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August 31, 1999

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Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**RE: In The Matter of Numbering Resource Optimization  
CC Docket No. 99-200**

Dear Ms. Salas:

Enclosed please find an original and ten copies of the Reply Comments of the Cook County State's Attorney's Office in the above-entitled docket. Included also are a Notice of Filing and Certificate of Service. Please return to us a date-stamped copy of this document in the enclosed pre-addressed, stamped envelope.

Thank you for your assistance. If you have any questions regarding this document, please do not hesitate to contact me.

Sincerely,

**RICHARD A. DEVINE**  
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By:

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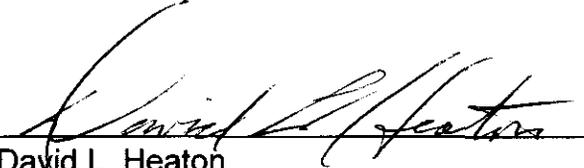
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of	)	
	)	CC Docket No. 99-200
Numbering Resource Optimization	)	
Connecticut Department of Public Utility	)	
Control Petition for Rulemaking to Amend	)	
The Commission's Rule Prohibiting Technology	)	RM No. 9258
Specific or Service-Specific Area Code Overlays	)	
Massachusetts Department of	)	
Telecommunications and Energy Petition	)	
For Waiver to Implement a Technology-Specific	)	NSD File No. L-99-17
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 Technology-	)	NSD File No. L-99-36
Specific or Service-Specific Area Code	)	

**NOTICE OF FILING**

**PLEASE TAKE NOTICE** that we have this 31<sup>st</sup> day of August filed with the Secretary of the Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, the Reply Comments of the Cook County State's Attorney's Office, in the above-entitled proceeding.

  
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Assistant State's Attorney

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## CERTIFICATE OF SERVICE

I, DAVID L. HEATON, hereby certify that I caused copies of the foregoing Reply Comments of the Cook County State's Attorney's Office to be served upon Magalie Roman Salas, Secretary of the Federal Communications Commission, by overnight express mail, and to all other parties on the attached service list via U.S. Mail on August 31, 1999.

A handwritten signature in cursive script, reading "David L. Heaton", written over a horizontal line.

David L. Heaton  
Assistant State's Attorney

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

In the Matter of	)	
	)	CC Docket No. 99-200
Numbering Resource Optimization	)	
Connecticut Department of Public Utility	)	
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California Public Utilities Commission and	)	
The People of the State of California	)	
Petition for Waiver to Implement A Technology-	)	NSD File No. L-99-36
Specific or Service-Specific Area Code	)	

**REPLY COMMENTS  
OF  
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**August 31, 1999**

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**REPLY COMMENTS  
OF  
THE COOK COUNTY STATE'S ATTORNEY'S OFFICE**

**I. Introduction and Summary**

In our initial Comments, the Cook County State's Attorney's Office ("Cook County"), in conjunction with the Illinois Attorney General's Office, the City of Chicago, and the Citizen's Utility Board, collectively, "the Illinois Government and Consumer Intervenors (IGCI)," jointly responded to several concerns the Federal Communications Commission (the "Commission") raised in its Notice of Proposed Rulemaking ("NOPR").<sup>1</sup> In our Comments, IGCI presented the Commission with our recommendation for a long-term number optimization plan, the linch-pin of which is a standardized method of administering one-thousand block number pooling ("1KBNP") with mandatory returns of thousand-blocks ("1KBs") with a 10% or less fill rate (the "Illinois Plan") Along with 1KBNP, the Illinois Plan includes standardized number utilization thresholds and reporting mechanisms.

As noted in our Comments, 1KBNP and long-term number conservation have been in place in Chicago NPAs since June of 1998. Moreover, the Illinois Plan has met

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<sup>1</sup> Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99-200 (released June 2, 1999) [hereinafter, "NOPR"].

with great success in staving off exhaust of the 847 NPA which includes Chicago's northwestern suburbs. To date, no party has disputed the success of the Illinois Plan in the 847 NPA. Under the leadership of the Illinois Commerce Commission ("ICC"), and through the joint efforts of the IGCI, and industry participants, the success in 847 will now be extended to the other four Chicago NPAs. The Illinois Plan has proven effective, technically feasible, and competitively neutral. For this reason, Cook County recommends that the Commission adopt the Illinois Plan as the national model for numbering resource optimization.

