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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Connecticut Department of Public Utility Control)	RM No. 9258
Petition for Rulemaking to Amend the Commission's)	
Rule Prohibiting Technology-Specific or)	
Service-Specific Area Code Overlays)	
)	
Massachusetts Department of Telecommunications)	NSD File No. L-99-17
and Energy Petition for Waiver to Implement a)	
Technology-Specific Overlay in the)	
508, 617, 781, and 978 Area Codes)	
)	
California Public Utilities Commission and the People)	NSD File No. L-99-36
of the State of California Petition for Waiver to)	
Implement a Technology-Specific or Service-Specific)	
Area Code)	

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

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SUMMARY

These reply comments will address WinStar's response to some of the other comments submitted, and will focus on the following areas: (1) authority to implement numbering optimization measures; (2) responsibility for exhaust; (3) ten-digit dialing; (4) rate center consolidation; (5) utilization rates; (6) number pooling; and (7) unassigned number porting. In addition, because of its comprehensive nature and some contents unique to that particular document, WinStar will discuss in detail the comments of the California Public Utility Commission ("CPUC").

One of the more controversial subjects in the *NPRM*, as demonstrated by the initial comments filed, is that of the allocation of authority over numbering optimization efforts. Not surprisingly, many of the state commissions have proposed that the states be given maximum latitude to design their own versions of NPA relief, and be given grants of additional authority to engage in other optimization efforts. WinStar, however, strongly opposes any grant of additional authority to the states. While the implementation of NPA relief certainly may best be left to the states -- and WinStar submits that the states currently have sufficient authority to adopt NPA relief plans -- other optimization measures *must* be established and implemented by the FCC on a nationwide basis. Only the establishment of a nationwide numbering scheme will permit carriers that operate on a national basis to provide service efficiently and effectively.

In addition, WinStar is troubled by the contention of many of the state commissions -- and some incumbent carriers -- that the current numbering crisis is largely attributable to the entry into the marketplace of CLECs, and, more particularly, to the misuse by CLECs of the numbering resource. The data demonstrates that within two to three years of market entry, most responsible CLECs attain utilization levels that match or exceed incumbent utilization levels.

WinStar submits that since all industry participants share the responsibility for the numbering crisis, all industry segments generally must be subject to the same utilization rates and policies. In that regard, WinStar submits that a constructive numbering optimization policy must include reasonable utilization rates and a reasonable time period to achieve them, and controls on “reserved” and “aging” numbers.

WinStar continues to believe that it is imperative that the Commission adopt a rule requiring the establishment of mandatory ten-digit dialing on a nationwide basis; WinStar notes that many of the commenters are in agreement. Several of the state commissions submitting comments, however, argue for the preservation of seven-digit dialing at virtually all costs, and, of course, a number of states specifically have requested a waiver of the ten-digit dialing rule with regard to overlay NPA relief. Generally, the primary basis for these requests is a claim that there is significant public opposition to ten-digit dialing.

These arguments are unavailing, however, and the waiver requests must be denied. Although mandatory ten-digit dialing generally is somewhat controversial prior to its introduction, in areas where it has been introduced implementation has gone smoothly, and, moreover, controversy has been minimal or nonexistent. In sum, swift deployment of mandatory ten-digit dialing would simplify NPA relief, eliminate the confusion that currently exists in most dialing plans regarding which calls can be dialed using seven digits and which require ten digits, and, at least theoretically, increase the number of potentially available NXX codes in an NPA.

Like mandatory ten-digit dialing, WinStar believes that rate center consolidation is one of the most effective measures that may be taken to achieve optimization of the NANP -- and, moreover, unlike ten-digit dialing, also is one of the simplest. However, rate center

consolidation is not a “cure all” for number optimization, and it may not be appropriate in all situations. Accordingly, WinStar has supported the Commission’s tentative conclusion that state commissions should carefully consider rate center consolidation, only deploying rate center consolidation where appropriate.

WinStar submits that utilization rates also may be an extremely helpful indicator of the quality of a service provider’s stewardship of the numbering resource. At the same time, it is important that established utilization rates promote the principle of competitive neutrality, facilitate the satisfaction of end-user requirements, and address the very real concerns that service providers have for the protection of proprietary business information. To this end, WinStar has proposed a “two tier” plan for utilization rates. Specifically, WinStar continues to believe that a 40 percent utilization rate is appropriate for inexperienced providers, while a 60 percent rate is appropriate for experienced providers. The more aggressive levels advocated by some of the state commissions are both impractical and potentially damaging to consumers.

