

Administrator(s) or through transfer from another entity, *should be placed in service within 6 months* after the initially published effective date. *Certification of in service will be required* (see Central Office Code (NXX) Assignment Request and Confirmation Form - Part 4). If the assignee no longer has need for the code, the code should be returned to the Code Administrator(s) for reassignment. *If it is determined through the audit process or other means that a code is not in use after 6 months as noted above, the Code Administrator(s) will request the return of the code.*¹²⁹

“In service” is defined in the guidelines as “[a]n active code in which *specific subscribers...are utilizing assigned numbers.*”¹³⁰ Similarly, Section 5.0 of the Guidelines, entitled “CO Code (NXX) Assignment Functions” states the “[t]he Code Administrator(s) *shall...*”

*Ensure that the code applicant places the code in service within the time frame specified in Sections 6.3.3 and 4.4 of these guidelines. If the assigned code is not used within this time frame, the Code Administrator(s) shall request the return of the code for reassignment.*¹³¹

There is no reasonable ambiguity in the obligations of NANPA or applicants in the guidelines: the guidelines clearly require that carriers place codes “in service” within six months, which in turn requires that “specific subscribers or services . . . utiliz[e]” some portion of the numbers assigned. The NANPA’s obligation is similarly clear: it “will” or “shall” “request the return” of an NXX code if a carrier fails to place the code in service, and it is obligated to “ensure” that codes are placed in service in time.

¹²⁹ *CO Code Guidelines*, *supra* note 96, at § 6.3.3 (emphasis added).

¹³⁰ *Id.* at § 13.0 (emphasis added).

¹³¹ *Id.* at § 5.0 (emphasis added). Similarly, the NANPA Requirements Document, NANPA is obligated to “[v]erif[y] that applicants place the codes in service within the time frames specified in the CO Code (NXX) Assignment Guidelines.” NANC, NANP Administration Requirements Document, at § 5.2.2(7) (Feb. 20, 1997) <<http://www.fcc.gov/ccb/Nanc/>>.

There is no excuse for the NANPA failing to exercise this authority or fulfill its responsibility. The Commission's regulations require that the NANPA comply with the guidelines,¹³² and the NANPA should not be permitted to ignore the Commission's regulations.

Second, the Commission should clearly inform all carriers that the "Part 4" certifications (referenced in guidelines section 6.3.3, above), which is supposed to certify that a NXX code has been placed "in service," actually certifies that numbers within an NXX code are assigned to end user customers. Some carriers today may be providing "Part 4" certifications on the basis that a code has been "activated" in the LERG. The Commission should put carriers on notice that such a practice could subject the carrier to enforcement proceedings before the Commission. In addition, all carriers should be required to re-certify that all of their currently assigned NXX codes are "in use."

Third, the Commission should require all carriers to provide networking information on "initial" code requests, as explained in Section IV.B.1 above. If a carrier is required to provide information on its point of interconnection when it submits its code request, then codes need not sit idle while the carrier completes its interconnection arrangements, installs facilities, and the like.

Fourth, SBC supports the Commission's proposal that the NANPA be directed to initiate code reclamation within 60 days of the expiration of the activation deadline.¹³³ SBC agrees that imposing a specific deadline on the NANPA would likely increase reclamation and "encourage better recycling of NXX codes."¹³⁴

¹³² 47 C.F.R. § 52.13(b)(3).

¹³³ See *NPRM* at ¶ 99.

¹³⁴ See *id.*

Fifth, SBC supports the Commission's proposal to reduce the NXX code reservation interval.¹³⁵ As noted in the NPRM, the current industry guidelines permit an initial 12 month reservation, with a six month extension. SBC recommends that the initial reservation period be shortened to six months, permitting a maximum reservation period of 6 months, with a single 6 month extension. No extension beyond a 12 month period should be granted to any provider for any reason. In SBC's opinion, reserving numbering resources for over a year with no services being offered suggests no real plan in place to utilize the requested resource.¹³⁶

Finally, the Commission should, as discussed above, authorize state commissions to reclaim unused NXX codes. The state commissions have to bear much of the public concern regarding area code relief, and it is reasonable to assume that most commissions would act swiftly to reclaim unused codes, even if the NANPA does not do so.

