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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

To: The Commission

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OFFICE OF THE SECRETARY

**VERIZON WIRELESS COMMENTS
IN RESPONSE TO FURTHER NOTICE**

VERIZON WIRELESS

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SUMMARY

Utilization Thresholds. Verizon Wireless believes the use of a standardized utilization threshold for growth codes for non-pooling carriers is appropriate, but only if —

- The utilization threshold is applied at the rate center level within an NPA and is used only to determine the carrier's eligibility for growth codes in that rate center in that NPA.
- A "safety valve" procedure is established that will afford a carrier below the utilization threshold the right to obtain growth codes by demonstrating actual need.
- The utilization threshold is applied only in jeopardy and number-pooling NPAs, with growth code eligibility elsewhere determined by months-to-exhaust.
- The same fixed utilization threshold and criteria for calculating utilization rates are employed nationwide, without any state discretion to adjust the threshold within a range.
- The criteria for calculating utilization rates are adjusted to ensure that carriers will not be penalized for numbers devoted to special services, numbers that are unavailable for technical or regulatory policy reasons, or numbers classified as intermediate (such as those used by resellers), aging, administrative and reserved.

Subject to these qualifications, Verizon Wireless supports establishment of a utilization threshold of 60% initially, increasing by 5% annually for two years, until it reaches 70%.

Transition Period. Verizon Wireless supports establishment of a nine-month transition period between CMRS carriers' implementation of LNP and the start of their participation in number pooling. The current wireless LNP implementation date was set without considering the added complexity of a simultaneous move to pooling. A nine-month pooling transition period for CMRS, equivalent to that afforded to wireline carriers, would allow CMRS carriers time to address the technical challenges, which go well beyond simply having LNP capability. The public would be better served by giving CMRS carriers an opportunity to implement LNP capability properly before implementing a second change that could endanger nationwide seamless roaming.

Sale of Numbering Resources. Verizon Wireless opposes the Commission's proposal to sell numbering resources. Congress gave the Commission plenary authority over the NANP, which is now running out of available numbers. The Commission should devote its resources to planning for the orderly expansion of the NANP instead of pursuing schemes to sell the limited existing number resource. The FCC lacks statutory authority to sell numbers, and such a scheme would not serve the public interest. Numbers are a public resource, not a marketable commodity, and should be managed to benefit the public at large. Moreover, the sale of numbering resources could result in speculation and warehousing.

Cost Recovery. The cost categories used for number portability should also be used for number pooling; shared industry costs become carrier-specific costs once they are distributed among carriers, which should be done according to the NANPA formula. States should not be permitted to have their own formulas for cost recovery. Instead, a single nationwide standard should be applied.

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**VERIZON WIRELESS COMMENTS
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Pursuant to Section 1.415 of the Commission's Rules, Verizon Wireless¹ submits these comments in response to the Commission's March 31, 2000 *Further Notice of Proposed Rulemaking*.² In the *Further Notice*, the Commission seeks comment on (1) issues related to the use of a utilization threshold for obtaining growth codes; (2) whether CMRS carriers should be required to participate in number pooling immediately when they become subject to the local number portability ("LNP") capability requirement, or should instead have a transition period; (3) whether a pricing scheme should be applied to numbering resources, and how such a system might function; and (4) issues related to number-pooling cost recovery.

Verizon Wireless addresses these issues, but notes that they cannot be discussed in isolation from certain matters decided in the *Report and Order* that require clarification or

¹ On April 3, 2000, pursuant to Commission approval (*Vodafone AirTouch, Plc, and Bell Atlantic Corporation*, DA 00-721 (Mar. 30, 2000)), the domestic cellular, paging, and PCS businesses of Bell Atlantic Mobile ("BAM") and Vodafone AirTouch were combined, forming a new nationwide competitor that offers wireless products and services coast-to-coast using the name of Verizon Wireless.