Upon review of the comments submitted by various parties to this proceeding, it is clear that further planning and work is necessary for the Illinois Plan to be successfully rolled out on a national basis. Cook County agrees with several other parties who have submitted comments that the Commission should continue to be guided by the recommendations of the North American Numbering Council ("NANC"). However, the Commission must not overlook the valuable input and real-world experience that consumer interests such as IGCI bring to the table. NPA exhaust is everybody's problem, and the interests of consumers must be protected as the Commission sets in motion a plan to address the current numbering crisis. Therefore, Cook County recommends that the FCC adopt the Illinois Plan, promulgate federal regulations reflecting each component of the Illinois Plan, and clearly delegate to the

States implementation authority with full power to enforce the FCC's regulations.

**II. Number Optimization Rules are Essential and Should Be Strictly Enforced**

Upon review of various parties' comments in this proceeding, there appears to be a general consensus that whatever national plan is ultimately adopted for number optimization it should be backed up by clear rules and strong enforcement measures. As would be expected, however, there also appears to be varying interpretations of the form such rules and enforcement measures should take. It should not be overlooked that the Industry Guidelines ("guidelines"), while a product of hard work, intense planning, and effective cooperation between many participants, lack the force and effect of law. Further, even if the Commission were to adopt the guidelines wholesale as federal rules, they contain deficiencies that would render them ineffective as an enforcement mechanism. Therefore Cook County recommends that the Commission adopt clear federal rules that remedy these inadequacies.

**A. Federal Regulations Should be Adopted in Favor of Guidelines**

As written, the Industry Guidelines can be interpreted as voluntary and, as such, are inadequate as an enforcement tool. This issue was a source of much controversy during the several area code relief dockets litigated before the Illinois Commerce Commission ("ICC") that lead to the ICC's implementation of the Illinois Plan. Not only

was the legal effect of these guidelines extensively litigated, but the interpretation of the substantive language in the guidelines, was also a subject of litigation. Therefore, wholesale adoption of the guidelines as federal regulations would not be advisable because as written, they are ambiguous, unworkable, and would likely spur onslaughts of wasteful litigation.

Some industry members comments are consistent with this view and warn of the shortcomings of industry guidelines, but do not go so far as to recommend codification of federal regulations. MCI WorldCom ("MCIW") notes that, "the guidelines process provides a useful way to deal with issues that require consistency across the industry, but do not involve matters that are both controversial and important to the industry's trusteeship of the public numbering resource. In those instances, uniform rules are needed."<sup>2</sup> Other industry members, however, recommend that the Commission rely on industry guidelines rather than codifying regulations.<sup>3</sup>

AT&T states that the guidelines were developed through industry consensus and are modified based on "real world experience."<sup>4</sup> While the guidelines process does have the benefit of flexibility, the Commission should not overlook the fact that

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<sup>2</sup> See, *Comments of MCI WorldCom, Inc.* at 45, CC 99-200 (July 30, 1999).

<sup>3</sup> See, *Comments of AT&T Corp.* at 10, CC 99-200 (July 30, 1999).

<sup>4</sup> Id.

*controversial* issues, as noted by MCIW, are rightly decided by the Commission or state regulatory bodies. Indeed, consensus is rarely reached by the NANC on such issues. It only takes a handful of negative votes to prevent a consensus of the NANC, therefore, the tough policy issues involved in numbering administration ultimately need to be decided by a clearly designated regulatory authority.

Further, as IGCI noted in its opening Comments, we are concerned by the unbalanced composition of industry fora such as the Industry Numbering Committee ("INC") and the NANC.<sup>5</sup> The Federal Advisory Committee Act requires that advisory committees "must have a membership fairly balanced in points of view expressed."<sup>6</sup> With only a handful of consumer representatives on the NANC and the large majority of the members being industry representatives, it is possible that consumers' and public interests are being overlooked there.

Further, the INC, the body that developed the industry numbering guidelines, is made up *entirely* of industry members and receives no oversight from the FCC or even from the NANC. It would be naive to believe, under these circumstances, that the interests of the consuming public are adequately represented on the INC or in the

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<sup>5</sup> *Comments of the People of the State of Illinois, the Cook County State's Attorney's Office, the City of Chicago and the Citizens Utility Board* at 14, CC 99-200 (August 11, 1999).

<sup>6</sup> See, 5 U.S.C. App. 2 et seq. (1998).

development of the guidelines.

Therefore, federal regulations are necessary to mitigate the shortcomings of the Industry Guidelines. The Commission should adopt clear, Federal Regulations that reflect IGCI's recommendations for national number conservation and resource optimization as set forth in IGCI's opening comments at pages 15-37.