G. THE COMMISSION SHOULD PROVIDE AN EFFECTIVE COST RECOVERY MECHANISM FOR ADMINISTRATIVE PROCEDURES

SBC supports the Commission's tentative conclusions regarding cost recovery for these administrative measures. SBC agrees that some of these administrative measures would involve new responsibilities for the NANPA, and possibility (in some cases) new charges as well. To the best of SBC's knowledge, no estimates of these costs have been prepared at this time. Auditing likely would be a second major source of costs, and, like the NANPA costs,

¹³⁵ *See id.*

¹³⁶ While the Commission is on the right track in seeking to shorten the permitted reservation period, the NPRM's three months/30 day proposal (*see NPRM* at ¶ 99) may be too aggressive for many new entrants, particularly new entrants are required (as they should be) to provide detailed interconnection information in initial code requests. *See* Section IV.B.1, *supra*. SBC suggests that it would be better to ensure that carriers have a longer reservation period, and that they in turn be responsible for doing the groundwork to ensure that they provide the information necessary to ensure the initial codes are placed "in service" promptly.

would have to be paid to an independent entity if a third-party serves as the auditor.¹³⁷ These SBC agrees that these costs must be recovered in a competitively neutral manner, and would best be recovered using the existing NANPA fund formula, and through the NANPA fund.¹³⁸

Finally, there will be some carrier-specific costs to comply with the plethora of new administrative requirements, including the reporting and record-keeping requirements. SBC recommends that these carrier-specific costs be recovered in the same manner as number pooling costs.¹³⁹

V. THE COMMISSION SHOULD ADOPT A LIMITED AND FOCUSED APPLICATION OF TBNP IN ORDER TO PROVIDE MAXIMUM BENEFITS AT THE LEAST SOCIETAL COST AND ALLOW FULL COST RECOVERY FOR CARRIERS

SBC supports a limited deployment of TBNP in those instances where a carrier's average utilization in an NPA falls below a reasonable threshold in areas in the largest 100 MSAs, and only where carriers receive full cost recovery for the costs of implementing TBNP.¹⁴⁰ To ensure that the benefits of thousands block number pooling exceed the costs, the Commission should only require that LNP-capable carriers who have low utilization implement TBNP. In addition, at this time the Commission should limit thousands block number pooling to the largest 100 MSAs. Third, the Commission should mandate implementation of the "Efficient Data Representation" method developed by the industry by all carriers participating in LNP in areas

¹³⁷ Because some auditing costs would be paid for by the carrier audited, *see* Section IV.D.3, *supra*, only "net" auditing costs should be recovered through the NANPA fund mechanism.

¹³⁸ *See NPRM* at ¶ 103-04.

¹³⁹ *See* Section V.D, *infra*.

¹⁴⁰ *See NPRM* at ¶¶ 13-214 (discussing number pooling issues).

where thousands block number pooling is implemented. These points, and responses to the Commission's other inquiries regarding number pooling, are addressed below.

A. TBNP SHOULD BE REQUIRED ONLY FOR LNP-CAPABLE CARRIERS WHO DO NOT MEET THE COMMISSION'S UTILIZATION THRESHOLD IN THE LARGEST 100 MSAS

SBC previously has expressed concern that number pooling could be an expensive long-term solution to what could be a temporary problem.¹⁴¹ SBC continues to have reservations concerning TBNP due to the enormity of the costs to implement TBNP and the possibility that the pace of footprint expansion (and thereby the pace of area code relief) might decrease naturally by the time TBNP is implemented. As the NPRM correctly notes, SBC estimates that TBNP implementation by its incumbent local exchange carriers would cost between \$160 and \$190 million,¹⁴² and it will take substantial time to implement and deploy – 12 to 15 months for implementation alone, as discussed in more detail in Section V.C, below. Because the current rapid pace of area code exhaust appears to be a short-term problem, created largely by the rapid influx of new entrants into wireline local exchange markets, there is some risk that by the time that carriers spend the time and money to implement TBNP, the high demand for NXX codes and the rapid exhaust of area codes may already be slowing down. These concerns counsel caution and prudence in considering whether, and to what extent, thousands block number pooling should be required. Thus, to avoid a situation where the Commission has required expenditure of hundreds of millions of dollars with little benefit, the Commission needs to ensure that TBNP is implemented to provide the maximum benefit at the least cost.

¹⁴¹ *SBC NRO Report Comments, supra* note 2. at 5.

¹⁴² *See NPRM* at ¶ 198.

SBC fully supports numbering resource optimization measures, including TBNP, if they are implemented in a cost-effective manner and carriers receive full cost recovery. To minimize the costs of implementing TBNP, SBC proposes a utilization threshold be used to determine which carriers are required to participate in TBNP and that TBNP be implemented only in the largest 100 MSAs.

