

telephone numbers as a result of an overlay. Correspondingly, there are two perceived disadvantages to an overlay. The first is the possibility of two NPAs operating in very close proximity, in some cases even in the same building. The second is the requirement for mandatory ten-digit dialing. That is, all customers must dial ten digits for all calls, even those in their home area code.

The mandatory ten-digit dialing requirement is driven by policy rather than technology. The policy was deployed in the belief that, particularly in the initial stages of overlay deployment, end users will prefer numbers in the established area code. This preference would be made even stronger if end users were required to dial ten digits only to reach the new area code and not the established one. Such a rule would violate the principle of dialing parity and would disadvantage new entrants who were forced to accept NXX codes in the new NPA. Consumer surveys have shown that the availability of seven-digit dialing in the home NPA substantially strengthens the bias toward the old NPA, to the detriment of new entrants. For this reason, WinStar believes that the policy requiring mandatory ten-digit dialing in all-service overlay NPAs should be retained as a national standard.

It should be noted that in areas where overlays have been deployed, the expected consumer resistance to ten-digit dialing simply has not materialized. For example, the entire state of Maryland migrated to overlay NPAs in 1996 without incident, and has experienced no problems in more than three years.

One final point must be raised with regard to overlays. There is consensus in the industry that once an overlay is deployed in an area, all future NPA relief also must utilize all-service overlays. This consensus is based on more than impression. A split of an overlay is not

technically feasible in the current generation of central office switches. Furthermore, the result would be somewhat chaotic with one overlay area code operating in the same geography as two geographic codes. For this reason, care should be taken in implementing overlays in geographic footprints substantially larger than 2,000 square miles. If the result of the overlay in such a case is less than optimum, it cannot be undone.

C. Service Specific and Technology Specific Overlays

The widespread proliferation of CMRS technology, most specifically cellular and PCS telephony and radio paging, has revived interest in service- and technology-specific overlays. Such overlay NPAs would operate in the same geography as wireline NPAs but would be available only to designated services, in most cases CMRS.

WinStar opposes technology- and service-specific overlays, because they waste numbering resources. A particularly instructive example is the only operating technology-specific NPA in the North American Numbering Plan, the 917 NPA in New York City. The 917 NPA was established more than ten years ago, yet remains largely unused. At the same time, the 212 and 718 NPAs have reached the extreme stages of exhaust, which has resulted in diminished competitive activity in what is arguably the largest market in the world. Due to the severity of the situation, the New York Department of Public Service recently approved the use of 917 NXXs for conventional wireline services.

Given the size of the New York market and the high penetration rate of CMRS devices in that market, this should have been the classic example of the utility of a technology-specific overlay. Instead, more than a decade of experience has shown it to be a colossal failure. This

case study alone should give pause to anyone considering further use of service- or technology-specific overlays.

In a related matter, WinStar is concerned about the Commission's interpretation of Ameritech's request in Illinois. Far from being discriminatory, Ameritech's proposal is meant to level the playing field. Historically, CMRS providers have requested and received "grandfathering" for their NXX codes. The logic for grandfathering seems persuasive at first: because CMRS devices are inherently non-geographic, CMRS numbers should not be required to be tied to a particular NPA. Furthermore, if CMRS numbers change as a result of a geographic split, end users would have to reprogram their CMRS handsets at their own cost or at the cost of the provider, which ultimately would pass these costs to the end user in one form or another.

The problem with this argument is that it creates a discriminatory environment in which certain classes of carriers are favored to the detriment of other carriers and of the NANP. Although WinStar acknowledges the cost and inconvenience of reprogramming CMRS handsets, the continued grandfathering of CMRS codes has contributed to premature exhaust of the NANP. For example, in the recent Minnesota NPA relief proceeding, the grandfathering of CMRS codes reduced the already short life of the 612 NPA by more than one year. A similar situation has contributed to the premature exhaust of the 248 and 810 NPAs in Michigan. Clearly, the industry no longer has the luxury of favoring certain classes of carriers over others to avoid inconveniences. WinStar therefore urges the Commission to issue a rule that forbids any further grandfathering of codes for any industry segment.