² *Numbering Resource Optimization*, CC Docket 99-200, *Report and Order and Notice of Proposed Rulemaking*, FCC 00-104 (Mar. 31, 2000) (containing two separate sections referred to herein as the *Report and Order* and the *Further Notice*).

reconsideration. While Verizon Wireless plans to file a separate petition addressing the resolution of issues concerning the *Report and Order*, these comments identify critical matters requiring clarification that affect the subjects on which the Commission seeks further comment.

Further, in addressing these issues, the Commission should bear in mind that Congress gave the FCC exclusive, plenary authority over numbering administration to ensure the integrity of the *nationwide* numbering resource. While Congress allowed the FCC to delegate authority to the states in appropriate circumstances, it did not intend thereby to diminish national control over numbering matters.

I. THE COMMISSION MUST ESTABLISH AN APPROPRIATE UTILIZATION THRESHOLD FOR CARRIERS NOT PARTICIPATING IN NUMBER POOLING

Verizon Wireless believes the use of a standardized utilization threshold for growth codes for non-pooling carriers is appropriate under some circumstances, and subject to certain necessary and reasonable conditions. Specifically, as discussed in more detail below, Verizon Wireless supports the use of a utilization threshold³ *only if* all of the following conditions are met:

- The utilization threshold is applied *only* at the rate center level within an NPA, and is used only to determine the carrier's eligibility for growth codes in that rate center in that NPA.
- A carrier below the specified utilization threshold retains the right to obtain growth codes by demonstrating actual current or projected need, based on months-to-exhaust or other credible evidence.

³ Verizon Wireless believes that months-to-exhaust, standing alone, would be a better measure of need for numbering resources than any arbitrary threshold. Based on the record, however, Verizon Wireless supports the use of utilization thresholds together with months-to-exhaust, under the conditions discussed herein.

- The utilization threshold is applied only in NPAs that are in jeopardy and in NPAs where number pooling is actually in use, with eligibility for growth codes elsewhere determined exclusively by months-to-exhaust, instead of a specific utilization threshold.
- The same fixed utilization threshold and the same criteria for calculating utilization rates (*e.g.*, the numerator and denominator used in the formula) are employed nationwide, and states are *not* given discretion to adjust the utilization threshold within a range.
- The criteria for calculating utilization rates are adjusted to ensure that carriers will not be penalized for numbers devoted to special services, numbers that are made unavailable for technical or regulatory policy reasons, or for intermediate numbers (such as those used by resellers) and those classified as aging, administrative and reserved.

Subject to these important qualifications — and assuming appropriate definitions are established for the various primary and secondary categories that are consistent with industry usage⁴ — Verizon Wireless supports establishment of a utilization threshold of 60% initially, increasing by 5% annually for two years, until it reaches 70%.

A. The Utilization Threshold Should Be Applied Only for Growth Codes in a Rate Center Within an NPA

The *Further Notice* seeks comment on a “nationwide utilization threshold,” and separately asks about applying a utilization threshold at the rate center level, the NPA, or both.⁵ Verizon Wireless submits that the *only* level at which the use of a utilization threshold is warranted is at the level where the growth codes are actually taken — *i.e.*, *at the rate center within an NPA*.⁶ This is because the utilization threshold will be used to determine a carrier’s eligibility for growth codes in a specific rate center. The only utilization rate relevant to this

⁴ See *Further Notice* at ¶¶ 11-36.

⁵ *Further Notice* at ¶ 248.

⁶ A carrier’s ability to meet a particular utilization threshold “nationwide” has no relevance to its need for numbering resources in any particular rate center. The fact that a carrier’s nationwide average utilization rate is below some specified threshold should under no circumstances affect its ability to obtain growth codes in a specific rate center in a specific NPA where it has a legitimate need for codes. See also note 18, *infra*.

determination is the carrier's utilization rate in that rate center. Using any other utilization rate could result in the public being denied service where needed, because carriers might be unable to obtain numbers in rate centers where there is a need for growth codes.