1. TBNP Should Be Required Only For Carriers Who Fail To Meet The Commission's Utilization Threshold

On the surface, it appears completely logical that assignment of telephone numbers in blocks of 1,000 instead of blocks of 10,000 would lead to better utilization and thereby extend area code life. However, at this point, no reliable estimate exists that quantifies the benefits that TBNP could provide in delaying area code exhaust, or the relative costs and benefits of alternative means for implementing TBNP. Lockheed Martin developed a model that purported to estimate the benefits of thousands block number pooling, which was part of its NANP exhaust study. As discussed in Section II.B.1 above, this "pooling model" is as incredible as its NANP exhaust projection.¹⁴³ This pooling "model" made numerous assumptions that were clearly not practical nor realistic. As just a few examples of the flawed assumptions included in the Lockheed Martin model: (1) it assumes an unrealistically early date for deployment (1/1/2000); (2) it fails to recognize that the entire wireless industry is not LNP-capable at this time (or that paging service providers are not under any requirement to implement LNP) and therefore could not participate in number pooling at the same time as wireline carriers (if they participate at all); (3) it assumes ubiquitous deployment throughout the nation; and, (4) it fails to

¹⁴³ The NANC review team examined the pooling model briefly, but it did not have sufficient time to study the Lockheed Martin model or its underlying assumptions. *NANC NANP Exhaust Review Team Report, supra* note 29, at 4.

take into account the impact of LNP on future demand for numbering resources. Each one of these assumptions is sufficiently serious to undermine confidence in the results of the study; taken in the aggregate, they underscore the industry's assertions regarding the invalidity of the Lockheed Martin studies.

However, Lockheed Martin's model is even more seriously flawed than these assumptions, because it completely *ignored the most important factor* that drives the usefulness of TBNP – the existing rate center structure. At a theoretical level, one might assume that if numbers are allocated in blocks that contain one-tenth the quantity of total numbers (1,000 as opposed to 10,000), society would realize a nine- or ten-fold increase in the efficiency with which numbers are allocated. However, the benefits that would actually be achieved with TBNP are a fraction of what theory might imply, due to the existing rate center number assignment structure used by the industry, the way numbers are used by carriers and demanded by customers, and the numbers of carriers that enter a particular rate center. In essence, number pooling creates a separate “pool” of resources in each rate center, and the supply of and demand for individual telephone numbers in these rate centers is the critical factor in determining the effectiveness and efficiency of TBNP in meeting demand for numbering resources.¹⁴⁴

Common sense dictates the Commission can achieve the maximum benefit for the lowest cost by limiting TBNP to those carriers who fail to meet a required utilization threshold. Obviously, these carriers are more likely to have a higher proportion of unused thousands blocks

¹⁴⁴ There is one hypothetical instance where theory comes close to reality. If there is one carrier who needs less than 1,000 numbers in a specific rate center, and there are nine other carriers who also need less than 1,000 numbers in that very same rate center, and those carriers *have not yet received resources in that rate center*, TBNP can provide a nine-fold increase in number assignments.

Commission's prior concern over several facets of technology- or service-specific plans including assigning numbers from the existing area code to wireline carriers but excluding paging and cellular carriers, requiring wireless carriers to give back numbers previously assigned to their customers when wireline carriers were not required to do so, and assigning all numbers from a new area code exclusively to wireless carriers.²⁰⁰

The NPRM requests comments on whether the discriminatory impact of service specific or technology specific overlays could be mitigated if such overlays were prospective only and did not involve "taking back" numbers from existing customers.²⁰¹ While the impact is certainly mitigated by not having to "take back" numbers and incur customer and carrier expense of changing number and reprogramming wireless phones, such mitigation does not equate to such an overlay no longer violating the Act. The Commission considered and rejected such arguments in the *Local Competition 2d Report & Order*, where it rejected a prospective technology-specific overlay, involving no "take back" of numbers.²⁰² In rejecting the proposed prospective overlay the Commission noted that it had specifically determined²⁰³ that "as a matter of law" *each* of the aforementioned facets of a service or technology specific overlay "violates the prohibition in the Act against unjust or unreasonable discrimination" and *each* "imposes significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers."²⁰⁴

²⁰⁰ See NPRM at ¶ 256.

²⁰¹ See NPRM at ¶ 257.

²⁰² *Local Competition 2d Report & Order*, ¶¶ 304-305.

²⁰³ *Ameritech Order*, ¶¶ 28, 33.

²⁰⁴ *Local Competition 2d Report & Order*, at ¶ 305.

The “prospective overlay” proposal also highlights a key numbering conservation efficiency concern with restricting use of numbers to particular technologies and that is would existing numbers become “stranded.” The introduction of a new NPA introduces 7.92 million numbers into an area. To restrict use of those 7.92 million numbers to a particular technology, not to be shared with another technology or service creates an extreme risk of inefficiency unless the use of the numbers by the technologies are equal.