VI. ADMINISTRATIVE MEASURES

As the Commission notes, one of the major causes of number exhaust is the lack of discipline in the process by which numbering resources are administered and allocated.⁵⁹

WinStar agrees with this conclusion and believes that the Central Office Code Assignment Guidelines, which contain the procedures for the allocation of numbering resources within the geographic area codes of the NANP, should be modified, and, in some cases, strengthened in order to prevent carriers from obtaining and stockpiling numbers for which they have no sufficient need. Further, WinStar believes that an increased responsibility must be placed on carriers to provide information about their utilization of the numbering resources that already have been allocated to them.

The Commission must ensure, however, that any new procedures adopted in this proceeding do not unduly hinder the ability of service providers -- especially competitive carriers and new entrants -- to obtain and utilize the numbering resources they need to provide competitive services. WinStar's specific proposals, which balance both the need for increased carrier responsibility and the importance of broad carrier access to the resource, are discussed below.

A. Definitions of Categories of Number Usage

WinStar concurs with the Commission's tentative conclusion that a uniform set of definitions for the categories of number usage needs to be established as part of an effective policy for number administration.⁶⁰ Further, WinStar believes that these definitions can be

⁵⁹ *NPRM*, ¶ 36.

⁶⁰ *NPRM*, ¶ 39.

finalized and administered as part of the Central Office Code Assignment Guidelines, the Thousands-Block Pooling Guidelines, and any other guidelines that the industry may choose to implement. In order for these definitions to be effective, however, rules of enforcement must be established to support them. For example, service providers that deliberately label reserved numbers as “working,” or vacant numbers as test numbers, should be subject to progressively punitive sanctions for such behavior. In WinStar’s opinion, such sanctions can be effective only if they have the force of FCC rules.

Generally, WinStar agrees with the Commission’s proposed definitions for administrative numbers, but offers the following revised definitions and supplemental information.⁶¹

Employee/Official Number – A number assigned by a service provider for its own internal purposes. An employee/official number must be installed and working at a location owned or controlled by the service provider under a legally enforceable agreement. Examples of such locations would be the service provider’s own offices, service provider-owned or controlled switch sites, and switch rooms at customer sites granted for the service provider’s use. In the case of CMRS providers, such numbers also may include wireless handsets assigned to employees for business purposes. Key to this definition is a provision which requires these numbers to be used primarily for the conduct of internal and external activities necessary to the service provider’s business.

Location Routing Number (“LRN”) – The definition as proposed in the *NPRM* generally is accurate, but requires one modification. The current definition allows assignment of an LRN to a switch or to a point of interconnection (“POI”). The guideline for LRN assignment

⁶¹ *NPRM*, ¶¶ 41-45.

contained in the Local Number Portability Administration Guidelines specifically states that LRNs are to be assigned on the basis of one per switch; the guidelines specifically exclude assignment on a per rate center or on a per-POI basis. In order to maintain consistency with this guideline, the definition should limit assignment to a switch only.

Test Number – Test numbers are necessary to maintain network integrity, to facilitate problem diagnostics, and to perform preventative maintenance. Examples of test number functions include, but are not limited to:

102 Test: Verification of transmission from the distant switch

105 Test: Verification of two way transmission

Intercept: Verification of various intercept announcements (such as transfer of calls, disconnected number, temporary service suspension)

Switch identification: Identification of the service provider switch for interconnection purposes

As noted, this list should be considered illustrative rather than comprehensive. Nonetheless, an industry standard is beneficial. WinStar recommends that the industry be consulted for consensus on a comprehensive list, and that test numbers be limited to those on that industry list. Special exceptions could be granted through the INC, the NANC, or the Commission.

Violations should result in sanctions against the violating carrier.

Aging Number – WinStar suggests the following as a replacement for the suggested Commission definition for aging numbers:

Aging is the process of making a disconnected telephone number unavailable for reassignment to another customer for a specified period of time in order to prevent caller confusion or annoyance calls. An aging period includes any announcement treatment period as well as the blank telephone number intercept period.

The length of time required for an aging number varies according to: (1) the type of service with which the number was associated prior to disconnect; (2) the reason for disconnect; (3) the intercept treatment provided for the number; and (4) the general inventory of available numbers. WinStar offers the following discussion, which closely tracks industry practices in many parts of the North American Numbering Plan, as a guideline for a number aging policy.

