

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

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In the Matter of)
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Numbering Resource Optimization)
)

CC Docket No. 99-200

**COMMENTS OF THE
RURAL INDEPENDENT COMPETITIVE ALLIANCE**

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Comments of Rural Independent Competitive Alliance
CC Docket 99-200, May 19, 2000

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The Rural Independent Competitive Alliance (“RICA”), by counsel, hereby files these comments in response to the Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 00-104, released March 31, 2000 (“Further Notice”).

Following adoption of the Telecommunications Act of 1996, many Rural Telephone Companies established competitive local exchange carrier (“CLEC”) operations to bring improved service to the small rural towns and surrounding areas adjacent to their existing service territories. Generally, these areas have received only minimal investment or attention from the large carriers serving them. These rural CLECs have offered facilities-based competition wherever possible. In recognition of common regulatory and legal issues facing them, many of these rural CLECs formed an alliance under the name Rural Independent Competitive Alliance. RICA opposes pricing for numbering resources for the following reasons:

- 1. Requiring Carriers to Pay for Numbering Resources places smaller, rural carriers at a competitive disadvantage.**

In its Further Notice, the Commission states its belief that a market-based number allocation system is “the most pro-competitive, least intrusive way of ensuring that numbering resources are

efficiently allocated.”¹ RICA, on the other hand, contends that not only is a market-based numbering allocation system not pro-competitive, but rather it is anti-competitive, in that it gives larger, more entrenched LECs a strong competitive advantage over small CLECs that are new entrants to the market.

If adopted, a market-based allocation of numbering resources that requires carriers to pay for numbers gives larger carriers a competitive advantage in that they are able to spread the costs of acquiring the numbers over their large rate base. Because smaller carriers have smaller customer bases over which to spread their costs, they incur greater per-subscriber costs when payment is required to obtain features that are essential to providing service such as numbering resources. Accordingly, payment for numbers would have a greater impact on subscribers of small, rural CLECs than those of larger companies and would place the CLECs at a competitive disadvantage.

Small CLECs would also be placed at a competitive disadvantage if numbering resources were allocated through a bidding or auction process. Such a system would permit large, entrenched carriers with deep financial resources to out-bid new entrants to the market, many of whom are small carriers with limited financial resources. Without the numbering resources necessary to provide service, the new competitors would be driven out of the market without even a chance to compete.

This competitive disadvantage would become even greater in situations where the numbers are deemed more valuable, such as vanity numbers. In the context of its Toll Free Service Access Code proceeding, the Commission defined a vanity number as “a telephone number for which the letters associated with the number’s digits on a telephone handset spell a name or word of value to

¹ Further Notice at para. 251.

the number holder” and acknowledged that vanity numbers are often of value to subscribers “because they can generate high visibility and consumer recognition when used in advertising.”² Similarly, non-toll free vanity numbers are of value to subscribers for commercial as well as personal reasons. Thus, if payment must be made to obtain these numbers, large carriers that have deep financial resources and can pay the going market rate for these valuable numbers have a competitive advantage over smaller carriers since they are able to supply the customers’ demand for the numbers. Indeed, the Commission recognized this anti-competitive effect when it rejected a fee-based first right of refusal approach for vanity toll free numbers and stated, “a fee-based right of first refusal could unfairly prejudice small businesses, unable to compete against the greater resources of large businesses.”³

If the Commission were to adopt a market-based approach, it would not only inhibit competition but also diminish the opportunities for small business to grow. As the Commission is aware, many innovations and technological advancements have been the product of entrepreneurs and small business enterprises. Additionally, the bulk of new jobs in our country comes from small business enterprises. Therefore, for the benefit of competition itself and other benefits that small businesses provide, the Commission must not require carriers to pay for numbering resources.

² In the Matter of Toll Free Service Access Codes: Fourth Report and Order, 13 FCC Rcd 9058, 9059 (1998).

³Id. at 9072.

2. No Justifiable Reasons Exist For Carriers to Pay for Numbering Resources

As the Commission stated in its Further Notice of Proposed Rulemaking, its consideration of mandating carriers to pay for numbering resources is not caused by a need to raise additional funds.⁴ On the contrary, the Commission has requested comment as to how to use the funds that would be generated.⁵ There exists no Congressional mandate to charge for the services as exists in other contexts.⁶ Additionally, there should be no administrative costs to recover since a numbering administrative body already exists and the Commission has made provision for covering any new costs that are associated with the thousands-block number pooling function.⁷ Thus, the Commission would be hard pressed to justify its decision to require carriers to pay for numbering resources based on financial reasons.

In requesting comment as to whether carriers should pay for numbering resources, the Commission stated that “a market-based approach is the most pro-competitive, least intrusive way of ensuring that numbering resources are efficiently allocated.”⁸ However, in seeking to ensure that numbering resources are efficiently allocated, the Commission already decided against a market-

⁴In the Matter of Numbering Resource Optimization: Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99-200, para. 251 (Mar. 31, 2000) (R&O).

⁵Id. The Commission requested comment as to whether the funds should be used to offset other payments carriers make, such as contributions to the universal service and TRS programs.