The fact that a carrier may have numbers available in one rate center does not and should not affect its ability to obtain codes in another, in which it needs numbering resources to serve customers. The rate center usually determines whether a call placed to a given number is local or toll. There is no justification for restricting a carrier's legitimate access to numbers needed to accommodate customers based on concerns about potential stockpiling, given the significant steps taken in the *Report and Order* to detect and prevent such stockpiling, to ensure optimal use of codes through sequential numbering, and to reclaim unused and unneeded codes.

The Commission has recognized the need for measurement of utilization by rate centers, not merely by NPAs, in its *Report and Order*, where it observed:

We require rate center-based utilization to be reported because it more accurately reflects how numbering resources are assigned. . . . Moreover, rate center-based utilization allows carriers to obtain numbering resources in response to specific customer demands. For example, some NPAs contain both suburban/rural and urban areas. In such "mixed" NPAs, carriers might have high utilization rates in the more rural or suburban rate centers in the NPA. As a consequence, a carrier may be unable to meet an NPA-wide utilization rate, even when it is running into numbering shortages in particular rate centers in more densely-populated areas.⁷

Thus, a carrier's utilization rate across an entire NPA has no bearing on whether the carrier should have access to numbering resources for growth in a specific rate center therein. A carrier's inventory of available numbers in a low-utilization rate center does not help it meet customers' needs in a high-utilization rate center. Likewise, a carrier with a high NPA-wide

⁷ *Report and Order* at ¶ 105.

utilization rate should not automatically be entitled to growth codes in rate centers where it has plenty of numbers available.

For example, Verizon Wireless provides broadband wireless service in NPA 505, which covers the entire state of New Mexico, but takes codes from only six of its 163 rate centers. These six rate centers represent distinct parts of the NPA (and the state): Albuquerque, Santa Fe, Grants, Taos, Gallup, and Espanola. Albuquerque and Santa Fe have the largest populations and subscriber bases. They are, accordingly, the rate centers with the greatest number usage and need for growth codes. Other rate centers may have plenty of numbers available when a rate center such as Albuquerque or Santa Fe may have high utilization and need codes for growth. If an NPA-wide utilization threshold were employed, Verizon Wireless would be unable to obtain codes in Albuquerque or Santa Fe to respond to constant growth if its available number inventory in Gallup or Espanola reduces the company's NPA-wide utilization rate below the prescribed threshold.

Verizon Wireless notes that one complicating factor in determining utilization is the effect of splits and overlays that result in a rate center being in two or more NPAs. Verizon Wireless agrees that utilization should be calculated to the rate center level in order to show utilization of all NPAs within the same geographic boundary. However, in situations where there are at least two geographically different NPAs within that rate center, utilization must be a combination of rate center and specific NPA (for example, in Phoenix one rate center is split among three different NPAs).⁸

⁸ Thus, where an *entire* rate center is in two or more NPAs due to overlays, a carrier's utilization rate should be calculated based on that carrier's total numbering assets in the rate center from both NPAs (but the carrier should nevertheless be assured the ability to obtain an initial codes from both NPAs, subject to availability, in order to meet subscriber needs). Where, (footnote continued)

B. As an Essential “Safety Valve” for Service Providers, Carriers Below the Threshold Must Retain the Right to Obtain Codes by Demonstrating Actual Need Based on Months-to-Exhaust or Other Evidence

The Commission stated in the *Report and Order* that it will “requir[e]” carriers not participating in pooling “to meet a utilization threshold before they receive a growth code.”⁹ In the *Further Notice*, however, the Commission said it was considering the utilization level that carriers “should” meet, rather than describing this as a mandatory requirement.¹⁰ Verizon Wireless submits that the Commission should treat the utilization threshold as establishing a rebuttable presumption, instead of an inflexible requirement.