WinStar continues to be troubled by the tendency of some industry segments to declare that number pooling has been proven an absolute success and should be implemented immediately. As WinStar has indicated, thousands-block pooling probably has a place in a comprehensive strategy to optimize the numbering resource. However, there is insufficient evidence in the record to justify the expenditure of billions of dollars by the industry and a million dollars or more by each participating service provider to deploy pooling at this time. Specifically, the results of the pooling trials in New York and Illinois cannot bear the weight some commenters have tried to place on them: the data gathered after less than a year of actual

operation in Illinois and less than six months in New York reveals that the extension of the numbering resource as a result of pooling was minimal.

WinStar submits that the Commission should direct the industry to concentrate its efforts on less capital intensive activities such as rate center consolidation, reclamation of unused codes, and audits to ensure service provider compliance -- and should extend pooling trials to four or five geographically diverse markets that are not in the advanced stages of NPA exhaust. Extended pooling trials will provide the opportunity to test the various hypotheses explaining the shortcomings of pooling in the two current trials -- before service providers, the industry, and, ultimately, consumers are forced to spend large sums of money on pooling technology that might not yield sufficient benefit.

Similarly, while unassigned number porting might at some time be an effective method of numbering conservation, WinStar believes that the existing technology contains insufficient safeguards to prevent unscrupulous service providers from creating fictitious customers or customer orders in order to appropriate and hoard vanity numbers or other numbering resources to which they are not entitled. Even if proper safeguards were designed into the system to prevent "gaming," there still remain multiple technical issues needing to be addressed, issues that likely will require years of negotiation and technical development to resolve. Hence, while further research into UNP may be warranted and even beneficial, these serious concerns must be addressed.

Finally, the California Public Utility Commission has made a number of useful recommendations in its comments, many of which WinStar supports. First, WinStar notes that the CPUC's comments complement WinStar's position regarding the efficacy of rate center

consolidation: markets with tightly defined calling scopes or so-called "zone" or "message unit" billing areas -- like California -- are not good candidates for rate center consolidation. In addition, WinStar agrees with the CPUC that a clear distinction needs to be made between assigned numbers and reserved numbers, and, specifically, that reserved numbers should be held in a separate category and reservations limited to a reasonable and finite time period, after which they become available for assignment to others. WinStar also agrees with the CPUC that service providers that use the numbering resource should be required to submit utilization and forecasting reports, and that reporting requirements should be uniform for *all* industry segments. Finally, WinStar applauds the CPUC for its support of the audit process and for its position that administration of the audit process properly should be subject to competitive bidding.

Although, as noted, WinStar finds much with which to agree in the CPUC comments, WinStar also has some profound disagreements with the CPUC, specifically with regard to the grant of additional jurisdiction to the states, cost elements and cost recovery, and number pooling. In particular, WinStar would dispute the CPUC's claim that the industry is unwilling to develop solutions to the numbering crisis that may result in increased costs. Many industry participants have spent hundreds of hours attending industry discussions to reach a cost-effective, competitively neutral solution to the crisis, and also have spent large sums of money developing innovative approaches to solving the numbering problem. Moreover, WinStar strongly disagrees with the implication that resistance to the indiscriminate deployment of new and expensive technology without the benefit of meaningful data to verify the efficacy of such technology constitutes a lack of willingness to seek and implement an appropriate solution.

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REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby respectfully submits this reply to the comments filed on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹

WinStar Communications, Inc., a competitive local exchange carrier ("CLEC") currently operating in 47 markets throughout the United States, has been an active participant in

¹ *In the Matter of Numbering Resource Optimization, Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays, Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes, California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a*
(continued...)

numbering optimization proceedings throughout the North American Numbering Plan (“NANP”) area. WinStar has participated in number pooling proceedings since their earliest days. WinStar has been an active participant and supporter of the NANC LNPA Working Group and National Number Pooling Task Forces. In its role as a representative of the Association for Local Telecommunications Services (“ALTS”), WinStar has participated in the NANC Number Resource Optimization Working Group (“NRO-WG”) and was responsible for the final edit and preparation of the NRO Report to the NANC. In the interest of advancing the cause of number resource optimization WinStar submitted a comprehensive response to the Commission’s *NPRM* in this proceeding. This reply will address WinStar’s response to some of the other comments submitted.

Specifically, WinStar will confine this reply to the following areas: (1) authority; (2) responsibility for exhaust; (3) ten-digit dialing; (4) rate center consolidation; (5) utilization rates; (6) number pooling; and (7) unassigned number porting. In addition, because of its comprehensive nature and some contents unique to that particular document, WinStar will discuss in detail the comments of the California Public Utility Commission (“CPUC”).