Aging schedules are first broken down into two categories, residential and business. Generally speaking, residential customers do not have the same urgency of need for a number to receive Transfer of Calls Recordings. For this reason, the schedules for residential customers are usually shorter than those for business customers. The following charts present the suggested aging schedule which is used by a number of service providers in the North American Numbering Plan. All of the intervals quoted are maximum intervals and may be shortened upon customer agreement or request.

Residential

Type of Disconnect	Maximum Aging Interval (Includes Intercept Period)
Disconnect without Transfer of Calls	3 months
Disconnect with Transfer of Calls	9 months
Annoyance Calls	2 years

Business

Type of Disconnect	Maximum Aging Interval (Includes Intercept Period)
Disconnect without Transfer of Calls	1 year
Disconnect with Transfer of Calls	1 year plus the interval until the next directory publication (maximum 2 years)
Annoyance Calls	2 years

These intervals are necessary in order to avoid customer confusion or irritation resulting from calls to a previous subscriber at the same number. In addition, these intervals are particularly important in the case of business end-users whose competitors may engage in arbitrage of disconnected numbers in order to gain a competitive advantage. Intervals as short as those shown for illustrative purposes in the *NPRM* might ultimately facilitate a more efficient utilization of the numbering resource, but in the process would degrade the quality of telephone service, particularly for business end users.⁶² On the other hand, service providers should be held to the limitations specified above, and should be constrained from requesting further resources if a substantial quantity of numbers are aged for longer intervals, and if there is no acceptable explanation for the anomaly.

Assigned Number – WinStar concurs with the Commission’s definition for this category. A number should be considered assigned if it is working in the PSTN or if it is not yet working but has a valid customer service order pending. WinStar would, however, suggest a different maximum interval for an order to remain pending. Because many business implementations are fairly complex and may require weeks or even months of preparation before a system can be cut

⁶² *NPRM*, ¶ 42 and n. 70.

over, WinStar submits that a maximum interval for a pending order should be 120 days. In addition, there should be a provision to extend the order, with justification, for an additional 60 days. Any extension beyond this point should require a new order.

Dealer Numbering Pool – Dealer numbering pools are allocated by service providers to retail dealers for their use in filling customer orders. These pools are necessary for service providers with wholesale operations because personnel that staff the retail outlets may lack the skills necessary to interact with the Number Portability Administration Center and other industry databases. WinStar recommends that dealer numbering pools be treated as a specialized category of reserved number. Since a viable dealer should be able to activate these numbers comparatively rapidly, the maximum reservation period should be 120 calendar days. During and after the reservation period, the original service provider should be held responsible for proper administration of the numbers, and any enforcement actions which arise from misuse should involve the service provider as well as the dealer.

Ported-Out Number – WinStar agrees with the definition of a ported-out number as a number ported from a code holder or block holder to another service provider. In order to properly track the use of numbers, WinStar believes that the ported-in carrier should treat the number as “working.” The ported-out carrier should delete the number from its inventory entirely. Alternatively, and in order to accommodate the potential “snap back” of the number, the number should be treated in the ported-out carrier’s inventory as “unassignable.” The number should count for the ported-in carrier as an assigned number for purposes of calculating the utilization level.

Reserved Numbers – WinStar concurs with the seven industry characteristics outlined in the *NPRM*.⁶³ In addition, WinStar would suggest that characteristic six – regarding restrictions with respect to timeframe and quantity – contain a maximum time frame of two years with a potential extension of one year, and that the maximum quantity of reserved numbers per end user account be 20 percent of the subscriber’s working numbers, with a maximum of 1,000 numbers.

In addition, the NRO proposed several broad guidelines to govern the administration of reserved numbers.⁶⁴ In general WinStar agrees with these guidelines, with one exception. Guideline 2 suggests that all classes of customers be treated equally under the guidelines. As noted above, WinStar believes that residential customers (that is, numbers for structures that are personal dwelling places and that are not used primarily for the generation of revenues) do not have the same vested interest in specific telephone number reservations, or the same need for extended reservation periods. Therefore, WinStar recommends that reservations for residential customers be limited to six months with the potential to extend the reservation one time for six additional months. For business customers (that is, those with lines used primarily for the generation of revenues), WinStar recommends that the time limit for reservation be two years with the option to renew the reservation for one additional year.