Under Verizon Wireless’s recommended approach, a carrier who fails to meet the utilization threshold would be rebuttably presumed ineligible for a growth code. The carrier would be entitled to overcome this presumption only by demonstrating actual need, based on its substantiated estimate of months to exhaust for the rate center at issue, or other relevant evidence. A carrier that can demonstrate that its numbering resources in a rate center will last no more than four months before exhaust should be entitled to obtain additional NXX codes sufficient to meet its needs, whether or not it is currently over a fixed utilization threshold. This “safety valve” procedure would allow carriers to obtain growth codes based on a demonstration

however, a rate center is divided geographically among two or more NPAs, the carrier’s utilization rate should be calculated separately based on its numbering assets in each NPA-rate center combination. (Similarly, where an NXX has been “grandfathered” at the time of a split, so that it remains associated with the old NPA to avoid changing customers’ numbers, instead of being shifted to the new NPA along with other codes in the same rate center, the utilization rate should be calculated separately for each NPA’s codes in the rate center.) In the future, when a rate center is geographically divided among two or more NPAs, but is also overlaid by a single NPA (as would eventually be the case in Phoenix if an overlay is added that covers multiple NPAs), appropriate combinations of rate center and NPA for computing utilization would need to be developed on a case-by-case basis.

⁹ *Report and Order* at ¶ 115.

¹⁰ *Further Notice* at ¶ 248.

of actual need in instances where they are temporarily below the utilization threshold at the time of making the request.

This procedure will provide carriers with the flexibility they need to respond to a rapidly growing, highly competitive market, where growth does not occur at a slow, steady pace. The “safety valve” approach is essential to wireless carriers, which may require additional numbering resources for anticipated near-term growth even when their utilization rate is below the established threshold. Situations where this may occur are described in the following sections.

They include:

- Sharp seasonal variations in demand — wireless carriers encounter most of their subscriber growth during a short winter season.
- Demand stimulated by promotions and introductions of new products, services, and options.
- Sudden increase in demand due to signing a major new business customer requiring a large block of numbers.

If the Commission decides to place primary reliance on utilization thresholds, a safety valve procedure is *essential* for addressing situations such as these. This does *not* create a “loophole” that will enable carriers to warehouse numbers they do not need. Any carrier requesting numbers based on extraordinary factors such as those described here will remain subject to number conservation measures, such as sequential numbering, as well as to ongoing months-to-exhaust reporting requirements and the potential of being audited. These measures will make it possible to monitor carriers’ use of codes that they obtained through the safety valve process and facilitate reclamation of codes, if appropriate.

1. Seasonal Demand

Wireless demand tends to be highly seasonal, which would lead to unacceptable difficulties if a strict utilization threshold were to be employed. Many carriers find that a high proportion of their growth occurs during the holiday season, from Thanksgiving through the first quarter of the new year. When applying for new numbering resources prior to the holiday season, a carrier's utilization might well be below the threshold, which would preclude obtaining growth codes, even though the carrier's expected growth — and actual use of numbers — in the space of a few short months will vastly exceed the available numbers in key rate centers. In such a case, the carrier should be entitled to base a request for NXX codes on a months-to-exhaust projection in light of its historical growth trend or other relevant data, even though its utilization at the time of the request falls below the prescribed utilization threshold.

The importance of this to wireless carriers is illustrated by an example. A wireless carrier typically draws all of its numbers in a given NPA from just a few rate centers, so a lack of available resources in a single rate center can have a severe effect on a carrier's ability to accommodate demand. The rate centers located where the subscriber growth is most concentrated — such as new or established urban centers — must be able to accommodate a high proportion of the company's NPA-wide annual growth during the winter peak season.

For example, a company may have 10 codes (100,000 numbers) in one critical rate center, with a utilization level of 50% at the end of September, and thus be well below a specified utilization threshold, such as the 60% level.¹¹ Based on its growth rate, this company may know that it needs to be able to accommodate demand for 45,000 new numbers in that rate

¹¹ This utilization threshold is used here for illustrative purposes only.

center during the initial part of the winter season, with as many as 10,000 additional numbers potentially being needed toward the end of the first quarter of the new year.