I. AUTHORITY TO IMPLEMENT NUMBERING OPTIMIZATION MEASURES

The issue of what entity should exercise authority over numbering optimization efforts and under what circumstances is one of the most controversial topics in the *NPRM*, and, correspondingly, among the commenters. As might be expected, state commissions and other entities that responded, in particular California, Colorado, Connecticut, Massachusetts, New

(...continued)

Technology-Specific or Service-Specific Area Code, CC Docket No. 99-200, RM No.

(continued...)

Hampshire, and New York, favor allowing the states maximum latitude to design their own versions of NPA relief. Their position is understandable given the nature of their functions as state agencies, and certainly WinStar has no quarrel with allowing states the ability to govern their affairs to the benefit of their citizens and taxpayers. However, in a representative democracy there are some matters which are best facilitated at a federal level. WinStar would postulate that matters of rates, service tariffs, and, in the area of numbering, NPA relief (specifically the determination of whether a geographic split or overlay should be deployed for NPA relief), are functions which are best left to the states. On the other hand, matters which impact national standards pertaining to service provider interconnection, or switching platform hardware and software, should be controlled and deployed at a national level. In WinStar's view, this would include, but not be limited to, such measures as number pooling, utilization levels, dialing protocols, and categorization of numbers.

A number of these state agencies have argued that a "one size fits all" approach cannot be applied to the states. One has only to consider the converse of this argument to see its fallacy. If each service provider in a jurisdiction were to petition the Commission for an individual set of rules governing its behavior, the Commission would, to say the least, be highly unlikely to agree to such an arrangement. It would be cumbersome, if not completely impractical to manage. It would be similarly impractical for WinStar, a service provider with operations in 39 states, to comply with technology and OSS configurations which could be significantly different in each of those states.

(...continued)

9258, NSD File No. L-99-17, NSD File No. L-99-36 (rel. June 6, 1999) ("*NPRM*").

To see the potential problems one has only to look at two of the state responses to the *NPRM*. North Carolina, for example, recommends a somewhat “laissez faire” approach to number optimization. Specifically, North Carolina would establish a mandatory fill rate for service providers and leave the method for achieving that fill rate to each individual service provider.² At the other extreme, the Missouri Public Service Commission recommends that competitive LECs be required to obtain numbering resources as unbundled network elements (“UNEs”) from the incumbent.³ The North Carolina plan would allow the service provider maximum latitude as long as a prescribed target is achieved; the Missouri plan, by contrast, would make a CLEC little more than a sales agent for the incumbent. Such a wide variation in philosophies ultimately would lead to the balkanization of the numbering plan from one state to another and would impose administrative burdens on carriers with a national footprint that would, in some cases, preclude entry to the marketplace as national players. In addition, some states have conceded that they have neither the staff nor the expertise to shoulder further responsibility. For these reasons, it is essential that beyond currently delegated responsibility for NPA relief, authority and administration of numbering optimization methods must be applied nationally and must be enforced by the FCC.

II. RESPONSIBILITY FOR EXHAUST

WinStar indicated rather forcefully in its initial comments the belief that responsibility for the current numbering crisis is and must be shared by all industry segments, and even a good portion of the end-user community. Comments from several state representatives, however,

² North Carolina Utilities Commission at 5-6.

³ Missouri PSC at 2.

suggest that the current crisis is predominantly a product of the entry into the marketplace of -- and the implied misuse of the numbering resource by -- new competitors.⁴ Such comments strike WinStar as neither accurate nor useful. While it is certainly true that new entrants, particularly upon initial entry into a market, will have an inventory of numbers which are unused, further investigation shows that responsible providers, within two to three years after initial entry, attain utilization levels which equal or surpass those of the incumbent provider. For example, in New York, WinStar's most mature market, WinStar's resource utilization level is approximately 85 percent. In Chicago, a significantly less mature market, the level is nearly 80 percent. Hence, it is clear that the low fill rates attributable to CLECs are more a function of competitive providers attempting to penetrate a market controlled by long-time monopolists than of any malicious or even negligent intent to hoard numbers.

WinStar also indicated in its comments, and would reiterate here, its belief that a constructive numbering optimization policy must include, in addition to reasonable fill rates and a prudent time period to achieve them, controls on "reserved" and "aging" numbers. It is not uncommon for incumbent providers to hold aging numbers for periods of time well in excess of established aging intervals. In addition, in order to satisfy major customers, incumbents frequently will allow these customers to reserve indefinitely hundreds or thousands of numbers (in the extreme case even multiple NXX codes) for perceived or projected growth. WinStar believes that such numbers, if analyzed in the aggregate, would constitute at least as great a strain on the resource as new entrants that have not had an opportunity to mature.