Wireless telephony subscribership was approximately 69.2 million and paging is approximately 53.3 million *nationwide* at the end of 1998.²⁰⁵ As the Commission notes, wireless carriers on the average need less NXXs to than landline to serve the same geographic footprint. Thus, for a service specific overlay not to result in an inefficient use of numbers the coverage area of such an overlay would have to be expanded or regional in nature – thus enhancing the discriminatory anti-competitive affect by introducing confusion over dialing patterns and toll-calling. Again the only “benefit” of introducing such detrimental effects is to preserve numbers in an existing area code for another technology – something that the Commission has repeatedly found to violate the Act.

Moreover, technology- and service-specific area codes would not increase numbering efficiency or slow the pace of area code relief – in fact, they likely would *decrease* efficiency and require *more* new area codes. Artificial boundaries in numbering resource allocation create inefficiencies – whether those boundaries are geographic split lines or service restrictions. Establishing new wireless codes, for example, would hasten the pace of exhaust, at

²⁰⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Fourth Report, at 6-7 (released June 24, 1999).

least in the short-term as a substantial number of new area codes likely would need to be created to dedicate to wireless. Such “wireless only” area codes would clearly not be any kind of solution to the current problem – given that the current high demand is created primarily by *wireline* new entrants seeking to expand footprint, it makes no sense to create a class of area codes that *cannot be used* to satisfy the main source of demand.

The Commission should not change its long-established prohibition on service specific or technology specific overlays. Quite simply, if 7.92 million numbers are going to be introduced into an area it makes more sense for such numbers to be available to all users rather than only the users of a particular service or technology. Such overlays are not numbering resource optimization or conservation tools—they are merely value judgments about who is more deserving of existing numbering resources.

D. “D DIGIT EXPANSION” SHOULD NOT BE IMPLEMENTED AT THIS TIME

SBC does not recommend expansion of the “D digit” at this time, in light of the other alternatives proposed in the NPRM.²⁰⁶ Much investigation and study would need to be done prior to releasing the D digit, as it could substantially affect carriers’ internal operations. Implementing the “D digit” also would require substantial time and effort, as it would require modification of all switching systems and networks to allow the “D digit” to be recognized as a ten-digit number. If switching changes are not made for all NANP areas, then callers may not be able to complete calls to telephone numbers in “D digit” prefixes. Because all NANP areas would be affected, “D digit” expansion would require coordination with and the cooperation of

²⁰⁶ See NPRM at ¶ 129 (seeking comment on expanding the D digit).

all nations in the NANP, further increasing the implementation time and effort.²⁰⁷ In addition, “D digit” expansion would require mandatory ten-digit dialing, which, for the reasons stated in Section VI.C above, should not be the Commission’s highest priority at this time. Finally, releasing the “D digit” very likely would entail substantial additional costs, and additional costs are not justified at this point in light of the other costly initiatives that the Commission is considering in this proceeding. Accordingly, SBC recommends that the industry continue to investigate release of the “D digit” as part of its development of NANP expansion plans, but the Commission should not consider this issue further in this proceeding.

VII. STATE COMMISSIONS SHOULD ACTIVELY INVESTIGATE RATE CENTER CONSOLIDATION

SBC supports consolidation of rate centers, where consolidation will not significantly affect consumers’ existing local calling areas and thus would not increase consumer existing local rates. SBC has extensive experience with RCC, having actively participated in RCC efforts in the States of Missouri and Texas. Last year, SBC voluntarily consolidated 108 rate centers to 32 in the State of Texas. In the State of Missouri, SBC recently agreed to consolidate 14 rate centers to seven in the St. Louis area. In addition, SBC currently studying rate center consolidation in other states where it provides service.

RCC can be implemented most expeditiously in contiguous rate centers having identical calling scopes. Where rate centers can be consolidated in the same local calling area, consumer local exchange service rates are not affected. State commissions, of course, will need to evaluate the cost benefit analysis of these types of RCC proposals before they can be

²⁰⁷ Because “D digit” expansion must be done on a NANP-wide basis, it would be impractical for state commissions to choose whether to release the “D-digit” in their territories.

implemented. Technical and operational complexities with 911 call routing must be thoroughly studied as part of any RCC plan. Close coordination between local exchange carriers, 911 service providers, and Public Safety Answering Point (“PSAP”) operators must occur in order to avoid potential public safety concerns. Because RCC involves detailed examination of local calling scopes, rate center structures, and 911 systems, state commissions likely are best able to determine whether RCC would be justified in any particular local area. Accordingly, the Commission should encourage state commissions to implement RCC where the benefits exceed the costs.

Where the benefits of RCC do exceed the costs, there would be some advantage to consolidate rate centers prior to implementing TBNP.²⁰⁸ However, because the comparative costs and benefits of consolidation need to be examined in every local area, RCC should not be a prerequisite to TBNP. Instead, RCC should be implemented only after a thorough review of the potential impacts by the industry and state commissions, and only where the benefits exceed the costs.