WinStar believes that the NANC guidelines, with WinStar’s recommended modifications, are sufficient to fashion a workable policy for number reservation. MCI WorldCom’s recommendation that numbers be reserved under a legally enforceable written agreement is viable, and largely is in place now, for large business customers (those with more

⁶³ *NPRM*, ¶ 46.

⁶⁴ *NPRM*, ¶ 47.

than 100 working lines). However, for small business and residential customers, it is probably too cumbersome to be practical. Instead, WinStar suggests that a verbal agreement is acceptable, provided that the service provider note the date on which the agreement was made on the customer record and that the reservation be withdrawn once the reserved interval has passed.

WinStar opposes any effort to assess a fee to the reserving carrier. Such a fee could pose a barrier to entry to new entrants that must preserve capital wherever possible to establish and promote their businesses. While such a charge might be comparatively trivial to an established service provider, it literally may keep new entrants from getting into business.

“Soft Dial Tone” Numbers⁶⁵ – So-called “soft dial tone” numbers, in a PBX environment, do not typically utilize actual assigned numbers from the PSTN. The only environment where such numbers do commonly use PSTN numbers is Centrex. WinStar suggests that Centrex is technically capable of supporting such numbers when they are not part of the PSTN. Hence, absent an uncompromising technical barrier, such numbers should not be part of the PSTN, and should not be considered in this proceeding.

WinStar concurs with the Commission’s definitions for **“Available for Assignment”** and **“Unavailable for Assignment.”⁶⁶** Subject to the stated guidelines and the modifications suggested above, WinStar believes that these definitions would promote the numbering optimization objectives stated in the *NPRM*.

⁶⁵ *NPRM*, ¶ 50.

⁶⁶ *NPRM*, ¶¶ 51-52

With regard to the Commission's question regarding the current definition of "*Working Telephone Numbers*,"⁶⁷ WinStar believes that such numbers represent a subset of "telephone numbers unavailable for assignment." By definition, if a telephone number is working for one customer or application, it is not assignable for another customer or application. Therefore, in addition to administrative, aging, assigned and reserved numbers, working numbers should be considered unavailable for assignment.

B. Verification of Need for Numbers

In the *NPRM*, the Commission expresses its concern that applicants for initial codes are making their requests well in advance of the time that they actually will provide service.⁶⁸ While WinStar shares the Commission's concern that carriers should utilize resources as promptly and efficiently as possible, there are many variables that can delay or preclude market entry. These include facilities limitations; limitations imposed by incumbent, interexchange, or other interconnecting service providers; construction delays; labor disputes; and acts of God. A smooth installation can be completed in a few months; a troublesome installation could require a year or more. For this reason, the imposition of an arbitrary deadline for switch implementation could severely disadvantage new market entrants.

The Central Office Code Assignment Guidelines already recommend the reclamation of any code which is not placed in service within six months of assignment. As a practical matter, NANPA will grant extensions to this time frame where a service provider can show evidence of good faith efforts to deploy a code despite uncontrollable setbacks. Any more stringent

⁶⁷ *NPRM*, ¶ 53.

⁶⁸ *NPRM*, ¶ 58.

provision would have a chilling effect on competition. Indeed, it is even possible that an incumbent could trigger reclamation proceedings through the delay, intentional or otherwise, of vital interconnection facilities. For these reasons, the standard must remain as it is today.

The Commission has asked whether the applicant should be required to submit proof of certification with applications for initial codes.⁶⁹ WinStar believes, in the context of the current procedure, that this would be a redundant exercise. Under current procedures, an applicant must have an operating company number (“OCN”) from the National Exchange Carriers Association (“NECA”) in order to obtain an initial or growth code. Before furnishing a code, NECA, in turn, requires extensive information about the service provider, and proof of certification in the state for which the OCN is to be utilized. Given NECA’s review of the detailed information submitted by the provider, it should be unnecessary for a provider to be required to furnish further proof of certification in order to obtain a code. The least burdensome way to ensure compliance is to require that a valid OCN, registered to the entity making the request, be associated with every application. If the service provider does not initiate service within the six-month window after receiving the code, NANPA could and should initiate reclamation proceedings.