⁴ See, e.g., Connecticut DPUC at 3-4, 7-8; New Hampshire Office of Consumer Advocate at 2-3; New York DPS at 6, 17-18.

Finally, WinStar is deeply troubled by the comments of SBC Corporation in this regard.⁵ In its comments SBC lays virtually all blame for stress on the numbering resource at the feet of the CLEC community, and suggests that CLECs be held to strict utilization rates while incumbents are exempted. WinStar believes that except for a reasonable "ramp" period for new entrants (WinStar has suggested three years) utilization rates and policies should be the same for all classes of carriers. A utilization rate of 60 percent appears to be achievable for experienced service providers, while a rate of 40 percent seems both reasonable and achievable for new entrants. WinStar submits that such a policy is both fair and competitively neutral.

III. TEN-DIGIT DIALING

In its initial comments, WinStar indicated its strong support for the establishment of mandatory ten-digit dialing. Such diverse interests as the Small Business Alliance for Fair Utility Regulation,⁶ the Colorado Public Utilities Commission,⁷ and BellSouth Corporation⁸ have voiced their support for mandatory ten-digit dialing. As a practical matter, ten-digit dialing is becoming the norm in many major metropolitan areas because of the widespread deployment of new area codes. Consumers, too, in rural areas, which tend to have a limited local calling scope, must dial ten digits for the majority of their calls. One quantitative measure of this phenomenon was made during the recent NPA relief proceeding in Minneapolis/St. Paul, Minnesota. During the proceeding, the Minnesota Department of Public Utilities presented a study which showed

⁵ SBC at 5-12.

⁶ Small Business Alliance for Fair Utility Regulation at 8-9.

⁷ Colorado PUC at 11-13.

⁸ BellSouth at 15-18.

that more than 60 percent of calls placed in the Minneapolis/St. Paul area already require ten-digit dialing.

Several of the state respondents argue for the preservation of seven-digit dialing at virtually all costs, and of course one of the original petitions that led to the *NPRM* is the Massachusetts DTE request for waiver of the ten-digit dialing rule with regard to overlay NPA relief. Since the Massachusetts request, a number of other states have made similar requests. The most vocal of these states, Minnesota⁹ and California,¹⁰ contend -- without concrete evidence -- that there is significant public opposition to mandatory ten-digit dialing. The California contribution refers to a "firestorm" of criticism preceding the introduction of an overlay to the 310 NPA. Although mandatory ten-digit dialing generally is somewhat controversial prior to its introduction, in areas where it has been introduced implementation has gone smoothly, and, moreover, controversy has been minimal or nonexistent. In fact, in the state of Maryland, where the 301 and 410 NPAs were the first in the NANP to be overlaid, the implementation was smooth and without any apparent controversy. More than three years later, it remains so. It would therefore appear that the public opposition argument against ten-digit dialing is a red herring.

Although WinStar continues to believe that the ten-digit dialing rule is imperative to address the well known anti competitive characteristics of overlay relief, there also is a very practical and consumer-oriented reason to continue to require ten-digit dialing in overlay area codes. It is inevitable after the deployment of overlay relief that at some point the legacy NPA

⁹ Minnesota DPS at 10-13.

¹⁰ CPUC at 24-25.

will exhaust not only its NXX codes but even individual telephone numbers. When this occurs, multi-line business and residential customers will be faced with the prospect of multiple area codes at the same premise, and in some cases in the same piece of customer premise equipment. In such an instance, a need to distinguish which calls to place using seven digits, and which to place using ten digits, would become intensely confusing to end users placing and receiving calls. Hence, from a purely practical standpoint, seven-digit dialing in an overlay NPA quickly would become impractical and unworkable.

Swift deployment of mandatory ten-digit dialing would simplify NPA relief, eliminate confusion which currently exists in most dialing plans as to which calls can be dialed using seven digits and which require ten digits, and, at least theoretically, increase the number of potentially available NXX codes in an NPA. WinStar notes that with regard to this last point, the ILECs appear to be in complete agreement that the so called "D" digit should not be opened to permit zero or one as a first digit of an NXX code. Although WinStar is not fully versed on the technical challenges inherent in opening the "D" digit, and despite its firm belief that zero should remain as a designator for operating services, WinStar nonetheless believes that the Commission should order investigation of the potential for opening the "D" digit. Even an increase of 100 NXXs per NPA could significantly delay exhaust of the NANP.