**B. The FCC Must Clearly Delegate to the States the Necessary Authority to Carry Out Whatever National Numbering Plan the Commission Ultimately Adopts, Including Broad Enforcement Jurisdiction**

The states role in numbering administration has been an issue of hot dispute and costly litigation in recent years. In Illinois, the issue of state authority and jurisdiction was a centerpiece of controversy in at least four recent cases involving area code relief.<sup>7</sup> The FCC's most recent decision relating to this issue was released September 28, 1998 ("Pennsylvania Order"). In that decision the Commission clarified, to some extent, the authority it was delegating to states. However, further clarification from the FCC is necessary as the following discussion demonstrates.

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<sup>7</sup> Illinois Commerce Commission on its Own Motion v. Illinois Bell Telephone Co. et al., Order, *Investigation into issues relating to the exhaustion of telephone numbers in the Chicago metropolitan area* ICC Docket No. 98-0497 (Dec. 16, 1998); *Lockheed Martin IMS, Petition for Approval of NPA Relief Plans for the 312, 630, 708 & 773 NPAs*, Interim Order, ICC Docket No. 98-0847 (June 30, 1999); *Citizens Utility Board, Petition to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630 and 708 area codes*, Illinois Bell Telephone Co., *Petition for Approval of an NPA Relief Plan for the 847 NPA*, Order, ICC Docket 97-0192/0221 consolidated (May 11, 1997).

**1. The FCC's latest pronouncement of state jurisdiction relating to number optimization and area code relief must be further clarified.**

In the Pennsylvania Order, the Commission ruled that "state commissions may need flexibility to become involved in attempts to conserve NXX codes in order to extend the lives of area codes within their borders."<sup>8</sup> Accordingly, the Commission, on its own motion, reconsidered the Local Competition Report and Order and delegated "a limited amount of additional authority to state commissions" to allow them to: (1) order rationing of NXX codes; and (2) impose a "usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center."<sup>9</sup> Further, the Commission explicitly delegated exclusive additional authority to the State of Illinois to continue with its number pooling initiative:

Although the Illinois number pooling trial falls outside of the guidelines that we adopt herein, we acknowledge Illinois has taken steps to ensure that the trial will not impede our NPA relief guidelines and efforts to initiate national number pooling standards. We therefore grant to Illinois limited authority to continue its number pooling initiative, in spite of the trial's mandatory nature. Illinois has taken several precautions to conduct its number pooling trial in a nondiscriminatory manner. [footnote omitted] Further, although the Illinois pooling trial is mandatory, because the Illinois Commerce Commission (ICC) has ordered that an all services overlay will supersede the pooling trial in the event that NXXs in the 847 NPA are depleted, we conclude that the Illinois trial does not interfere with the operation of the guidelines that the Commission has established for

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<sup>8</sup> Pennsylvania Order at par. 23.

<sup>9</sup> Id. at par. 23-26.

traditional area code relief. We also observe that only those carriers that have implemented permanent number portability are subject to the trial, and that wireless carriers will not be subject to the trial until they are required to implement LNP. [footnote omitted] Finally, by requiring that national pooling rules or guidelines mandated by the [FCC] will supersede whatever guidelines Illinois has in effect for carriers operating within Illinois, we conclude that Illinois has not acted in a manner that undermines efforts by the [FCC] and the industry to establish a national pooling solution. [footnote omitted] We acknowledge that Illinois has been at the forefront of developing number pooling as a conservation measure, and we do not wish to discourage Illinois from continuing the work done in this area.<sup>10</sup>

Despite the explicit authority the Commission granted to Illinois, several parties to ICC Docket 98-0497 and, subsequently, ICC Docket 98-0847, continued to challenge the ICC's jurisdiction to implement the Illinois number pooling and resource conservation plan. The Illinois Commerce Commission, however, rejected these challenges and went forward with the Illinois Plan.<sup>11</sup> The experience in Illinois, as well as in many other parts of the country, demonstrates that without an explicit, unambiguous delegation of authority to the states, executing the Commission's ultimate national numbering plan will likely be impeded by exhaustive litigation.

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<sup>10</sup> Id. at 30 (*emphasis added*).