Growth Codes – The Commission has asserted that that carriers should not be permitted to apply for growth codes for the purpose of building or carrying excessive inventories of numbers;⁷⁰ WinStar concurs. Indeed, appropriate controls should be exercised by NANPA to discourage and prevent such behavior. At the same time, it is essential that requirements not be

⁶⁹ NPRM, ¶ 59.

⁷⁰ NPRM, ¶ 60.

so stringent that they prevent carriers with a legitimate need for additional resources from obtaining them. WinStar believes that the current Months-to-Exhaust Worksheet is inadequate to demonstrate need, since it is little more than a sales forecast and is only as accurate as the input used to make the projections. Any modification of the current worksheet would, at best produce marginal benefits. Accordingly, WinStar submits that another criterion is necessary to verify need.

As a potential remedial measure, the Commission suggests the use of fill rates which would demonstrate a benchmark utilization level before additional NXX codes would be granted.⁷¹ WinStar believes that fill rate could be a useful component of a need-verification policy. However, fill rate must not be the only criterion which satisfies a needs test. For instance, it is conceivable that a new entrant, with a relatively low fill rate (such as 20 percent) might receive a contract from a large customer that requires 10,000 lines at a large campus location. The 8,000 lines in the service provider's inventory would be insufficient to fill the customer need, yet the service provider would not qualify for an additional NXX code. To cover such circumstances, a mechanism must be deployed which would permit the service provider to furnish proof of the customer order and then obtain resources.

Key to any policy that involves utilization or fill rates is the establishment of the fill rate. WinStar suggests a "two tier" rate. In most cases incumbent fill rates are substantially higher than those of newer entrants, which is attributable to several factors. First, as monopoly providers, most incumbent could be less responsive to customer requests for marquee or "vanity" numbers than if the incumbent had operated in a competitive environment. In short, if a

⁷¹ *NPRM*, ¶ 62.

customer wanted to receive telephone service, he had only one service provider and therefore would have to settle for whatever number was given to him. In a competitive environment, a customer for new (as opposed to existing) service may select a service provider based on which provider can furnish a "good" number.

In a scenario which mandates a high fill rate (such as 70 percent) for new entrants, a service provider, even one who has been a responsible steward of the resource, may be precluded from this business opportunity because its supply of attractive numbers is exhausted, *but* the provider still has failed to reach the utilization threshold necessary to obtain new numbers. On the other hand, an incumbent provider, simply because it has a greater quantity of numbers as a result of its dominant market position, may have a higher fill rate and, therefore, a greater quantity of desirable numbers. Such a situation is a clear disadvantage to the new entrant, one which is unlikely to be overcome in a reasonable period of time.

For these reasons, WinStar suggests that service providers be required to achieve a fill rate of 35 percent before a growth code is granted if the service providers have had a presence in a given rate center for five years or fewer. For service providers that have had a presence for more than five years, the threshold for a growth code should be 55 percent. The 55 percent calculation would include all working and unassignable numbers in the NXX code divided by the number of possible number assignments in the NXX code. Fill rate calculations should be made on a rate center basis as long as rate centers continue to be the standard for NXX code assignment. WinStar believes that this policy would meet the needs of all parties, including new entrants.

C. Reporting/Record-Keeping Requirements

Utilization reporting, both present and projected, is a vital component of the prudent management of the telephone numbering resource. WinStar agrees with the FCC's tentative conclusion that the current COCUS process is inadequate.⁷² WinStar also would draw the Commission's attention to one additional fundamental flaw in the process. The current COCUS assumes that during extraordinary jeopardy periods, demand for numbering resources diminishes to the levels mandated by the industry consensus for the jeopardy period. Furthermore, the process assumes that any requests that are refused during the extraordinary jeopardy period will never be repeated -- that is, that carriers that are declined for codes during extraordinary jeopardy will not subsequently return when jeopardy ends.