In sum, WinStar believes that the sun is setting on seven-digit dialing and that attempts to save it distract the industry from the more important mission of conserving the numbering resource. Therefore, WinStar once again states its unqualified support for a transition to mandatory ten-digit dialing.

IV. RATE CENTER CONSOLIDATION

As WinStar discussed in its comments, in many cases rate center consolidation remains one of the simplest and yet most effective means to achieve optimization of the NANP. Even so, as WinStar explained in its initial comments, rate center consolidation is not a “cure all” for number optimization, nor is it appropriate in all situations. Accordingly, WinStar has supported the Commission’s tentative conclusion that state commissions should carefully consider rate center consolidation, only deploying it where appropriate. The Atlanta and Denver implementations, as well as the initial Phoenix and Minnesota consolidations, amply demonstrated the potential gains to be made from rate center consolidation. Most of these gains are directly attributable to the expansive “free” calling scopes which characterize these markets.

On the other hand, in areas of the country where “free” calling scopes are extremely compact, or, in the rare case, nonexistent, the advantages of rate center consolidation are substantially outweighed by the drawbacks, which include fundamental changes in call rating algorithms and possibly in recurring line charges for end users. These potential drawbacks demonstrate that the ultimate decision regarding rate center consolidation must rest with the state commissions in concert with industry representative from the specific state. Nonetheless, WinStar believes that a federal rule that requires serious consideration of rate center consolidation before the institution of more complex and expensive measures is both appropriate and productive.

V. UTILIZATION RATES

WinStar continues to believe that utilization rates may be an extremely helpful indicator of the quality of a service provider’s stewardship of the numbering resource. At the same time, it

is important that established utilization rates promote the principle of competitive neutrality, facilitate the satisfaction of end-user requirements, and address the very real concerns that service providers have for the protection of proprietary business information. To this end, WinStar has proposed in its original response and has reiterated here a "two tier" plan for utilization rates. Rather than distinguishing between incumbent providers and CLECs, a distinction which, even if allowed, would be controversial because of its different treatment of disparate industry segments, WinStar instead suggests a distinction between "experienced" and "inexperienced" service providers. In most cases, new entrants are able to achieve utilization rates comparable to those of incumbent providers after approximately three years of presence in a given rate center. Specifically, WinStar continues to believe that a 40 percent utilization rate is appropriate for inexperienced providers, while a 60 percent rate is appropriate for experienced providers.

The more aggressive levels (75 percent to 90 percent) advocated by, for example, the CPUC,¹¹ are both impractical and potentially damaging to consumers. The only way to achieve such high utilization rates in some areas would be the reassignment of vacant numbers after an exceedingly short aging period, perhaps 30 days or fewer. This in turn would lead to end users receiving calls intended for previous customers -- an annoyance at best, and, at the extreme, an impediment to personal or business activities. While the more aggressive rates may be achievable in certain mature, high volume markets (as indicated earlier, WinStar has achieved such rates in New York and Chicago), service providers must have the flexibility of lower utilization rates to meet the real needs of end users.

¹¹ CPUC at 20.

Some commenters have suggested the use of sequential assignment to facilitate high utilization rates. As WinStar indicated in its initial comments, some form of sequential assignment might be workable and even beneficial. However, any such scheme must allow service providers the opportunity to hold aside 20 percent of an NXX code for the assignment of preferred or so called "vanity" numbers. Such assignments are frequently demanded by business customers to facilitate their own marketing activities. Even more importantly, the design of most PBX equipment that supports direct inward dialing requires the assignment of sequential blocks of 100 or 1000 numbers, beginning with numbers that end in "00" or "000." If service providers are not permitted to assign these blocks out of order in a sequential assignment process, medium and large customers will be deprived of the telephone numbers essential to operate their businesses, and new entrants, because of constraints on assignment, may be less able to satisfy customer requests than would an incumbent provider.

VI. NUMBER POOLING

WinStar continues to be troubled by the tendency of some industry segments to "declare victory and move on" with regard to number pooling. As noted, WinStar laid aside its initial unqualified opposition to number pooling more than two years ago in the interest of supporting industry consensus to try innovative methods to conserve the numbering resource. Since that time, WinStar has been an active participant in the NANC working groups and task forces that have fashioned guidelines and standards for number pooling. Further, WinStar has been among the earliest participants in trials in Chicago and New York. Based on this participation, WinStar believes that thousands-block pooling probably has a place in a comprehensive strategy to optimize the numbering resource. However, the data gathered after less than a year of actual

operation in Illinois and less than six months in New York suggest a less than compelling case for pooling. In reality, the extension of the resource in these two cases was minimal.