<sup>11</sup> Illinois Commerce Commission on its Own Motion v. Illinois Bell Telephone Co. et al, Order at 20, 26-27, *Investigation into issues relating to the exhaustion of telephone numbers in the Chicago metropolitan area* ICC Docket No. 98-0497 (Dec. 16, 1998); *Lockheed Martin IMS, Petition for Approval of NPA Relief Plans for the 312, 630, 708 & 773 NPAs*, Interim Order at 13-14, 18, ICC Docket No. 98-0847 (June 30, 1999).

**2. The assertion that states have acted imprudently in executing their current delegated authority when they delay traditional area code relief lacks credibility**

Some commenters recommend that the Commission delegate further authority to states, but that any enforcement power should be retained exclusively by the Commission.<sup>12</sup> If the Commission delegates any additional authority to the states, it is imperative that the Commission make clear that such delegation necessarily includes full enforcement authority. Indeed state authority to order or execute numbering optimization measures without the power to *enforce* those measures would be tantamount to no state authority whatsoever. Cook County urges the Commission to reject any recommendation that state's should not have enforcement powers. No less than the integrity and workability of the Commission's ultimate national resource optimization plan would depend upon it.

Some parties base their recommendation that the Commission retain exclusive enforcement power on the erroneous suggestion that states have acted imprudently in executing the authority the Commission has previously delegated. The Commission should not be persuaded by the unsubstantiated allegation that any action by state commissions that tends to "delay" a carrier's ability to obtain additional codes within ten days of request or that if "there is fear on the part of service providers that they are

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<sup>12</sup> *Comments of MCI WorldCom at 47.*

likely to face a protracted period of time in which they cannot obtain numbers" that this somehow means a state commission is exercising its authority "imprudently" or "irresponsibly."<sup>13</sup> Such an argument is circular in that it assumes as its premise a claim that, itself, is open to debate, i.e., that when NPA exhaust or jeopardy is declared imminent, or when carriers project an immediate need for codes, their projections are reliable. The information upon which those projections are based is provided to the NANPA on a voluntary basis, unless State commissions, such as the ICC, demand new forecast as well as utilization data under subpoena. State commissions would be remiss to accept such industry declarations without questioning or investigating the reliability of the projections upon which it is based.

A case-in-point is the situation that arose in Chicago's 847 NPA over two years ago. On May 5, 1997, Illinois Bell Telephone Company ("IBT" or "Ameritech") in its role as Local Number Administrator for Illinois under the NANP filed a verified Petition with the ICC seeking approval of a relief plan for the anticipated exhaust of NXX codes in the 847 NPA.<sup>14</sup> The IGCI parties quickly intervened in these proceedings requesting that the ICC investigate whether area code relief was necessary at that time. According

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<sup>13</sup> See *id.* at 24,25; see also, *Comments of Sprint Corp.* at 25, 26

<sup>14</sup> Illinois Commerce Commission on its Own Motion v. Illinois Bell Telephone Co. et al, Order at 2, *Investigation into issues relating to the exhaustion of telephone numbers in the Chicago metropolitan area* ICC Docket No. 98-0497 (Dec. 16, 1998).

to Ameritech's Petition, the 847 NPA was projected to exhaust at some point between April and December 1998.<sup>15</sup> IGCI conducted an analysis of carrier utilization data and submitted testimony challenging the need for area code relief and recommending a plan for 1KBNP, ultimately prevailing before the ICC.

April and December 1998 came and went. Indeed, April 1999 has come and gone. The most recent Report of the Number Administrator, Lockheed Martin IMS,<sup>16</sup> projects that 847 exhaust will not occur until sometime during 2000.<sup>17</sup> The decisive, swift action of the Illinois Commerce Commission in "delaying area code relief implementation" has resulted in substantial benefits to the People of Illinois, has been praised by the Federal Communications Commission, and, significantly, now appears to have the blessing of many industry participants. Most importantly, the plan we have developed in Illinois, may very well serve as a model for the nation. Therefore, the Illinois experience demonstrates that suggestions that the state commissions are at fault or act "imprudently" any time they resist industry calls for traditional area code

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<sup>15</sup> Id.

<sup>16</sup> Lockheed Martin IMS took over Code Administration for Illinois from Ameritech on March 29, 1999.

<sup>17</sup> *Lockheed Martin IMS, Petition for Approval of NPA Relief Plans for the 312, 630, 708 & 773 NPAs*, Report of Number Administrator on 847 Exhaust, ICC Docket 98-0847, submitted by Lockheed Martin IMS as Number Administrator for Illinois (August 9, 1999).

relief lack credibility and should be rejected. Similarly, any attempts to freeze the states out of the number administration and optimization process or to deny states a role in enforcement likewise should be rejected.

