

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

In the Matter of )  
 )  
Numbering Resource Optimization )  
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To: The Commission

CC Docket No. 99-200

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COMMENTS OF COX COMMUNICATIONS, INC.

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**COMMENTS OF COX COMMUNICATIONS, INC.**

Cox Communications, Inc. (“Cox”), by its attorneys, hereby submits its comments in response to the *Further Notice* in the above-referenced proceeding.<sup>1</sup> Cox submits that the Commission’s continuing efforts to optimize the use of numbering resource should not lose sight of the 1996 Act’s overriding goal of promoting competition. Thus, the Commission should ensure that any actions it takes in response to the *Further Notice* do not create disproportionate or undue burdens on new entrants that do not have access to huge blocks of previously-assigned numbers. Cox’s recommendations, described below, are made in this light.

**I. Introduction and Summary**

Initially, Cox applauds the Commission’s efforts in the *Report and Order* to adopt and support numbering exhaust solutions that will have the greatest effect on the availability of numbering resources. Cox specifically is encouraged that the Commission has not precluded carriers from adopting additional conservation mechanisms such as unassigned number porting (“UNP”).<sup>2</sup> UNP, by permitting any number in an NXX code to be used by any carrier, would

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<sup>1</sup> Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 00-104, (rel. March 31, 2000) (“*Report and Order*” and “*Further Notice*”).

<sup>2</sup> *Further Notice*, ¶ 231.

significantly increase the life of the current North American Numbering Plan and enhance the development of competition. For this reason, Cox supports the Commission's decision to direct the North American Numbering Council to further investigate the implementation of UNP.<sup>3</sup> It also is important for all carriers to participate in the numbering conservation measures adopted by the Commission as soon as possible.<sup>4</sup>

These comments respond to three issues raised in the *Further Notice*. First, Cox supports the Commission's efforts to reduce requests for codes that are not need-based through utilization thresholds. However, numerical thresholds do not recognize the differences between incumbents and new market entrants. Cox believes that the utilization threshold should be determined based on a time interval that permits carriers to obtain numbers only when they are a certain period, *e.g.*, three months, from exhaustion. Second, Cox opposes the imposition of any further "taxes" on the telecommunications industry, and thus does not support the imposition of a market-based fee schedule for numbering resources. Finally, Cox believes that the recoverable carrier-specific costs associated with thousand-block number pooling should include the direct costs, the proper share of joint costs and appropriate incremental common costs.

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<sup>3</sup> *See, e.g.*, Ex Parte Letter filed by MCI WorldCom, CC Docket No. 99-200 (April 11, 2000) (discussing success of recently completed feasibility trial of UNP between MCI WorldCom and Focal Communications without involvement of a third party administrator). Cox supports an implementation of UNP that permits carriers to share any number, regardless of whether an NPA is in jeopardy, and that does not require a separate administrator.

<sup>4</sup> In particular, providers that are not now providing local number portability ("LNP") should participate in number pooling as soon as possible after they implement LNP.

## II. The Commission Should Adopt an Interval-based Utilization Threshold for Growth Code Assignments.

In the *Report and Order*, the Commission adopted a requirement that non-LNP-capable carriers meet a utilization threshold before they are eligible to receive a new growth code. The intent of this requirement is to ensure that non-LNP-capable carriers, which cannot participate in thousands-block number pooling, will nonetheless contribute to the Commission's number conservation goals.<sup>5</sup> The Commission did not, however, adopt specific utilization thresholds for non-LNP carriers. Rather, the Commission sought comment on a tentative conclusion that a nationwide utilization threshold for growth numbering resources should be set at fifty percent initially, with an annual increase of ten percent annually until the threshold reaches eighty percent.<sup>6</sup> Additionally, the Commission proposed<sup>6</sup> to require carriers to meet a specific rate center-based utilization threshold for the rate center in which they are seeking additional numbering resources.<sup>7</sup>

While the Commission has proposed a suitable mechanism to limit requests for numbering resources codes that are not need-based, any numeric thresholds inherently will favor incumbents over new entrants. Indeed, the utilization threshold that is most appropriate can be determined only by examining a carrier's rate of consumption of the unassigned codes at a particular rate center. Thus, a more appropriate approach would be to shorten the time that the

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<sup>5</sup> *Further Notice* at ¶ 248.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

carrier's inventory in that rate center can cover ("months-to-exhaust") from six months to three months.<sup>8</sup>

As Cox demonstrated in its comments, fill rates are more a function of how long and where a carrier has been operating than of how efficiently it uses telephone numbers.<sup>9</sup> For instance, carriers that have been in operation for a number of years are likely to have higher fill rates (because older NXXs were "filled" prior to the addition of new NXXs) than newer carriers.<sup>10</sup> Should the Commission adopt a uniform fill rate percentage, therefore, it would create competitive disadvantages for newer carriers. This would be contrary to the basic purposes of the 1996 Act to encourage and enable local exchange competition.<sup>11</sup>

The interval approach, which assigns growth numbering resources based on the number of months until exhaust, would ensure that all carriers obtain numbering resources when and where they are needed to provide service. Moreover, the "months-to-exhaust" or time interval approach represents a forward-looking measure of a carrier's market projections. A fill rate percentage threshold merely considers the historical use of numbering resources by a carrier and may not reflect the carrier's future business plan or changed circumstances.