Finally, as mentioned in Section VI above, the geographic split method of area code relief can divide rate centers. Although rate centers could be divided with any geographic split, RCC creates larger rate centers and thereby could increase the possibility that a geographic split could divide a rate center. Thus, if the Commission encourages state commissions to implement RCC, it should also direct them not to divide rate centers with geographic split area code relief plans.

²⁰⁸ TBNP pools resources at individual rate centers. Reducing rate centers would reduce the number of pools required, and, at least at a theoretical level, could thereby improve the efficiency of TBNP.

VIII. CHARGING PRICES FOR NUMBERING RESOURCES WOULD PROVIDE LITTLE BENEFIT AND WOULD RESULT IN HIGHER COSTS FOR CONSUMERS

Although recognizing “in the short term, it is probably not feasible to replace our existing numbering allocation mechanism with a pricing allocation mechanism,”²⁰⁹ the NPRM seeks comment on “both the theoretical and practical issues related to using pricing to allocate optimally numbering resources” in the long term.²¹⁰ Noting that telephone numbers are administratively allocated rather than sold, the NPRM suggests that the assignment of explicit prices to numbers could potentially encourage carriers to use inventories of available numbers more efficiently.²¹¹ Establishing prices for telephone numbers, however, will not necessarily reduce any inefficiencies in the use of numbers and could produce, perhaps unintentionally, negative effects on consumer welfare. These points are addressed below.

A. A ZERO PRICE FOR TELEPHONE NUMBERS IS APPROPRIATE

The NPRM suggests that the current zero price for telephone numbers as one of the reasons for “the poor utilization of numbering resources.”²¹² Since the supply of numbers theoretically is infinite, however, telephone numbers are not a scarce resource *per se*. The limitless supply of telephone numbers, absent any external constraints, suggests a zero price is appropriate.

²⁰⁹ See NPRM at ¶ 226.

²¹⁰ See NPRM at ¶ 225.

²¹¹ *Id.*

²¹² *Id.* While the absence of a price may contribute to low numbering utilization, SBC respectfully suggests that the absence of a price regulating mechanism is not the principal cause of the current problem. Instead, as discussed in Section II.A, *supra*, the current problem is caused by the expansion of service area footprint codes by wireline new entrants under the existing rate center/NXX block number assignment structure. A pricing mechanism would likely

The conditions limiting the size of telephone numbers (such as manufacturing conventions, prior industry standards, and/or technological constraints) may impose the characteristics of a scarce resource on telephone numbers, at least for limited periods of time. For example, if the industry faces NANP exhaust, the costs of NANP expansion could create a type of temporarily-limited scarcity. However, if telephone numbers ultimately expand beyond ten digits, then assigning explicit prices to numbers is not intended to avoid, but rather delay, the investment in NANP expansion. The benefits from delaying such investment requirements must therefore be expected to exceed any costs imposed by the imposition of explicit prices on telephone numbers. Furthermore, administrative solutions would need to be deemed a less effective and/or more costly approach to delaying number-related investment requirements than establishing prices for telephone numbers to conclude carriers should pay for numbers.

If the NANP is expanded, the investment and network modifications very likely would (and certainly should) accommodate telephone number expansion to the point where further telephone number exhaustion issues are avoided altogether. In effect, the network investments and administrative program modifications (e.g., changes to billing systems, databases, etc.), once accomplished, might effectively reestablish an extraordinarily large (*i.e.*, for practical purposes, an infinite) supply of telephone numbers. If the supply of telephone numbers ultimately will increase dramatically as technological and administrative constraints are relaxed, then the price of numbers should appropriately be zero. To the extent technological and administrative changes are inevitable to accommodate growth in the demand for additional telephone numbers (driven, for example, by increasing population and income levels), assigning

have little influence on this situation, except (perhaps) to discourage carriers from entering new

prices to numbers for conservation purposes now is a short term policy action which will ultimately be reversed as the supply of numbers increases and their prices fall toward zero. As a result, establishing prices for telephone numbers would be focused only on the short-term, with little, if any, long-term application.

***B. "MARKET-BASED" PRICES SUBJECT TO REGULATORY CONTROL
LIKELY WILL NOT BE A SIGNIFICANT IMPROVEMENT OVER
ADMINISTRATIVE SOLUTIONS***

The NPRM suggests two methods for determining prices for telephone numbers: administratively determined prices and market-based prices.²¹³ Administratively determined prices would seem to simply impose additional costs (e.g., generating cost studies) on the current administrative process for allocating numbering resources. An administrative solution can be implemented without requiring the regulatory process to produce a set of prices. For instance, requiring carriers to pay for telephone numbers does not seem necessary for implementing the Commission's example in which "the rate of increase in the supply of numbers ... could be set based on achieving a prescribed life for each NPA."²¹⁴ Furthermore, the NPRM recognizes that administratively determined prices should include "the costs imposed on the rest of society when new numbers are rolled out."²¹⁵ Recognizing the difficulty of determining the total social cost associated with the allocation of each block of telephone numbers, administratively determining appropriate prices appears extraordinarily burdensome, if not impossible. Relying on market forces, however, could be no more likely to generate appropriate prices for telephone numbers.

markets (or at least expanding service area footprint).