Proponents of pooling contend that the reason for the minimal extension is the fact that both the 847 and 212 NPAs were in extremely advanced stages of exhaust before pooling was implemented, and that, as a result, there was a diminished opportunity to reclaim thousands blocks for pooling purposes. While these arguments very well may have merit, the fact remains that the only information available presents a less than compelling case for pooling. It also is important to remember that the most optimistic arguments for pooling are made by Lockheed Martin, which stands to gain a tremendous amount of revenue and leverage over NANP activities as a result of the deployment of pooling.

Arguments that the advantages of pooling are "intuitively obvious" simply are not sufficient to justify the expenditure of billions of dollars by the industry and a million dollars or more by each participating service provider to deploy pooling. Instead, WinStar believes that the Commission should direct the industry to concentrate its efforts on less capital intensive activities such as rate center consolidation, reclamation of unused codes, and audits to ensure service provider compliance -- while pooling trials are extended to four or five geographically diverse markets that are not in the advanced stages of NPA exhaust. The efficacy of these other measures already has been demonstrated empirically, and they will be beneficial with or without pooling. At the same time, extended pooling trials will provide the opportunity to test the various hypotheses explaining the shortcomings of pooling in the two current trials, before service providers, the industry, and, ultimately, consumers are forced to spend large sums of money on technology which may not yield sufficient benefit.

Now, however, having prematurely declared thousands-block pooling a success, a number of commenters are recommending the expeditious deployment of individual telephone number ("ITN") pooling, seemingly basing this recommendation on the assumption that if some pooling is good, more is better. The most reliable analysis to date of ITN has been the NRO Report to the NANC.¹² This report explained in detail that ITN pooling, while worth further study, is lacking in substance, cost data, and technical review. The high level timeline developed by the NRO shows that development would require four to six years, and that full deployment would come some time after that. For this reason, WinStar believes that while ITN deserves further study, it is at best a long-term solution which might not even be deployable before NANP exhaust. At worst, ITN pooling could be an expensive and unworkable burden to the NANP and all those who use it. Certainly, ITN pooling should be studied carefully, and, if that study reveals that it is a beneficial and workable concept, then ITN pooling could then be deployed. However, WinStar disagrees with the rush to judgement that some parties are willing to make on little more than gut reaction.

In sum, WinStar believes that the pooling concept has enough merit that WinStar has chosen to participate voluntarily in pooling trials. WinStar tempers this belief, however, with the knowledge that trials fail nearly as often as they succeed. Therefore, WinStar urges the Commission and even the most strident proponents of pooling to proceed cautiously, gather good data from a valid sample, and, if results warrant, only then move forward with full deployment of pooling.

¹² NRO Report to the NANC, October-November, 1997.

VII. UNASSIGNED NUMBER PORTING

With unassigned number porting technology, numbers from one service provider's inventory could be ported to another service provider's inventory and be used by the second service provider to service its customers' needs. In a perfect world, it would appear that unassigned number porting would level the playing field between experienced service providers and new entrants. New entrants and others with depleted stocks of numbers would be able to appropriate numbers from another provider, whether for simple inventory replenishment or to respond to a customer's request for a "vanity" number. Unfortunately, the world is not perfect.

As outlined at the NRO, unassigned number porting technology contains insufficient safeguards to prevent a less than scrupulous service provider from creating fictitious customers or customer orders and thereby appropriating and hoarding vanity numbers or other number resources to which it is not entitled. Such a situation could create wholesale chaos within the NANP as service providers are forced to employ resources to protect their own inventories, and perhaps raid others.

Even if proper safeguards are designed into the system to prevent "gaming," there are still many technical issues that need to be addressed. Among these is the ability to differentiate an unassigned number within a competing service provider's inventory from one that is assigned. As with ITN, these issues likely will require years of negotiation and technical development to resolve. Hence, while further research into UNP may be warranted and even beneficial, these serious concerns must be addressed. As WinStar indicated in its initial comments, incumbent service providers have engaged in cooperative arrangements similar to UNP for many years, and WinStar sees no reason why cooperative porting of unassigned numbers should not take place

using LNP technology if the service providers perceive a mutual benefit. Be that as it may, UNP should not be mandated in the short term.

VIII. RESPONSE TO THE COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA

Certainly no place in the country has been affected by the numbering crisis more than the state of California. With a current total of 25 area codes and no end in sight to the introduction of new codes, California is the extreme example of the effects of the numbering crisis. The CPUC makes a number of useful recommendations in its comments, recommendations no doubt gleaned from bitter experience. However, there are a number of proposals in these comprehensive and thoughtful comments with which WinStar must respectfully disagree. Below is a discussion of both the concepts which WinStar supports and those with which WinStar disagrees.

