

limitation with the potential for a three-month extension with good cause is an ample interval in most cases for the activation of an NXX code. Nonetheless, without an enforceable and enforced reclamation policy, many codes remain unactivated many months beyond the six-month limit.

WinStar supports the proposed modification of the Central Office Code Assignment Guidelines to facilitate reclamation of inactive codes. Conversely, WinStar differs with some of the suggestions made in the *NPRM*.

In Service – WinStar concurs with the proposed change in the definition of “in service,”⁸⁸ and submits the following: a code is deemed to be “in service” when numbers from an NXX code have been placed into service for customer or valid intracompany purposes. WinStar would defer to industry consensus to determine the appropriate quantity of numbers that constitute activation. WinStar suggests, however, the use of fewer than one percent of the total numbers in an NXX or thousands block should not constitute “in service.”

Reclamation Date – WinStar agrees with the basic principle advanced by the Commission that a well defined, verifiable deadline must be set for activation of a new NXX code.⁸⁹ Clearly, the lack of such a standard is a contributing factor to the current problem. Still, the Commission’s recommendation that reclamation begin 60 days after the service provider’s target “in service” date is unduly harsh and could prove to be anticompetitive as well.

Proposed in-service dates for NXX code activation, particularly for new entrants, are chosen at the very beginning of the implementation process. Delays well in excess of 60 days are common as a result of, for example, construction delays, equipment delivery delays, labor

⁸⁸ *NPRM*, ¶ 98.

⁸⁹ *NPRM*, ¶ 99.

disputes, errors in the Local Exchange Routing Guide, and incumbent carrier order processing problems. A firm deadline of 60 days could result in the inappropriate reclamation of fully 50 percent of codes for which applications are submitted. A more appropriate deadline would be 120 days from the proposed activation, not to exceed 6 months from the date that the code was assigned. This represents a modest reduction in the current guideline that most service providers could meet.

The key to effectiveness in this situation is enforcement. The NANPA already has the delegated authority to reclaim codes, but, historically, for some reason has been reluctant to do so. If the NANPA fairly and impartially exercises the authority which it already has been granted, a significant number of codes would be reclaimed, and a clear message would be sent to service providers that they must use the codes for which they apply or stand a very real risk of losing them. Hence, WinStar submits that no further delegation is either necessary or appropriate. Quite simply, the NANPA and the Commission must exercise the authority which they already possess.

G. Cost Elements and Cost Recovery

The Commission has sought comment on the specific cost elements of the administrative measures proposed in the *NPRM*.⁹⁰ It is reasonable to assume that the vast majority of service providers both understand the need for improved administration of the NANP to defer exhaust, and support appropriate changes to facilitate improvement. Of particular concern, though, is the cost of any changes which are implemented. Costs are incurred on three levels: costs of administration at the regulatory/NANPA level, costs to service providers, and costs to end-user

⁹⁰ *NPRM*, ¶ 102

subscribers. All of these various costs must be given close consideration before any measure or set of measures is adopted. Generally speaking, WinStar believes that a thoughtful, effective process will minimize costs at all levels.

To that end, it is important that measures with known benefits and affordable costs be adopted first. This would include many of the non LNP-based measures such as guidelines enforcement, NXX-code reclamation, and, in some cases, rate center consolidation. These measures can be implemented with existing technology, with minimal or no additions to regulatory or NANPA force levels, and with comparatively minor adjustments to existing service provider systems.⁹¹

Other non-LNP based measures such as mandatory ten-digit dialing and extended local calling areas may require costly equipment changes for service providers and for end users, particularly for alarm companies and other users of automatic dialers. While these costs should not eliminate these measures from consideration, the costs must be weighed against any perceived benefits to be achieved. Further, in assessing costs, it is important that costs not be disproportionately assessed to any group or industry segment.

Accordingly, WinStar concurs with the FCC's conclusion that the existing NANPA fund formula should be used to facilitate cost recovery.⁹² WinStar believes that this formula is, for the most part, both effective and competitively neutral. Furthermore, the conclusion that costs should be borne by all carriers on a competitively neutral basis is a sound one.

⁹¹ WinStar notes, however, that in some parts of the country, rate center consolidation would require fundamental changes in rating and routing algorithms that could render it impractical both in terms of cost and customer acceptance.

⁹² *NPRM*, ¶ 103.

On the other hand, LNP-based measures will impose substantial costs on service providers, regulators, and the NANPA. In addition, the effectiveness of LNP measures is, at present, unknown. Projections about the effectiveness of LNP-based measures range from a negligible extension of the life of the NANPA to an extension of many decades. The truth is that the technologies are so new that no one can say for certain what effect these measures would have.