An analysis of nearly any NPA which has reached extraordinary jeopardy and then experienced NPA relief demonstrates that there is a "spike" in the number of applications for codes as soon as jeopardy ends. The increase in the rate of applications is generally attributable to pent-up demand created by the inability of carriers to get codes during the jeopardy process. For this reason, WinStar believes that any modification of the COCUS process must include a factor to account for pent-up demand. This factor could be based on historic demand trends and could be refined over time to arrive at a more accurate model. In any event, the current COCUS requires modification in method, frequency, and analysis in order to serve the purpose for which it was originally intended.

⁷² *NPRM*, ¶¶ 69, 72.

1. Mandatory Data Submission Requirement

The Commission has tentatively concluded that it should require all users of numbering resources to supply forecast and utilization data to the NANPA;⁷³ WinStar supports this tentative conclusion. WinStar submits that any process which relies solely on voluntary submission of data is virtually certain to provide a flawed basis for any subsequent analysis. In a voluntary situation, even a responsible service provider may, from time to time, relegate COCUS submission to a low priority among the many functions it has to perform. There are a number of reasons for the low submission rate under the current process. The first is simple inertia: some service providers simply will not comply with a process that is not mandated. Second, even providers that intend to comply fully may not follow up to ensure that a voluntary process is followed in its entirety. The third reason is a concern by some providers, even providers that otherwise would cooperate in a voluntary process, about the protection of proprietary information.

As noted, WinStar favors the imposition of mandatory reporting requirements. There should be no service provider in the marketplace that is unaware of the seriousness of the current numbering situation. It is vital to all parties that effective controls be maintained. Therefore, whatever reporting schedule the Commission ultimately selects should be a mandatory schedule for all code holders with an enforcement mechanism that ensures compliance.

Specifically, WinStar supports the receipt and analysis of relevant data by the NANPA, subject to the following constraints. First, all data received by the NANPA must be treated as confidential. Second, analysis of the data must be reported only in the aggregate. Data from

⁷³ *NPRM*, ¶ 73.

individual service providers, whether or not the service providers are identified, should never be disseminated outside NANPA and the FCC. Third, a mechanism should be developed for the resolution of any disputes between NANPA and the service provider over the accuracy of data. Fourth, provisions should be made for reporting in a paper or electronic format, depending on the service provider's capabilities. Finally, any data provided to the states should be reported in the aggregate unless the state provides a compelling reason for specific reporting by a service provider. In such cases, the states must be bound by the same confidentiality provisions as the NANPA.

2. Specific Data Elements

The FCC also seeks comment on the specific data items carriers should be required to track.⁷⁴ WinStar believes that a requirement which compels carriers to show the status of each telephone number within an NXX code is cumbersome and unnecessary. Accurate reporting at the aggregate level for each category of numbers -- "reserved," "working," or "available for assignment" -- will provide the NANPA, and anyone else who requires it, with sufficient data to calculate the status of the numbering resource. In fact, accurate data compiled in this way will expedite the reports which result from the data.

WinStar respectfully disagrees with the Commission's proposal that utilization reporting be done in addition to COCUS.⁷⁵ Such an activity is unnecessary and redundant. The quality of the data which the Commission is proposing is far superior to that gained through COCUS. If

⁷⁴ NPRM, ¶ 74.

⁷⁵ NPRM, ¶¶ 74-75.

the data is provided on a quarterly basis, as WinStar recommends, it should provide the NANPA with all the information necessary to provide better management of the resource.

3. Specificity of Data

Subject to the provisions for confidentiality and restriction of use detailed above, WinStar supports data collection at the thousands-block level, at a minimum.⁷⁶ Collection at this level will yield the best results in terms of reporting accuracy and reliable projections. Reporting at this or any other level selected by the Commission should apply to all service providers. It is entirely feasible for any service provider, whether LNP capable or not, to administer its numbers on a thousands-block basis. Even if non-LNP capable carriers are not required to participate in thousands-block pooling, it is a reasonable expectation that a service provider's own telephone number administration records would track usage down to the individual number level. To hold non-LNP capable carriers to a lower reporting standard might even serve as an incentive for these carriers to delay entry into the LNP process or even opt out of it altogether. Such a situation, in turn, could have a chilling effect on competition, and this would thwart one of the main objectives of the *NPRM*: the promotion of healthy competition in the marketplace.

