methods that would be most suitable for use within a particular area. Upon reaching consensus, the appropriate methods then could be deployed. This method is workable, equitable, and if properly applied, could provide the flexibility that the Commission wishes to achieve.

WinStar believes that a vital component of the consensus process is the full participation of all carriers, including CMRS providers, in any adopted optimization measure. While WinStar has no quarrel with the Commission's current grant of forbearance until 2002 for full compliance of CMRS providers with LNP and with pooling, WinStar adamantly asserts that no further requests for exemption or extension should be honored. As a practical matter, the very nature of CMRS services renders them particularly compatible with concepts such as pooling and rate center consolidation. For example, since CMRS devices are programmed individually, they

would be particularly amenable to so called "paper pooling," a process where numbers are assigned to individual units by blocks.

In fact, prior to the introduction of cellular service, CMRS providers in general, and paging providers in particular, were classified not as telecommunications service providers, but as radio common carriers ("RCC"). As such, they received numbers from the RBOCs in blocks of one thousand. It was only after the establishment of cellular companies as service providers that entire NXXs began to be issued routinely. It would seem that a move back to this procedure would be feasible, if not simple. As such, WinStar believes that CMRS providers would not face greater hardships than wireline providers if ordered to participate in number pooling. In sum, "choice" of optimization measures should be a function of industry consensus, and once consensus is reached, the adopted optimization measure should apply to all service providers within a given LATA.

4. Utilization Rates

In the *NPRM* the Commission expresses its wish to establish a utilization rate that is "totally neutral."⁴⁹ While this objective is admirable, it probably is unachievable, at least in the literal sense. Nonetheless, WinStar believes that a reasonable balance is attainable. It appears to be competitively biased on one hand, or wasteful on the other, to establish a uniform fill rate for all service providers. Rather, consideration should be given to new entrants for a period of time after initial entry. WinStar recommends the following schedule for utilization thresholds:

⁴⁹ *NPRM*, ¶ 219.

Service provider Type	Fill Rate
Experienced	60%
New Entrant	40%

WinStar believes that the above proposal is equitable because of the relative availability and importance of vanity numbers. WinStar advocates a 60 percent fill rate for experienced providers. For purposes of this document, an experienced provider is defined as one who has been operating in a given rate center for three or more years. Incumbents, who comprise a subset of this class, have the longest track record among the three recognized classes of carriers. Further, since incumbents for so long have been monopoly providers by practice and usually by statute, they continue to control a preponderance of the active NXX codes within an NPA. As noted, this gives the incumbent a larger supply of vanity numbers than others within the market.

In addition, the majority of lines in the incumbent subscriber base are residential customers. By and large, residential customers do not receive vanity numbers, and there is no compelling economic reason to assign vanity numbers to residential customers. These two factors make it easier for incumbents to attain high assignment thresholds within an NXX. More recent entrants, that have been present in a market for three or more years, similarly have had an opportunity to establish a footprint in a rate center, and should, therefore have had sufficient time to turn up a significant number of customers. This level of customers should in turn enable these carriers, even though they are relatively inexperienced compared to the incumbent, to achieve fill rates of 60 percent. It then follows that these carriers can attain higher usage thresholds and should be held to such levels.

It is WinStar's position that all number optimization policies should apply in all NPAs in all parts of the country. In recent months, even some comparatively rural NPAs have begun to exhaust. Therefore, it is clear that number exhaust is no longer merely a "big city" problem. Finally, resource optimization is a prudent concept regardless of whether an NPA is nearing jeopardy or is forecasted to be decades away from exhaust. Accordingly, there is no compelling reason to limit fill rate requirements only to high growth areas. WinStar would suggest that an approach such as that outlined above balances the interests of new market entrants with the principles and goals of resource optimization to yield a process that is both fair and effective.