²¹³ See NPRM at ¶ 231.

²¹⁴ *Id.*

²¹⁵ NPRM at ¶ 232.

Although numbers would be available only to carriers, a market mechanism would permit end users' preferences to influence prices. Large corporate end users might have strong preferences for numbers that require particular dialing patterns, such as those spelling out a business name, acronym, or slogan. Acting in concert with a carrier to acquire the desired number, the end user can not only drive up the prices for numbers during a particular selling period but could leave the carrier with the type of excess supply of numbers the Commission is seeking to eliminate. The carrier, if sufficiently compensated by such corporate "clients," will not view its inventory of unused numbers as either inefficient or wasteful. The carrier, in effect, could perform the functions of a broker, satisfying the demands of such corporate "clients" while accumulating a stockpile of potentially valuable numbers.²¹⁶ Market-based pricing of telephone numbers would seem to create heightened demand for numbers and incentives to stockpile, rather than encouraging efficient use of numbering resources.

With potentially few participants bidding for numbers in a particular geographic market (including those urban areas that are the focus of competitive entry), the possibility arises that a carrier (or group of carriers acting in concert) might use the auction process to gain competitive advantages. For example, it might be feasible for a carrier (or a few cooperating carriers) to either hoard numbers, thereby preventing rivals from acquiring a necessary resource, or drive up the price rivals must pay for numbers. Aware of the potential for encouraging a "raising rivals costs" strategy that can accompany the auction of telephone numbers, the NPRM seeks comment on a two-tier pricing system to dampen such incentives.²¹⁷ Establishing an

²¹⁶ If such arrangements are sufficiently lucrative, some carriers could conceivably consider such activities one of the services routinely offered to potential subscribers.

²¹⁷ See *NPRM* at ¶ 229.

appropriate flat rate charge, however, might be sufficiently difficult to require repeated experimentation. A flat rate charge, in effect, establishes a threshold financial loss that carriers would be willing to incur to prevent rivals from acquiring telephone numbers. Flat rate charges set too low would eliminate all incentives for carriers to hoard numbers. However, if hoarding behavior is not immediately detected, upward adjustments in the flat rate might reinforce the “raising rivals’ costs” strategy by increasing the price of remaining numbers to the carriers initially denied numbers by their rivals’ hoarding strategy. Even with two-tier pricing, administrative oversight and intervention likely would be necessary.

The NPRM also suggests that numbers currently available to carriers, whether or not such numbers are assigned to end-users, would be assigned prices that “reflect their current market value.”²¹⁸ Assigning prices to all numbers currently held by carriers on the basis of auction results involving only the supply of numbers administrators and/or regulators decide to release for bid during a particular time period would tend to overstate the value of currently assigned numbers. Many of the numbers currently held by carriers were assigned years ago and reflect industry and regulatory goals and intentions prevailing at the time these numbers were assigned. It is inappropriate to apply current auction prices to numbers acquired under a significantly different set of regulatory guidelines and expectations. Auctions influenced by expectations of number shortages or scarcity might be expected to generate higher prices than would be the case if the supply of available numbers were substantially greater. For example, consider the hypothetical example that a substantial portion of the 633 million unused numbers

²¹⁸ *NPRM* at ¶ 235.

cited by the Commission as currently held by carriers were made available for auction.²¹⁹ By effectively taxing numbers currently assigned to carriers, the Commission would be financially punishing those carriers for their responses to a significantly different set of regulatory incentives, requirements, and expectations than those currently put forth.

Perhaps envisioning an outlet for unassigned numbers currently held by carriers, the Commission invites comments on whether a secondary market for numbers should be permitted.²²⁰ Although the Commission claims telephone numbers are a public resource and not a private commodity,²²¹ the potential existence of a secondary market would seem to give numbers the primary characteristics of privately owned commodities. The development of a secondary market for telephone numbers could dampen the effects of any Commission attempts to prevent hoarding numbers. A secondary market would establish the potential for speculative acquisition of numbers in the Commission's (closely managed) primary auction market. Public policy should not subject the price of what is characterized as an essential input to the national telecommunications infrastructure to the speculative influences that determine, in part, the prices of foreign currencies, commodities, common stocks, and other privately owned assets, which are an integral part of the market-based auction process.