4. Frequency of Reporting

WinStar concurs with the Commission's tentative conclusion that data should be provided on a quarterly basis.⁷⁷ The pace of utilization and changes within the industry would certainly appear to dictate that reports be submitted more frequently than annually. Although quarterly reporting would impose a burden of several days of work on each service provider, as

⁷⁶ *NPRM*, ¶ 76.

⁷⁷ *NPRM*, ¶ 77.

well as significant additional work and, presumably, on the NANPA, WinStar believes that the benefits to be gained easily justify the minimal additional costs imposed upon service providers.

5. Confidentiality of Data

As noted above, the confidentiality data is a serious concern to WinStar; WinStar assumes that all service providers share a similar concern. Information about utilization rates, particularly below the NXX level, is guarded proprietary information even within WinStar. Information such as this in the hands of competitors would give substantial insight into company marketing plans, deployment schedules, and customer base. Such information, if shared with WinStar competitors, would severely disadvantage the company and its sales efforts. For this reason, it is vital that such information not be shared by the NANPA or by the Commission with anyone other than regulatory authorities with a "need to know." With regard to state regulatory authorities, a legally enforceable confidentiality agreement must be in place before any service provider data is shared.

6. Cost of Data Collection Activity

WinStar estimates that the cost for its compliance with these proposed requirements range between 1.0 and 1.25 million dollars. Clearly, this is not a trivial sum, to WinStar or to any service provider. However, it is WinStar's belief that any service provider, regardless of its size, has certain basic responsibilities to regulators, the industry, and, most importantly, to consumers. Furthermore, WinStar sees no reason to limit reporting to the 100 largest MSAs. Five years ago, exhaust was seen as a problem only in a handful of the top 30 MSAs. Today, the problem is rampant throughout the top 100 MSAs, including areas that would not have even been

considered for NPA relief three years ago. Prudent administration is a worthwhile idea for any market, regardless of size.

Finally, with regard to frequency, WinStar already has made clear its support for quarterly data collection. Even in a jeopardy situation, quarterly reporting should be sufficient to maintain adequate control of the resource.

7. Alternative Data Collection Options

The forecast and utilization process in the current Thousand Block Pooling Guidelines is little different from COCUS, except that it requires reporting at the thousands-block level and specifies reporting at semi-annual intervals. These changes certainly make this alternative preferable to the current COCUS, and in theory make it less costly than the alternative which we have outlined. Because the report is only semiannual, however, it will be a less accurate predictor than a report produced on a quarterly process. Nonetheless, if a preponderance of service providers were to find the quarterly process to be too burdensome, WinStar would support the Pooling Guidelines process over the current COCUS process.

The Line Utilization Survey ("LINUS") proposed by NANPA is, as might be expected, the most comprehensive reporting proposal currently under consideration.⁷⁸ WinStar believes that LINUS would be an effective tool for management of the NANP, and would therefore support its adoption. WinStar would recommend, however, that reporting be done quarterly in all markets, not just the top 100 MSAs, and that it be required for all classes of carriers.

⁷⁸ *NPRM*, ¶ 81.

D. Audits

WinStar concurs with the Commission's assertion that only by the use of audits can the validity and accuracy of utilization data be ensured.⁷⁹ It is vital that these audits be uniformly applied for all service providers and all classes of service providers -- whether ILEC, CLEC, or CMRS providers. It also is important that the basic framework for audits be formulated by the Commission and that the audit procedures be formulated and agreed upon by industry consensus. A fair and uniformly applied audit procedure will ensure that resources are utilized properly and fairly by all service providers. Moreover, WinStar submits that it is probable that audits will discourage those service providers who might be inclined to hoard numbers from doing so.

In the *NPRM* the Commission has identified three different types of audits: regularly scheduled audits, "for cause" audits, and random audits.⁸⁰ WinStar believes that all three audit types will be useful in the complete audit process, as discussed below.

1. Audit Types

Each carrier should be subject to a regularly scheduled audit. The first audit should take place one year after the carrier has activated its first code for service. Thereafter, scheduled audits should then take place on a triennial basis thereafter. Scheduled audits should be held at a time mutually agreeable to the service provider and the auditor.