IV. PRICING OPTIONS

In the *NPRM*, the Commission implies that the allocation and utilization of numbering resources might be improved through the use of a pricing mechanism for the use of resources.⁵⁰ WinStar wishes to assert, in the strongest possible terms, its opposition to such a concept.

The Commission also states in the *NPRM* that unlike other network "resources," service providers do not pay a charge for numbers.⁵¹ WinStar respectfully submits that the Commission has erred in its interpretation of the word "resource." Service providers do indeed pay for facilities necessary to transport traffic. However, these are physical facilities which require provisioning, and in most cases construction to deliver, while numbers exist as an important but comparatively abstract concept. Even radio spectrum, to which the commission alludes as an example of a resource that carries an economic value, is at its heart a facility which information traverses.

⁵⁰ *NPRM*, ¶¶ 225-227.

⁵¹ *NPRM*, ¶ 226.

Numbering, on the other hand, functions as an address -- a routing instruction. No one would suggest, nor would the public tolerate, a federally mandated charge or an auction for street addresses -- street addresses exist to facilitate the orderly function of society. In a similar vein, telephone numbers exist for the orderly transmission of voice and data information for which the public switched telephone network exists.

The sale or auction of numbering resources would contradict the most basic tenets of industry consensus with regard to numbering. Current industry guidelines state explicitly that numbers are *not* commodities to be bought or sold by end users.⁵² Furthermore, numbers are an indispensable part of operating the PSTN, and hence any provider must have access to numbers in order to operate. The sale or auction of numbers, particularly in an open market as dictated by the Commission's most radical suggestion,⁵³ would favor service providers with the greatest resources to the detriment of smaller start-up carriers. This "deep pockets" preference could enable a few large providers, or even one particularly aggressive and well-funded provider, to monopolize the resource. In the extreme, this would have the practical effect of creating an unregulated monopoly in telecommunications services, the polar opposite of the intent of the 1996 Act.

Furthermore, any attempt to charge for numbers automatically would commoditize the resource. Instead of treating the resource with the care and conservation necessary to forestall exhaust, such a "free market" plan could exhaust the resource, place an even greater premium on

⁵² NPA Allocation Plan and Assignment Guidelines, 2.1 ("The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered or leased by the assignee for a fee or other consideration.").

⁵³ *NPRM*, ¶¶ 235, 236.

numbers, and thwart competition by creating an impenetrable barrier in the form of prohibitive costs to obtain numbers.

In any case, regardless of the policy reasons militating against the imposition of a charge for numbering resources, the Commission's authority to do so is expressly delineated and, more importantly, limited by the plain language of the 1996 Act. Accordingly, WinStar has serious doubts about the Commission's authority to begin charging service providers for numbering resources. Section 251(e)(2) expressly provides that

the *cost* of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.⁵⁴

While Section 251(e)(2) does give the Commission a certain degree of discretion in determining what charges may be imposed in connection with the establishment of numbering administration arrangements – as opposed to charging for the numbering resources themselves – any charges imposed must be both competitively neutral *and*, more importantly, cost-based.

The Commission's proposal to establish a pricing mechanism for numbering resources, however, is motivated by a desire to provide incentives to carriers to use numbering resources "more efficiently."⁵⁵ Significantly, the proposed charges are not intended to enable the Commission to recover costs associated with the agency's administration of numbering resources. In other contexts the Commission has recognized that, despite its belief that market-based user fees are a "desirable means" of encouraging efficient resource usage, absent express

⁵⁴ 47 U.S.C. § 251(e)(2) (emphasis added).

⁵⁵ *NPRM*, ¶ 226.

statutory authority the Commission may not impose such incentive fees on service providers.⁵⁶ Accordingly, WinStar submits that any charges imposed on service providers for their use of numbering resources must be based solely on the costs accruing to the Commission for administration of those resources.