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<sup>8</sup> In jeopardy numbering plan areas ("NPAs"), carriers seeking a growth code currently must certify that existing NXX codes will exhaust within six months. *See Report and Order* at ¶ 87.

<sup>9</sup> Comments of Cox Communications, Inc., CC Docket No. 99-200, at 23 (filed July 30, 1999).

<sup>10</sup> For instance, an ILEC with ten NXX codes in a rate center and a fill rate of 80 percent has 20,000 unused numbers and likely is not in jeopardy of exhaust. A CLEC with one NXX and an 80 percent fill rate may be only weeks away from running out of numbers.

<sup>11</sup> *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd 16499, 16505 (1998) ("In the new regulatory regime, we and the states . . . affirmatively promote efficient competition using tools forged by Congress.").

### **III. The Commission Should Refrain from Imposing Additional Taxes on the Telecommunications Industry Through Fees for Numbering Resources.**

The *Further Notice* proposes charging carriers for numbering resources as another potential means of improving numbering allocation and utilization.<sup>12</sup> Specifically, the Commission seeks comment on how a market-based allocation system for numbering resources could be implemented. The Commission further explains that “our motivation in seeking comment on such an approach is to increase the efficiency with which numbering resources are allocated and not to raise additional funds. . . .”<sup>13</sup> The Commission also seeks comment on whether the funds collected in this way could be used to offset other payments that carriers make, including universal service obligations and TRS payments.

Cox opposes the imposition of any charges in excess of the cost of administering numbering resources. First, the Commission does not have the authority to impose the proposed fee for the use of NXX codes. Congress granted the Commission only limited power to assess fees related to numbering issues and the proposed fees are not within that authority. Under Section 251(e)(2), the “*costs of establishing telecommunications numbering administration arrangements and number porting* shall be borne by all telecommunications carriers on a competitively neutral basis. . . .”<sup>14</sup> The Communications Act (the “Act”), therefore, mandates that the Commission may recover only the costs of numbering administration through

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<sup>12</sup> *Further Notice* at ¶ 250.

<sup>13</sup> *Id.* at ¶ 251.

<sup>14</sup> 47 U.S.C. § 251(e)(2) (emphasis added).

numbering-related fees.<sup>15</sup> The Act does not permit the Commission to impose fees for numbering resources in excess of those costs or for purposes other than offsetting those costs, *i.e.*, to increase the efficiency with which numbering resources are allocated or to offset other carrier costs.<sup>16</sup> Indeed, the Commission has concluded that it does not have the power to impose charges on carriers without a specific grant of authority.<sup>17</sup>

Even if the Commission did have the authority to impose charges for NXX usage, such charges would not be competitively neutral, as required under the Act. For instance, new

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<sup>15</sup> See H.R. Rep. No. 104-458, at 122 (“New [S]ection 251(e) clarifies the Commission’s authority for numbering administration. The *costs for numbering administration* and number portability shall be borne by all providers on a competitively neutral basis.”) (emphasis added).

<sup>16</sup> The Commission’s authority to mandate payment of fees of any sort is defined strictly by the Communications Act, and the Commission consistently has held that it will impose fees only to the extent necessary to meet statutory requirements. For instance, in the context of regulatory fees, the Commission has interpreted the scope of its authority under Section 9 very narrowly, and has recognized that the sole purpose of the fee program “is to assess and collect fees for regulatory services provided to the public, and that the fees charged are based primarily on the costs to the Commission of providing those services.” See Policy and Rules Concerning the Interstate, Interexchange Marketplace, *Public Notice*, 12 FCC Rcd 18040 (1996). See also Assessment and Collection of Regulatory Fees for Fiscal Year 1998, *Report and Order*, 13 FCC Rcd 19820, 19838 (1998) (“[S]ection [9(a)] requires the Commission to collect fees designed to recover its costs for these four general activities and to collect those fees from all entities that either require the Commission to engage in those activities or who benefit from them.”); Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, *Fourth Order on Reconsideration*, 9 FCC Rcd 5795, 5797 (1994) (“Section 9 of the Communications Act of 1934, as amended, requires the Commission to collect cable system regulatory fees of \$370 per 1,000 subscribers from cable television systems on an annual basis. The purpose of requiring cable systems to pay regulatory fees to the Commission is to permit the Commission to recover the annual cost of its various regulatory activities. . . . Cable system regulatory fees are mandated by Congress, collected by the Commission, and are intended to reimburse the Commission for administering its regulatory responsibilities under the Communications Act of 1934.”).