⁶ In the context of auction of radio spectrum, Congress has mandated that the Commission auction certain spectrum to raise funds for deposit into the U.S. Treasury. In the context of carrying out the administrative duties of the Commission, Congress authorizes the Commission to charge carriers for processing and regulatory fees.

⁷See R&O at paras 192-226; 252-53.

⁸Id.

based approach and chose instead to set forth new rules and regulations that carriers must follow including: (1) a mandatory requirement that all carriers that are currently required to be LNP-capable participate in “thousands-block number pooling;” (2) requirements that applications for initial numbering resources include documentation proving that the applicant is authorized to provide service in the area for which the numbering resources are requested and that the applicant is or will be capable of providing service within 60 days of the numbering resources activation date; (3) a requirement that non-LNP-capable carriers achieve a minimum number utilization threshold before they are eligible to obtain a new growth code; and (4) a requirement that carriers that receive numbering resources from NANPA or a pooling administrator must begin reporting their forecast and utilization data to NANPA on a semi-annual basis.⁹ Because the Commission has chosen to set forth such comprehensive regulations to ensure that carriers are using numbering resources efficiently and has rejected a market-based approach, it has effectively eliminated any justification that it might have to supplement the regulations with a requirement that carriers pay for number resources.

Finally, the Commission has not justified a requirement that carriers must pay for numbering resources by the need to deter hoarding of numbers. In its Toll Free Service Access Code proceeding, the Commission defined “hoarding” of numbers as when a toll free subscriber acquires more numbers than it intends to use immediately.¹⁰ In its Second R&O, the Commission considered instituting a one-time or monthly fee to deter hoarding of toll free numbers. However, in this

⁹State commissions are allowed to reduce the filing requirement to an annual reporting.

¹⁰In the Matter of Toll Free Service Access Codes: Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11189 (1997) (“Second R&O”).

context, the Commission determined that the imposition of a fee would not sufficiently deter the hoarding of toll free numbers “ because some subscribers have the means to and will pay high fees if it is profitable to hoard and sell the numbers.”¹¹ The Commission concluded that such a policy “may hasten rather than slow number exhaustion.”¹² Given the Commission’s previous conclusion that charging a fee for toll free number resources would not deter hoarding and may actually hasten number exhaustion, the Commission certainly could not justify a requirement that carriers pay for non-toll free number resources on the basis that it would deter hoarding.

3. In Considering the Issue of Whether Carriers Must Pay For Numbering Resources, the Commission Fails to Adequately Consider the Economic Impact on Small Entities

In its Initial Regulatory Flexibility Analysis (“IRFA”),¹³ the Commission claims that in its Further Notice, it has adequately addressed the possible significant economic impact on small entities and requests comment on the IRFA. The Commission defines a small entity as one which “(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).”¹⁴

¹¹Id. at 11190. The Commission reasoned, “[a] one-time fee, therefore, would not necessarily result in the orderly allocation of the toll free SAC because, if the fee is below the market price of toll free numbers, parties with financial means may view the fee as approval of hoarding and thus may make substantial investments in toll free numbers which they believe they can sell out of inventory for a substantial profit.”

¹²Id.

¹³Further Notice, Appendix C. The Commission notes that neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CLECs and that the closest applicable definition under the SBA rules is for “telephone communications companies other than radiotelephone (wireless) companies.” Further Notice, Appendix B at para. 10.

¹⁴Id. at para. 5.

RICA members are small entities under this definition and contend that the Commission has not adequately considered the significant economic impact would have if carriers were required to purchase numbering resources. As discussed above, such a requirement would have a significant negative economic effect on small, independently owned CLECs that are seeking to compete as new market entrants against large, well-entrenched LECs. According to the Commission's own finding, Section 251(e)(2) of the Communications Act requires it to ensure that the costs of numbering administration do not affect the ability of carriers to compete.¹⁵ Because such a requirement would have a negative economic impact, it must not be adopted.

¹⁵The Commission further stated that section 251(e)(2) requires that "the costs of thousands-block number pooling should not give one provider an appreciable, incremental cost advantage over another when competing for a specific subscriber; and should not have a disparate effect on competing providers' abilities to earn a normal return." Further Notice, Appendix C at para. 13. As demonstrated above, requiring carriers to pay for numbering resources would most certainly have a disparate effect on the ability of small CLEC entities that participate in thousands-block number pooling to compete against large carriers.

In conclusion, RICA contends that a market-based number allocation system is not pro-competitive as is claimed by the Commission, but rather anti-competitive in that it gives larger, more entrenched LECs a strong competitive advantage over small CLECs that are new entrants to the market. RICA also contends that the Commission has no justifiable reason as to why carriers should be required to pay for numbering resources and that if such a regulation was adopted, its adoption would be based on arbitrary and capricious decision-making.

Respectfully Submitted,

Rural Independent Competitive Alliance

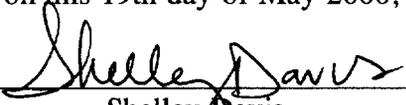


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CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Independent Competitive Alliance" was served on this 19th day of May 2000, by hand delivery to the following parties:


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