V. AREA CODE RELIEF

The Commission has requested comment on its handling and delegation of authority for area code relief to the states.⁵⁷ WinStar believes that the Commission has acted properly with regard to its current delegation of authority. State commissions, acting in concert with their constituencies and the service providers certified to operate in their jurisdictions, are in the best position to determine whether NPA relief should take the form of an all-services overlay or a geographic split. Further, in the case of geographic splits, local authorities generally are the best source to determine where boundaries should be drawn for a geographic split.

By the same token, WinStar submits that it would be unwise for the Commission to delegate any further authority to the states. For example, the Commission ruled last year that thousands-block pooling, which must be based on uniform standards in order to work properly, does not constitute NPA relief and therefore is subject to regulation only at the federal level.⁵⁸ WinStar believes, as discussed below, that the Commission acted wisely in retaining this

⁵⁶ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as Amended*, Notice of Proposed Rulemaking, WT Docket No. 9987, FCC 99-52 (rel. March 19, 1999), ¶ 76; *see also Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 10076, 10136-37 (1995).

⁵⁷ *NPRM*, ¶¶ 241, 247.

⁵⁸ *Pennsylvania Order*, ¶ 27.

authority, and that the Commission should create rules to which the states must adhere in the implementation of NPA relief.

A. Geographic Splits

Geographic splits have been the historic standard for area code relief. Geographic splits have the advantage of preserving seven-digit dialing within home NPA local calling areas; this has been a potent and persuasive factor for the selection of the geographic split as a method of relief. Countering this perceived advantage, however, is the fact that the geographic split requires approximately half of all affected subscribers to change telephone numbers. This causes businesses to incur substantial costs for changes to advertising, stationery, signage, and other business-related materials. Residential customers also must incur costs to notify out-of-town family and friends about the change.

Despite the disadvantages, WinStar believes that geographic splits have an appropriate and important role to play in NPA relief. WinStar believes that geographic splits should be adopted in those areas where the resulting NPA boundaries encompass an area greater than 2,000 square miles (such as an area 50 miles long by 40 miles wide). For smaller areas, overlay relief should be the primary solution considered, as discussed below.

In addition, WinStar believes that irrespective of any other outcome of this proceeding, the Commission should issue an immediate order which forbids any future geographic split which divides a rate center. The recent problems in Arizona are instructive of why such a rule is necessary. In Arizona, the Phoenix rate center was divided along ILEC wire center boundaries. As a result, substantial numbers of CLEC customers, including most customers whose numbers were ported from the ILEC, were unable to receive calls. In an effort to cooperate, U S West has

modified its translations temporarily to avoid CLEC disruptions until the permanent solution can be implemented fully.

However, the permanent solution -- the issuance of duplicate codes for all CLECs who have customers in the new NPAs -- also is problematic. First, the issuance of duplicate codes will exhaust the resulting area codes 30 percent faster than originally projected. In addition, CLECs must utilize valuable memory space in their switches for codes which otherwise would not be needed. Finally, there are costs associated with the deployment by CLECs of these otherwise unnecessary codes. For example, the cost to WinStar to deploy each additional code, assuming that there is no need for additional software or memory, is approximately \$2,100. If additional software, memory, or hardware is required, the costs can range from \$15,000 to \$195,000. Again, it is important to emphasize that if rate center boundaries are respected in the establishment of split boundaries, the customer irritation and attendant costs detailed above are eliminated. We strongly urge the Commission to adopt the suggested rule.

B. All Service Overlays

As can be inferred from the discussion above on geographic splits, WinStar believes that there is a geographic threshold below which all-service overlays become the preferred method of NPA relief. We believe that if the NPA boundaries resulting from a geographic split would cover less than 2,000 square miles, an all-services overlay should be deployed. Of course, if regulators and their constituents agree, all-service overlays also may be implemented over larger geographic areas. Such was the case recently in the Des Moines, Iowa LATA.

Clearly, the chief advantage of an all-service overlay is that in an overlay, all existing customers keep their telephone numbers: it is not necessary for any existing customer to change