<sup>17</sup> See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Notice of Proposed Rulemaking*, 8 FCC Rcd 7635, 7654 (1993) (Pursuant to H.R. Rep. No. 103-111 at 257, the “Commission is authorized to impose payments *to prevent unjust enrichment from trafficking*” but not for other purposes.).

entrants, which are the majority of carriers seeking new NXX codes, would be required to pay for their numbering resources while the ILECs, which already have access to vast numbers of NXX codes and have many more unused numbers than CLECs, would essentially receive their numbering resources for free. In addition, imposing fees only on newly-assigned NXX codes would not reflect the burden that well-established carriers, particularly incumbent LECs, have placed on numbering resources.<sup>18</sup> Consequently, the “market-based” charges proposed in the *Further Notice* are not competitively neutral and would act as an entry barrier to new competitors. Thus, such charges not only would violate Section 251(e)(2), but would be contrary to the basic purposes of the 1996 Act.

In addition to the discriminatory treatment these fees would impose on competitive carriers, any charge for NXX codes or other numbering resources would operate as a tax on new entrants. Carriers already are subject to a wide array of fees and taxes, ranging from 911 taxes to fees for telecommunications relay service, universal service and numbering administration to gross receipts taxes at the state level. The imposition of further “taxes” on the telecommunications industry, whether in the form of fees or otherwise, should be avoided until all of the “temporary” taxes that have been levied over the years, and which have become “temporarily permanent,” have been removed from telephone services. Further, there are costs and responsibilities that carriers already must bear to obtain and maintain new NXX codes. Indeed, once a carrier receives an NXX, it must prepare the thousands-blocks for pooling, incur

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<sup>18</sup> The competitive harms of imposing fees only on new NXX assignments could be ameliorated by imposing a uniform fee on all NXX codes held by a carrier. Such a fee would, among other things, encourage carriers to return unused codes. Nevertheless, even fees that were imposed on all NXX codes would not fall within the narrow limits of permissible fees under Section 251(e)(2).

pooling and porting costs, and bear the continuing administrative burden. There is no reason to add another tax to this existing burden.

#### **IV. The Commission Should Require Carriers to Bear Their Own Costs for Number Pooling.**

The Commission requests carriers to provide further information regarding the magnitude of costs associated with thousand-block number pooling, including any cost studies that carriers may have that quantify shared industry and direct carrier-specific costs.<sup>19</sup> The Commission seeks this information so that it may devise an appropriate cost recovery mechanism.

As Cox suggested in its original comments, each carrier should bear its own costs of implementing number pooling. The recoverable carrier-specific costs should include the direct costs, the proper share of joint costs, and appropriate common costs which are incremental and which flow from thousands-block number pooling. Allocating these costs to individual carriers is the best way to maximize carriers' incentives to implement number pooling efficiently and to avoid competitive harms.<sup>20</sup> Industry-wide costs, including the costs of modifying the local number portability database and pooling administration, should be borne by the entire industry, using a mechanism similar to that used to recover NANPA costs.

#### **V. Conclusion**

Cox is encouraged by the Commission's efforts to relieve the devastating number shortage affecting carriers all across the country. The Commission must, however, adopt rules in

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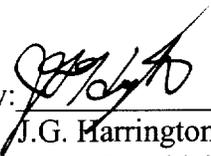
<sup>19</sup> *Further Notice* at ¶ 253.

<sup>20</sup> *See generally* Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8419-20 (1996) (declining to impose incumbents' number portability costs on CLECs).

this proceeding that maintain competitive neutrality and remain true to the purposes of the 1996 Act. For all these reasons, Cox Communications, Inc., respectfully requests that the Commission adopt rules in accordance with these comments and Cox's initial comments and reply in this proceeding.

Respectfully submitted,

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May 19, 2000

## CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, hereby certify that on this 19th day of May, 2000, I caused copies of the foregoing "Comments Of Cox Communications, Inc." to be served by hand delivery, except where indicated as by first-class mail, postage prepaid, on the following:

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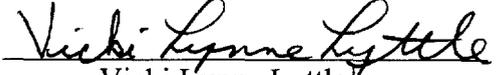
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