While WinStar has been an active participant in and supporter of the two current trials in Illinois and New York, WinStar believes that any further extension of pooling is ill advised until the trials have been in place for a length of time appropriate to draw valid conclusions about its efficacy. Several proponents of pooling, for example, have stated that the effectiveness of pooling is "intuitively obvious." In the absence of reliable utilization and demand information, WinStar does not believe that the efficacy of any measure should be characterized as "intuitively obvious." Instead, the trials should be pursued to a logical and reasonable conclusion with a concurrent study which shows actual utilization rates in order to determine whether the postulated improvements in efficiency have been achieved.

VII. OTHER ISSUES FOR CONSIDERATION

In addition to the Commission's rather comprehensive list of measures on which it has sought comment, WinStar would like to include for the Commission's consideration two issues which would contribute favorably to the optimization of numbering resources and to the furtherance of competition: tenant resale and modification of the so called "footprint code" requirement.

A. Tenant Resale

Tenant resale is broadly defined as the resale of telecommunications services on an exclusive or sometimes non-exclusive basis to tenants of a given property. Under these arrangements, the landlord becomes, for all practical intents and purposes, the telephone company for the tenant. Virtually all tenant resale operations provide local and long distance service, collect bills, perform installation and repairs, and deny service for non-payment. Some also sell equipment and operate their own long distance networks. Despite the appearance and operation of a telephone company, tenant resellers remain completely unregulated at the federal level and virtually unregulated at the state or local level. Of particular concern to WinStar is the conduct of these operations with regard to local number portability.

Because the tenant reseller itself is considered to be an end user by its service providers, it is exempt from number portability requirements. This means that a customer of a tenant reseller who desires to leave the tenant resale operation for another service provider may only take his assigned telephone number if the tenant reseller agrees to release it. This is, of course, a virtually complete reversal of the rules applied to service providers, even though some new entrant service providers have smaller operations than many tenant resellers. WinStar believes that this outcome represents an improper use of numbers, a restraint of competition, and a disservice to end users who desire to move their service away from tenant resellers.

Tenant resellers, in some instances, also contribute to the exhaust of the NANP. Because it is relatively inexpensive to reserve numbers – and, in some instances is free – tenant resellers often may “hoard” a growth inventory equal to 50 to 100 percent of the working number

inventory. Some of the largest tenant resellers may hold the equivalent of an entire NXX Code in reserve.

WinStar therefore urges the Commission to consider a rule which would require any tenant reseller with 1,000 or more lines at a single premise location to obtain certification as a service provider. As such, the reseller would be subject to the same rules as any service provider, including those pertaining to the acquisition of numbering resources and to local number portability. Such rules would serve the interests both of competition in the telecommunications market and of consumers in general.

B. Modification Of The “Footprint Code” Requirement

Finally, WinStar wishes to discuss the current requirement for a service provider to have a “footprint” NXX code in each rate center where it plans to do business. As demonstrated by the Commission throughout its *NPRM*, this footprint requirement is a significant contributing factor to the exhaust of the NANP. The requirement already has been eliminated in LNP guidelines and procedures with no apparent compromise of the integrity of rate centers.

WinStar believes that the Commission should encourage the industry to take the next step, and request the industry to test a procedure whereby a service provider could establish a ported customer in a rate center without the need to have deployed an NXX code in that rate center. WinStar further believes that the abolition of this requirement would substantially reduce the demand for numbers without the need to deploy any new technology or procedure such as pooling. (For example, a provider establishing service in Chicago would need only one NXX code instead of 29.) In some areas, this procedure could reduce NXX consumption by as much as 97 percent, substantially more than even the best case scenario for thousands-block pooling.

Finally, WinStar notes that it is important that this recommendation in no way advocates the abolition of rate centers, but merely requests removal of the footprint code requirement.

VIII. CONCLUSION

In sum, WinStar continues to hope that the Commission, the industry, and all other relevant regulatory bodies will work to conserve and avoid the premature exhaust of the NANP, ensure sufficient access to numbering resources for all service providers, and minimize any potential negative effects on end-user consumers. To that end, WinStar believes that many of the Commission's proposals will be both effective and fair. However, as discussed above, WinStar also believes that some of the proposals outlined in the *NPRM* will disserve, and, indeed, substantially thwart the Commission's admirable goals regarding number resource optimization. For these reasons, WinStar respectfully submits that the Commission should adopt measures proposed in the *NPRM* only in accordance with the foregoing comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rebekah J. Kinnett, hereby certify that on this 30th day of July, 1999 a copy of the foregoing Comments of WinStar Communications, Inc. were served by hand on the following:

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A handwritten signature in black ink, appearing to read 'Rebekah Kinnett', written over a horizontal line.

Rebekah J. Kinnett