While an unfettered auction process is strictly "nondiscriminatory" and "competitively neutral" in the economic sense, the results of a pure auction might be inconsistent with the regulatory connotations that apparently accompany these terms. For example, a pure auction would not guarantee each participating carrier would acquire a block of telephone

²¹⁹ *NPRM* at ¶ 226 n. 364.

²²⁰ *NPRM* at ¶ 235.

²²¹ *NPRM* at ¶ 229.

numbers. Even if a carrier depleted its current supply of numbers and required an additional block to continue increasing its subscriber base, a pure auction process would not guarantee the carrier needed telephone numbers.

The NPRM suggests a two-tier pricing scheme, with the variable charge for each NXX code potentially set via an auction process but the flat rate charge presumably to be set by the Commission.²²² The NPRM expresses uncertainty whether a market-based pricing mechanism will reflect the full social costs of using telephone numbers and references a “properly designed” market-based pricing mechanism.²²³ Indicating its ability to control the supply of numbers available for auction, the Commission implicitly acknowledges it could thereby “manage” telephone number prices by controlling supply relative to the demand for numbers.²²⁴ Finally, the Commission indicates its willingness to limit price fluctuations the auction process might produce, to cap the prices that could result from an auction process, to somehow (absent direct market determination) assign prices to telephone numbers currently assigned to carriers, and to consider whether it should prohibit the development of a secondary market for telephone numbers.²²⁵ Labeling any process “market-based” that is so closely “managed” and potentially subject to such numerous regulatory restrictions might be misleading. The administrative and enforcement costs likely necessary to ensure “proper behavior” of the auction process presumably envisioned by the Commission might approach (or perhaps even exceed) any marginal benefits anticipated from assigning prices to telephone numbers. If the process used to determine prices requires close regulatory supervision and intervention to ensure

²²² *See id.*

²²³ *See NPRM* at ¶ 233.

²²⁴ *See NPRM* at ¶ 234.

“acceptable results,” that process is clearly not considered efficient by the supervising regulators. Furthermore, the prices developed under such regulatory guidance likely would differ little from prices that might otherwise have been assigned by regulators directly. Indeed, using prices determined within a closely managed, tightly controlled system appears to differ from more direct administrative solutions only by increasing the complexity and likely the expense of allocating telephone numbers to carriers.

C. COST RECOVERY MIGHT PRODUCE UNINTENDED CONSUMER WELFARE EFFECTS

The potential assignment of prices to telephone numbers would be a cost increase mandated by regulators and hence appropriately recovered through the prices for those services to which the cost can be directly attributed. Since telephone numbers are essential to the provision of access to telephone networks, carriers might be expected to consider prices for numbering resources as increases in the cost of basic local access to their networks. From this perspective, the price for obtaining telephone numbers might be most appropriately recovered by effectively raising the prices of basic access to a carrier's network, which typically also includes unlimited local usage. While the precise method for recovering such telephone number costs might take the form of a surcharge, a special charge, or some similar mechanism, it is likely to be perceived as a local telephone service price increase by subscribers. The result of such perceived price increases will be to dampen, at least to some extent, the demand for local telephone service.

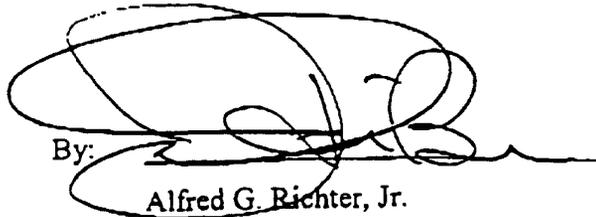
Since prices could potentially apply to all telephone numbers, all subscribers could be affected by the imposition of this new cost. Further, if prices for telephone numbers are determined through some sort of “market-based” process, prices in densely populated urban areas

²²⁵ See *NPRM* at ¶¶ 232, 239.

consolidate rate centers in their jurisdictions where consolidation can be accomplished without effecting local rates and the benefits otherwise exceed the costs. SBC urges the Commission to act promptly in this docket to establish these policies.

Respectfully submitted,

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(which are also the focus of competitive entry) probably will be higher than prices in sparsely populated, relatively remote regions (i.e., geographic markets that are less attractive to potential entrants). One possibility is that all carriers' telephone numbers (both those already assigned to end users and those awaiting assignment) in urban areas would be determined by auctions of a relatively small supply of new numbers (with the supply of numbers available for each auction being controlled by regulators). This process, therefore, could produce prices for telephone numbers assigned to low income, urban residence subscribers that reflect the intensity of the competition for large business customers in the same metropolitan area.