Cook County urges the Commission to reject the recommendation that enforcement be delegated to the NANPA "under the Commission's aegis." <sup>18</sup> Further, the Commission should reject Ameritech's suggestion that "incorporation by reference of industry guidelines into the Commission's rules responds to the Commission's concern that absent 'rules,' the industry may not 'police itself effectively'." <sup>19</sup> Such a suggestion ignores the hard business realities faced by service providers in the telecommunications market today. Ameritech appears to recognize this when it notes in its Comments that: "With the number of carriers now in the marketplace and the competitive pressures involved, it is no longer reasonable to rely on an 'honor system.'" <sup>20</sup> Delegating enforcement responsibility to the NANPA (currently Lockheed Martin IMS) would not ensure that the industry "polices itself effectively" any more than the honor system would. Leaving enforcement authority to a body that is funded by industry members who exercise control over whether Lockheed Martin's contract is renewed

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<sup>18</sup> *Comments of Ameritech* at 8.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 10.

would open up a veritable can of worms in conflict of interest problems and would not pass muster under conflicts law. Further, giving the NANPA the concurrent roles of "judge, jury, and executioner" could compromise the neutrality of the NANPA. It is the province of *courts and state regulatory bodies* to enforce the law, not Lockheed Martin's.

**3. State's should have enforcement authority up to and including imposing penalties and withholding numbering resources.**

The Federal Communications Commission has previously recognized that states are "uniquely positioned to understand local conditions and what effect new area codes will have on those conditions."<sup>21</sup> Further, as IGCI stated in its initial Comments, Congress' grant of exclusive jurisdiction over the United States portion of the NANP to the Commission provides for the broadest discretion in exercising that authority.<sup>22</sup> Accordingly, in our Comments, IGCI also recommended that the Commission delegate additional authority to the states to order mandatory number pooling and to implement service-specific overlays in certain circumstances.<sup>23</sup>

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<sup>21</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 92-237, Second Report and Order and Memorandum Opinion and Order at para. 272 (August 9, 1996).

<sup>22</sup> *IGCI Comments* at 9 (quoting 47 U.S.C. Section 251(e)(1)).

<sup>23</sup> *Id.* at 9-11.

Recognizing the need for uniformity in a National numbering resource optimization, IGCI recommended that 1KBNP be mandatory in the top 100 SMSAs as well as other number conservation measures which Cook County need not reiterate here.<sup>24</sup> IGCI's recommendations, if adopted by the Commission, would provide a common basis upon which the other states could rely to ensure uniformity across the country. By adopting a standard set of federal rules reflecting each component of the Illinois Plan, the FCC would remain faithful to its commitment to avoid the "substantial social and economic costs that would result if the uniformity of the North American Numbering Plan were compromised by states imposing varying and inconsistent regimes for number conservation and area code relief."<sup>25</sup>

The Illinois Plan would bring the necessary uniformity in administration that an effective national plan requires. However, it is also necessary that the states have the authority to *enforce* the Commission's national plan. The states being uniquely positioned to understand local conditions, likewise, are uniquely positioned to administer and enforce numbering optimization measures. Illinois, in particular, has enjoyed a head-start in conducting these functions ever since the Commission delegated to the ICC exclusive additional authority to continue its number pooling

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<sup>24</sup> See *Id.* at 15, et seq.

<sup>25</sup> See Pennsylvania Order at para 21.

initiative.

Specifically, state regulatory commissions should be given explicit authority to enforce all components of the Commission's ultimate national number optimization plan. The states enforcement powers should include authority to order sanctions against any service provider licensed in their respective jurisdictions who the state commission finds to have violated a provision of the FCC's national plan. Those sanctions should include imposing monetary penalties, and in cases of serious violations, withholding new resources and reclaiming resources already assigned to a carrier.

The Commission should, however, set limits on the amount of any monetary penalty a state commission may impose. Further, the Commission can set clear, reasonable guidelines that state commissions must follow when exercising the more severe, enforcement measures such as withholding new resources and reclaiming resources already assigned to a service provider. While these measures may seem harsh, they are essential to the success of the Commission's national plan. Ultimately, it is the threat of forfeiting the object sought that most effectively deters people from breaking the rules to obtain that object.