A "for cause" audit should be held when NANPA or a regulatory body with proper jurisdiction discovers that a service provider has committed a serious violation of its responsibilities for numbering administration. Such violations might include deliberate

⁷⁹ *NPRM*, ¶ 83.

⁸⁰ *NPRM*, ¶ 84.

misstatements about numbering utilization, inadequate or improper record keeping discovered during a random audit, or repeated failure to make timely required reports. The actual criteria which would trigger a “for cause” audit should be adopted using the industry consensus process.

The FCC has suggested the use of random audits as a replacement for regularly scheduled audits;⁸¹ WinStar believes that random audits should not replace regularly scheduled audits. Nonetheless, WinStar submits that a different use may be made of random audits. Regularly scheduled audits are necessary to ensure continuing and regular compliance with numbering rules and guidelines. Random audits could be used as a follow up to a “for cause” audit for a period of time in order to ensure compliance by a service provider that is found to be deficient in a “for cause” audit. Specifically, WinStar suggests that a noncompliant carrier be subject to random audits for a period of two years after being found deficient in a “for cause” audit. In this way, the deficient service provider can be monitored more closely and receive assistance in reaching compliance.

2. Audit Responsibility

WinStar agrees with the FCC’s conclusion that because the NANPA is itself subject to periodic audit, and because the NANPA provides other so called “enterprise services” to certain service providers, that it is not the appropriate entity to conduct these audits.⁸² Responsibility for audits should instead fall to the Commission or to a third party skilled in auditing and appointed by the Commission, but wholly separate from the numbering process.

⁸¹ *NPRM*, ¶ 87.

⁸² *NPRM*, ¶ 88.

3. Audited Information/Procedures

WinStar concurs with the Commission's tentative conclusion that the audit program should address all aspects of carrier compliance with numbering resource rules and industry numbering guidelines.⁸³ WinStar believes that audit procedures should be developed by a working group or task force under the auspices of NANC and that this procedure should be reviewed and modified as appropriate by the Commission. Such a working group or task force would, just as the NRO-WG has demonstrated, would be the best way to solicit input from all concerned parties including state regulators.

E. Enforcement

In the *NPRM* the Commission recognizes the need to strengthen numbering allocation and assignment guidelines and to find an appropriate enforcement mechanism;⁸⁴ WinStar concurs. WinStar also agrees that NANPA, the state commissions, and the FCC all have roles to play in any enforcement structure.⁸⁵ WinStar's recommendation for the proper division of this responsibility follows.

The NANPA already has the authority to reject central office code assignment applications which do not contain appropriate justification (such as Months-to-Exhaust Worksheets). WinStar believes that this authority can and should remain with NANPA as part of any enforcement mechanism, and that enforcement authority can be vested with NANPA for other objective criteria. For example, the filing or lack of filing of a required COCUS report can

⁸³ *NPRM*, ¶ 89.

⁸⁴ *NPRM*, ¶ 91.

⁸⁵ *NPRM*, ¶ 92.

be objectively verified. NANPA can and should be vested with the authority to reject a code application filed by a carrier that has failed to file a required COCUS. Similarly, the authority to reject an application which contains inaccurate or incomplete information should remain with NANPA. On the other hand, more subjective issues -- such as proper classification of numbers in reports, issues which arise from disputes between members of two different industry segments, or issues that arise from points of law -- should be referred to state commissions where they pertain to state regulations or issues, or to the FCC where the issues at hand are federal in nature.

WinStar concurs with the Commission's tentative conclusion that fines and forfeiture of certification are appropriate sanctions in instances where a service provider has committed a particularly egregious violation, and in situations where the withholding of numbering resources for a period of time would pose no hardship.⁸⁶ Once again, the type and degree of violation that would trigger the more serious sanctions should be established by industry consensus subject to the approval of the FCC.

F. Reclamation of NXX Blocks

WinStar agrees with the FCC that the reclamation of NXX blocks represents an easy measure to implement.⁸⁷ The policies and procedures for reclamation are in place and have been for some time; what appears to be lacking is the will to enforce these policies. To WinStar's knowledge there never has been an instance of involuntary reclamation of an NXX code, despite the fact that the procedures for activation are comparatively liberal. The current six-month

⁸⁶ *NPRM*, ¶ 94.

⁸⁷ *NPRM*, ¶ 95.