Although the available evidence indicates local service price increases have only a slight negative effect on the aggregate (i.e., total market) demand for access to telephone networks in the U. S., low income urban residence subscribers may be more sensitive to such price increases. A policy that increases the cost of providing basic access to telephone networks by assigning prices to telephone numbers might produce relatively detrimental effects on subscribership in the low income urban residence market segment. Ironically, this same policy might ultimately cause competition for large business customers in metropolitan areas to exacerbate these negative effects on the ability of urban low-income residence consumers to either purchase access or maintain their subscribership. While this is not the only cost recovery issue that merits attention, such potential non-uniform consumer welfare effects should be carefully considered prior to adoption of any decision to establish prices for telephone numbers.

IX. CONCLUSION

As explained in more detail in these comments, the Commission should take the following four major policy initiatives in order to slow the pace of area code relief and minimize

that can be contributed to number pools. Carriers with comparatively low area code-wide utilization rates also would be more likely to demand a lower volume of numbers at one time, and therefore might more efficiently use numbers in blocks of 1,000 instead of blocks of 10,000. Conversely, carriers with comparatively high utilization would contribute proportionately fewer thousands blocks, because they would have few uncontaminated thousands blocks to contribute. Additionally, because of their high utilization, these carriers also would likely demand a high volume of 1,000 blocks to meet their demand for numbering resources. In short, high utilizing carriers would supply less and demand more from number pooling and thus provide a significantly lower benefit than low utilizing carriers.

A utilization threshold for TBNP has the benefit of ensuring that the Commission's policies are directed toward solving the primary cause of rapid area code exhaust – new entrant demand for initial numbering resources to establish service area “footprint.” Assuming, as generally understood by the industry, that the resources currently assigned for this purpose have relatively low utilization, a substantial amount of these resources could be reclaimed in poolable thousands blocks, and these reclaimed resources would be available to other carriers, many of whom (given the current high level of footprint demand) would be seeking to establish “footprint” in the same rate center. Thus, a utilization threshold not only would be likely recapture the most underutilized resources in the NANP, but it also would make it more likely that future demand for service area “footprint” can be filled in a more efficient manner.

A utilization threshold can provide an efficient and effective means by which the Commission can control the societal cost of implementing TBNP. Every carrier that achieves a

utilization rate high enough to meet the Commission's utilization threshold could minimize its costs for TBNP which in turn would permit society to avoid the high cost of ubiquitous (and less effective) deployment of number pooling.

Although some commentors may oppose using a utilization threshold for number pooling, claiming that it would have a disparate impact of different types of carriers (particularly new entrants, who have low utilization rates), the Commission should recognize that any cost-effective numbering optimization policy *must be focused on the underutilized resources* in the current numbering system. Thus, any numbering optimization policy *must necessarily* be directed toward improving utilization in underutilized resources to be effective. There can be no claim that such a policy would not be competitively neutral, for new entrants would have access to the numbering resources they legitimately need. Carriers who do not need and cannot efficiently use a full 10,000 block of numbers, however, would be given those resources that more appropriately meet their level of demand.

In addition, in considering the disparate impact of number pooling policies, the Commission should consider that the TBNP implementation costs likely would be higher for carriers with high utilization. Two-way wireless service providers have comparatively high TBNP implementation costs, because LNP and TBNP capabilities would need to be implemented ubiquitously due to the "roaming" capabilities. Incumbent local exchange carriers would spend an extremely high proportion of TBNP implementation costs to modify their operational support systems.

Some commentors may claim (directly or indirectly) that CLECs need to be able to build a large warehouse of numbering resources in order to compete effectively with

incumbent LECs. However, this is plainly contrary to the Commission's goal in this proceeding, and, if accepted, this paradigm would prevent the Commission from optimizing numbering resources or slowing the pace of area code relief. What carriers actually need is access to an adequate supply of number resources when those resources are actually and legitimately needed, not a warehouse of numbers at their disposal. With LNP, CLECs have access to working telephone numbers and reserved telephone numbers when they win a customer that has service with SBC or even another CLEC. In fact, they only need their own numbering resources for customers establishing new service, customers who wish to change their telephone number, or customers seeking to expand lines beyond the numbers reserved to them. TBNP, if implemented with a utilization threshold, would give CLECs access to large pools of unused or underused thousands blocks in existing area codes. In area codes where CLECs have a large number of NXXs, the number of thousands blocks available from existing CLEC inventory is potentially huge. For example, in the 310 area code in Los Angeles, CLECs have 144 NXX codes, or 1,440 thousands blocks. With their relatively low demand for their own numbers, it is reasonable to assume that a large percentage of these blocks could be donated to the pool. If 80 percent of these thousands blocks were donated to a number pool, there would be 1,152 thousands blocks available for pooling, a full 31 percent more than the number of NXX codes in an entire area code. With a utilization threshold, CLECs and all other carriers would have access to the numbers that they need to compete in local marketplaces.