To ensure that the more severe punitive measures are not imposed unfairly, the Commission can set a standard of proof that must be met before additional numbering

resources are withheld or reclaimed as a sanction. However, the Commission should reject AT&T's recommendation that penalties should not be imposed for inaccurate forecasts unless a carrier is found to have committed "intentional misrepresentation or fraud."<sup>26</sup> Such a standard is unrealistically high. Fraud and misrepresentation are extremely difficult to prove and would require commissions to delve into the subjective intent of the transgressor. Such a standard would unnecessarily require those charged with enforcement duties to become tort lawyers and could render enforcement rules illusory.

**III. Standard Utilization Thresholds and Mandatory Returns of Qualifying IKBs are Essential to an Effective Number Pooling Resource Optimization Plan**

Standard utilization thresholds are necessary as part of an effective national numbering optimization plan because it ensures that carriers will use the resources already assigned to them efficiently before they request additional resources.

Utilization thresholds are feasible as demonstrated by the experience in Illinois.

Utilization thresholds ensure that all service providers abide by the same rules and effectuate they help uniformity. Further, standardized documentation and reporting

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<sup>26</sup> *AT&T Comments at 25.*

requirements should be required to obtain initial NXX codes as well as those requested for growth. Reporting requirements should also include actual utilization data to test the accuracy of industry projections.

**A. Standard utilization thresholds are feasible, effective, and do not discriminate against any industry segment.**

Standard utilization thresholds have been an important part of the Illinois number pooling scheme ever since the Illinois Commerce Commission implemented the plan. The ICC determined that utilization thresholds have the effect of forestalling NPA exhaust "with little detriment to the industry."<sup>27</sup> Further, the data collected from NPA 847 code holders demonstrate that utilization thresholds help improve overall NPA utilization rates.<sup>28</sup> Even though the ICC found that many carriers were not complying with its Order in ICC Docket Nos. 98-0197/0221 (consol.), the effect of utilization thresholds has been positive. Improvements were gained even though the utilization threshold was in place for only a short period prior to the time the data was collected.

Utilization thresholds are feasible as demonstrated by the results in the 847 area code. As IGCI recommended in our initial Comments, carriers should be required to

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<sup>27</sup> Citizens Utility Board, *Petition to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630 and 708 area codes*, Illinois Bell Telephone Co., *Petition for Approval of an NPA Relief Plan for the 847 NPA*, Order at 26, ICC Docket 97-0192/0221 consolidated (May 11, 1997).

<sup>28</sup> *IGCI Comments* at 19-21.

utilize 90% or more of the phone numbers in their possession. Theoretically, there is no technical impediment to any carrier utilizing 100% of every 1KB it possesses.<sup>29</sup>

However, the 10% cushion we recommend is based on an analysis of 1KB fill rate data collected from 847 code holders which showed that it was not uncommon for carriers to achieve 100% fill rates. A comparison of fill rate data from 1997 and 1998 shows that the 90% fill rate increased the number and proportion of 1KBs that met the threshold for block donation.<sup>30</sup>

A common concern expressed by opponents of standardized utilization thresholds is that, depending on the rate of growth of a particular carrier in a rate area, some carriers experiencing rapid growth may be prevented from meeting a utilization threshold. In those circumstances, these parties warn, a carrier may not be able to obtain the codes it needs to meet customer requests.<sup>31</sup> The ability to obtain needed codes is a serious concern. Mindful of this, the Illinois Plan accounts for situations of rapid growth. The Illinois Plan provides an exception to the 90% utilization rule where a

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<sup>29</sup> Id. at 18.

<sup>30</sup> Id.

<sup>31</sup> *AT&T Comments* at 15 (opposing utilization thresholds because may interfere with a carriers ability to meet customer demand); *MCI WorldCom Comments* at 25 (recommending that carriers only be required to show they are "certified to provide service in a particular rate area" to obtain initial codes); *Comments of Sprint Corp.* at 9 (opining that fill rates "must be established with care because they could actually prevent codes from being assigned to carriers in the greatest need of codes.").

carrier certifies, in writing, that a customer has made a bona fide request for a range of numbers larger than any range in the service provider's existing inventory of available numbers.<sup>32</sup> In this way, the concerns expressed by various parties that they may have to turn customers away is alleviated. In fact, Sprint Corp. has already invoked this safety net procedure in Illinois.<sup>33</sup> Further, Sprint appears to recognize the benefits of the Illinois approach that we have recommended, noting that it has the "advantage of simplicity in administration."<sup>34</sup>