A. Proposals That WinStar Supports

1. Rate Center Consolidation

The CPUC seems greatly concerned by the potential imposition of rate center consolidation because of the impact that it could have on both rates and calling scopes.¹³ As WinStar has indicated, WinStar believes that markets with tightly defined calling scopes or so-called "zone" or "message unit" billing areas are not good candidates for rate center consolidation. WinStar submits that California is a prime example of an area which is not suited, at least in the short term, to rate center consolidation. Given the CPUC's clear, if unwanted, leadership position in the deployment of new NPAs, and based on WinStar's involvement in the

¹³ CPUC at 6-7, 22-24.

California statewide NPA relief meetings, WinStar is confident that the CPUC has researched this issue thoroughly and has reached the proper conclusion. Rate center consolidation is not a desirable optimization method there.

2. Assigned Numbers

The CPUC comments reiterate a position that WinStar has attempted to highlight in its comments: a clear distinction needs to be made between assigned numbers and reserved numbers.¹⁴ As noted, WinStar believes that a significant causative factor in the numbering crisis is the indefinite reservation of large quantities of numbers for medium and large end users. Reserved numbers should be held in a separate category and reservations should be limited to a reasonable but finite time period, after which they become available for assignment to others. WinStar also agrees with the CPUC that the MCI WorldCom proposed definition of "reserved number" would facilitate stockpiling and the inefficient use of the resource.

3. Verification of Need for Numbers

In its comments regarding verification of need, the CPUC states its firm belief that service providers that use the numbering resource should be required to submit utilization and forecasting reports.¹⁵ Despite the effort and expense involved in such an effort, WinStar believes that reporting is essential to the prudent management of the resource. Further, as the CPUC has so properly stated, WinStar agrees that reporting requirements should be uniform for *all* industry segments: no industry segment that uses numbers should be exempt from this requirement. In fact, as WinStar indicated in its initial comments, WinStar believes that tenant resale operations

¹⁴ CPUC at 11.

¹⁵ CPUC at 13-15.

which control 1000 numbers or more should be classified as service providers and should be subject to the same requirements as other service providers.

4. Audits

WinStar also applauds the CPUC for its support of the audit process and for its position that administration of the audit process properly would be subject to competitive bid.¹⁶ As WinStar stated in its initial comments, WinStar believes that the consolidation of too much power in the hands of one entity for oversight of the NANP raises the potential for conflicts of interest, and might stifle a future competitive bidding process. Further, WinStar notes that the current NANPA, Lockheed Martin, also fulfills the Number Portability Administration function. As such, Lockheed's compensation is based largely on the volume of transactions processed by the NPAC. Hence, as an auditor, there could be a perception of bias against measures which are not NPAC based. WinStar acknowledges that safeguards against such a conflict could be developed, which would make Lockheed a qualified entity to perform audits. Nonetheless, in the interest of fiscal responsibility and sound business practices, WinStar believes that other candidates should be considered as part of a competitive bidding process.

B. Proposals With Which WinStar Differs

Although WinStar finds much with which to agree in the CPUC comments, WinStar also finds points with which it must express disagreement. In some cases, these disagreements are profound; these are detailed below.

¹⁶ CPUC at 16.

1. Commitment to Appropriate Solutions

In its introduction, the CPUC states, "Because they are focused on their companies' profit margins, the industry collectively is disinterested in solutions to the national numbering crisis that will cost more than they are currently paying."¹⁷ WinStar feels compelled to respond to this accusation. Make no mistake, WinStar and other industry participants are "for profit" companies, proud participants in the free enterprise system. If WinStar ignores its profit margins, it cannot remain in business. Nevertheless, one can earn a profit and still be a responsible industry participant. In point of fact, there are many industry participants that have spent hundreds of hours attending industry discussions to reach a cost effective, competitively neutral solutions to the crisis. A number of these have spent large sums of money, in many cases more than one million dollars each, supporting the current number pooling trials in Illinois and New York. In addition, many have spent large sums developing innovative approaches to solve the problem.

WinStar would dispute the implication that resistance to the indiscriminate deployment of new and expensive technology without the benefit of meaningful data to verify the efficacy of such technology constitutes a lack of willingness to seek and implement an appropriate solution. Given that the CPUC has stated, and rightly so, its own reluctance to saddle ratepayers with higher monthly recurring charges to restructure billing for rate center consolidation, the CPUC should understand that service providers need to see evidence of a benefit to the numbering resource before making costly investments in technology.

¹⁷ CPUC at 4.

At the same time, WinStar believes that the CPUC and other regulators need to keep an open mind with regard to concepts like ten-digit dialing, which empirical evidence shows do not present a major burden to end users once an initial and very short learning curve is mastered. Indeed, a uniform dialing plan is a potential benefit because it presents the public with a uniform procedure. In sum, as do many other commenters, WinStar believes that a rush to impose certain numbering relief measures is likely to have a detrimental effect on the competitive viability of new market entrants. The best solution to any individual numbering issue will be one that is not merely efficient, but also is cost effective to utilize.

2. Enforcement

The CPUC also argues for the virtually total delegation of authority for numbering to the states.¹⁸ Again, WinStar would refer to its earlier analogy. No state commission would, or should, grant each individual service provider under its jurisdiction authority to implement its own numbering scheme, beyond some very minor modifications. Such a process would be cumbersome and unworkable. A process which requires service providers to administer numbers differently in each state jurisdiction is just as cumbersome and just as unworkable. Furthermore, given the mobility of American society at the end of the twentieth century, end users will be inconvenienced if they must adapt to new policies every time they enter a different state.

The CPUC correctly asserts that the NANPA has lacked the willingness, the authority, or both, to enforce the existing guidelines. However, WinStar believes that the solution to this problem is to codify guidelines as rules and to vest enforcement with the FCC. If, in turn, the FCC sees fit to delegate a limited amount of that authority to the states, it certainly may do so.

¹⁸ CPUC at 16-18.

WinStar further believes that the FCC should provide the NANPA with clear procedures and authority to enforce any rules which it adopts. Delegating substantial authority to the states would result in inconsistent and uneven enforcement. In the extreme case of states like Michigan that have made it clear that they want no role in numbering policy, the system literally could run amok.

3. Cost Elements and Cost Recovery

WinStar believes that the CPUC also has erred in its view regarding cost elements and cost recovery.¹⁹ WinStar already has stated its support for the CPUC's contention that it should not pursue rate center consolidation, so WinStar will not belabor the point any further. On the other hand, WinStar must differ with the assertion that costs should not be recoverable because competition is not widespread, and in the case of residential customers, is not currently available. If one views the history of telecommunications and more recently deregulation, it is clear that service, as well as competition, comes first to the business community. Unfortunately, it is an almost universally accepted fact that residential service is not as profitable as business service. Indeed, in many cases residential service is not profitable at all.

Therefore, WinStar submits that it often may be necessary for new entrants to establish a profitable base of business customers before moving to the less profitable residential business. Despite this fact, residential customers do benefit indirectly from the lower costs that competition brings to businesses from which they buy, and ultimately will enjoy full benefits of competition when residential service is finally made available. Hence, local service providers

¹⁹ CPUC at 18-19.

should not be criticized for following a normal progression of business which has existed literally since the invention of the telephone.

4. Pooling

The CPUC has urged the FCC to delegate to the state commissions full authority to order number pooling;²⁰ again, WinStar must respectfully disagree. If pooling in fact proves to be a significant contributor to number optimization and the forestall of NANP exhaust, it will be necessary to deploy it on a uniform basis throughout the NANP. The most fundamental reason for this standardization is the system architecture which makes pooling possible. The Lockheed Martin NPAC, or a functionally similar system, will for the foreseeable future process pooled numbers. The cost of potentially 51 or more different pooling configurations, and an equal number of different sets of guidelines, could render the system either prohibitively expensive or completely unworkable. A unified process for the entire NANP is far more preferable.

WinStar also believes that the CPUC's recommendation that individual telephone number pooling and unassigned number porting be mandated three years after the deployment of thousands-block pooling is ill advised. First, the NRO has determined with a fairly high degree of certainty that development of ITN pooling will require four to six years. This estimate was the most optimistic considered by the NRO. Hence, it is impossible from a technical standpoint for ITN to be ready in a three-year timeframe, even if it were shown to be beneficial. As WinStar has emphasized throughout this proceeding, WinStar remains unconvinced of the benefits of pooling, although WinStar agrees that trials to gather the necessary information are both appropriate and beneficial. WinStar is absolutely unwilling to take the next step to ITN

²⁰ CPUC at 26-33.

until more is known about thousands-block pooling, and WinStar believes that the FCC should be similarly unwilling to take that step.

CONCLUSION

For the foregoing reasons, WinStar respectfully submits that the Commission should adopt measures proposed in the *NPRM* only in accordance with its initial comments and the foregoing reply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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