**B. Contamination Thresholds are Essential to Effective 1KBNP and are not Discriminatory**

Contamination thresholds are not discriminatory. This issue was thoroughly examined in ICC Docket No. 98-0847. In that case, MCI WorldCom expressed concern about potential competitive inequities of 1KBNP similar to some of the concerns expressed in this proceeding. In ICC Docket No. 98-0847, MCIW argued that if CLECs were required to abide by the same donation rules as ILECs, then CLECs would be providing the majority of the numbers to populate the pools.<sup>35</sup> The ICC rejected MCIW's argument:

Finally, the issues that MCI raises regarding the competitive inequities of number pooling are without merit. The Commission's number pooling

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<sup>32</sup> See, *IGCI Comments* at 21; See also, Order at 23-24, 36 ICC Docket No. 97-0192/0221 consol. (May 11, 1998) (incorporating exception into Illinois Plan where written certification of "bona fide request" is submitted).

<sup>33</sup> See, *Comments of Sprint Corp.* at 13, fn. 29.

<sup>34</sup> *Id.* at 13.

<sup>35</sup> Order at 8, ICC Docket No. 98-0847.

mandates apply to the incumbent carrier as well as new competitors. The Commission agrees with [IGCI] that pooling and the conservation measures we have approved reduce the amount of numbers that an incumbent can acquire before an NPA reaches exhaust. Accordingly, this leaves more numbers to be divided among the competitors and other service providers.<sup>36</sup>

In its Comments in this proceeding, MCIW opposes standardized utilization thresholds, claiming number pooling along with unassigned number porting ("UNP") will lead to more efficient number use.<sup>37</sup> Specifically, MCIW recommends that carriers only return clean 1KBs to the pool.<sup>38</sup> In contrast, Ameritech recommends that carriers should donate uncontaminated and lightly contaminated (up to 10%) 1KBs.<sup>39</sup>

For the foregoing reasons, standardized utilization thresholds and mandatory returns of qualifying 1KBs are necessary to an effective number pooling and resource optimization plan. These measures are feasible, have proven to be workable in Illinois and they do not discriminate against any particular industry segment. Therefore we urge the Commission to adopt these measures as part of its national plan.

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<sup>36</sup> Proposed Interim Order, at 14, ICC Docket No. 98-0847.

<sup>37</sup> *MCIW Comments* at 15

<sup>38</sup> *Id.* at 14.

<sup>39</sup> *Ameritech Comments* at summary, item 14.

**C. Standardized Documentation Reporting Requirements for Initial and Growth as Well as for Actual Utilization of Assigned Numbers Are Necessary .**

In order for the number optimization measures discussed above to be effective, the Commission should order standardized documentation and reporting requirements. Such requirements should include a showing of need for initial codes as well as for codes requested for growth. The reports should be made on a quarterly basis and should be of sufficient granularity to enable tracking of utilization data down to individual telephone number status categories. These categories include: administrative; aging; assigned; dealer numbering pool; ported number; and reserved number.<sup>40</sup>

While the "minimalist" method of reporting proposed by AT&T and the "hybrid approach" may be a good start, there are three main deficiencies in these approaches that the Commission must remedy in adopting its national reporting requirements.<sup>41</sup> First, the hybrid approach requires reporting at the NXX-X level only in pooling environments. The Commission should ensure that NXX-X reporting is required in NPAs in all of the top 100 Standard Metropolitan Statistical Areas ("SMSAs") whether or not number pooling is in effect. Second, the reporting should be broken down into the

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<sup>40</sup> See, *IGCI Comments* at 23.

<sup>41</sup> See, *AT&T Comments* at 18-21.

six telephone number categories enumerated above, not just into categories of "assigned" and "unassigned." Third, The reports must be filed on a quarterly basis and not just semi-annually as AT&T recommends. Cook County disagrees with AT&T's suggestion that "there is not enough change in a three-month period to place this type of burden on carriers." <sup>42</sup>

AT&T states that reporting at the NXX-X level is costly and administratively burdensome, however it does not attempt to quantify these costs.<sup>43</sup> Experience in Illinois demonstrates that the landscape of NXX-X demand can change significantly within a three-month period. In fact, results from the quarterly reports already required in Illinois indicate that changes can occur so rapidly that sometimes even quarterly reports out-date their usefulness.<sup>44</sup> Thus it is imperative that reports be required on a quarterly basis.

**D. Telephone Numbers Are a Public Resource, and Do Not Constitute Corporate Property or Trade Secrets.**

There is a basic philosophic flaw in a perception held by many industry members: that telephone numbering resources are corporate property. As the FCC has

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<sup>42</sup> *Id.* at 21.

<sup>43</sup> *Id.*

<sup>44</sup> *Lockheed Martin IMS, Petition for Approval of NPA Relief Plans for the 312, 630, 708, and 773 NPAs, Citizens Utility Board's Report On Response to Subpoena By Carriers and Compliance With ICC Mandate Regarding Return of NXX-X Blocks, at 4, ICC Docket No. 98-0847 (August 16, 1999).*

clearly articulated and as the industry appears to acknowledge in its guidelines, telephone numbers are a public resource. Yet most industry participants appear to consider number utilization data proprietary, going so far as to refer to it as a "trade secret." It should not be accepted as a foregone conclusion that telephone numbering resource information is proprietary and need not be disclosed to the public. In fact, there are good reasons why the Commission may consider discarding, altogether, the notion that telephone number utilization data deserves proprietary treatment.

One cause of the current NPA exhaust crisis is that companies have little accountability for how they obtain and use NXX codes. If number utilization data were available for full public scrutiny, companies would think twice before attempting deviate from number optimization rules. In fact, the industry as a whole might benefit from free access to utilization data. Certainly the NANP would benefit because it would be very difficult, in such an environment, for a service provider to retain codes for which it has no immediate need. However, the Commission must weigh the downside of free access to utilization data against the benefits. For example, open access to utilization and forecast data may reveal much about a company's marketing strategies to its competitors. But in this time of crisis, the issue at least deserves some discussion before the Commission proceeds with the notion that information relating to these public resources is proprietary material reserved solely for the eyes of its stewards.

That being said, AT&T raises an interesting issue: whether resellers must report

number utilization data directly to the NANPA (or any other body that is ultimately charged with the duty of monitoring compliance with the Commission's national optimization plan), or whether resellers should be required to report to the underlying facilities-based carrier as a conduit to the NANPA.<sup>45</sup> Intuitively, the idea of resellers reporting their utilization data to a competing facilities-based carrier who would have no policing responsibility seems misplaced. Further, Cook County has previously expressed that the NANPA's neutrality may be compromised if it were placed in an enforcement role and therefore does not recommend such a role for the NANPA. Cook County also opposes resellers being required to report their utilization data to the underlying carrier where the underlying carrier bears no responsibility for verifying the reliability of resellers' data.

If, however, number utilization data were required to be disclosed to the public, then perhaps it would be reasonable to charge underlying carriers with policing responsibility. In fact, several benefits could be achieved. First, open disclosure of forecast and utilization data would likely deter carriers--including resellers -- from hoarding unnecessarily large reserves of codes. In turn, the underlying carriers' duty to monitor resellers' data would not be overly burdensome in the atmosphere of compliance that would likely result. Indeed, such a method would have a built-in self-

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<sup>45</sup> *AT&T Comments* at 17.

policing effect. Third, as AT&T noted, having resellers report their data to the underlying carrier would keep administrative costs down by avoiding the need for the NANPA to track every reseller's inventory and forecasts.<sup>46</sup> In short, such a scheme could result in better monitoring, better compliance, less administrative costs and burdens, and ultimately, a much more efficient use of the NANP resources that would enure to the benefit of the public by staving off exhaust of the NANP.

While such a scheme would require careful consideration by the Commission before adopting it, the Commission should not overlook the potential benefits that open disclosure of utilization data may provide. Regardless of the Commission's decision on this matter, we urge the Commission to take steps to correct the apparently common misconception among industry that NXX codes are corporate property rather than a finite public resource.

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<sup>46</sup> Id.

#### IV. CONCLUSION

We recognize that the FCC has been presented with a wide variety of number resource optimization methods and proposals. Some of these would be simple to implement; others more difficult. Some can be implemented immediately; others may take years to deploy. We submit that a long-range strategy is necessary.

Cook County recommends that the Federal Communications Commission adopt the Illinois number pooling and long-term number conservation model as set forth in the initial Comments of the People of the State of Illinois, the Cook County State's Attorney's Office, the City of Chicago, and the Citizens Utility Board and order its implementation as a number resource optimization method for the nation. The recommendations we have made constitute a comprehensive solution that equitably addresses the present crisis of premature exhaustion of the nation's NPAs. Our recommendations will go a long way to helping prevent the collapse of the NANP.

Respectfully Submitted,

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Dated: August 31, 1999

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