Under a straight utilization threshold approach, the company would not be able to request additional numbers until its utilization exceeded the 60% threshold — which would not occur until it was well into the peak season. If it were unable to meet this threshold until mid-December, amid its seasonal growth spurt, its pool of available numbers would rapidly diminish to zero just when numbers are needed to respond to service demand. As a result, the carrier would not be able to add new codes until late February — and would have to turn away customers during its peak season. By contrast, if the carrier were able to request codes in late summer based on a December exhaust projection, it would be able to meet the service demand.¹² Thus, it is critical that wireless carriers retain the ability to resort to a months-to-exhaust “safety valve” in order to meet seasonal demand.¹³

2. Promotional Demand

Similarly, carriers often experience a large spike in demand for numbers on beginning a new promotional campaign. For example, Verizon Wireless expects significant growth as it begins promoting its commencement of service as a joint venture, uniting the formerly separate wireless operations of Bell Atlantic Mobile, Vodafone AirTouch, and PrimeCo Personal Communications, L.P., and offering its national **SINGLERATESM** and low-cost nationwide roaming through all of its outlets. In finding that the joint venture will serve the public interest,

¹² A request for codes shortly before Labor Day, based on four months to exhaust, would allow the code to be effective in the LERG no earlier than sixty-six days later, making the code available for use in November.

¹³ For example, in Illinois, regulators have employed a months-to-exhaust safety valve.

the Commission found that pricing features such as these clearly benefit customers.¹⁴ And because the public benefits directly from these offerings, the promotion associated with the new joint venture can be expected to result in a rapid growth spurt.

Sudden growth often occurs when a wireless carrier introduces and promotes new services, technologies, features, options, and calling plans. For example, Verizon Wireless has introduced a new “advance payment option” in several markets that has generated dramatic new growth — as many as 4,000 numbers a week in some markets. The company has been able to obtain new codes to accommodate the demand for service offered with this new option based on the projected rate of use of numbering resources; a flat utilization threshold would have prevented Verizon Wireless from meeting the public demand for service with this option.

Carriers need to be able to secure sufficient codes for growth in advance of beginning such promotional campaigns to accommodate the expected demand — demand that is not forecasted by historical growth in utilization rates, but may exceed available capacity if access to growth codes is available only when a carrier reaches a predetermined utilization threshold. Unless carriers have the ability to obtain codes to accommodate promotion-related demand, the public will not receive the benefits of those promotions.

3. Codes Needed to Accommodate Major New Customer

There are other situations where a safety valve procedure is needed, such as when a carrier signs a major new customer that requires additional numbering resources. Verizon Wireless recently encountered this situation. A large new business customer needed 10,000 numbers in one location — an entire NXX code. Verizon Wireless could not have satisfied the

¹⁴ See *Vodafone AirTouch, Plc, and Bell Atlantic Corporation*, DA 00-721, at ¶¶ 32-33 (Mar. 30, 2000).

customer's need under a strict application of a utilization threshold, but was able to obtain the requisite numbers based on a months-to-exhaust projection that took the new customer's needs into account.

C. The Utilization Threshold Should Only Be Used in Jeopardy NPAs or NPAs Where Number Pooling Is Used

Pursuant to the *Report and Order*, the utilization threshold established in response to the *Further Notice* will be used, starting January 1, 2001, to determine the eligibility for growth codes of all carriers not participating in number pooling, apparently nationwide. Verizon Wireless submits that there is no need to apply the utilization threshold except where numbering resources are actually in short supply.

The Commission should act cautiously in introducing a new number conservation technique such as the utilization threshold. Such techniques should first be deployed where the need is greatest — in markets or NPAs where numbers are in critically short supply. This will allow the Commission to assess the new technique's success. The Commission could then modify its approach, if necessary, and determine whether it should be extended to other areas. This is exactly how the Commission has proceeded with other steps taken to address shortages of numbering resources, such as area code relief and number pooling. Introducing the use of the utilization threshold gradually will give the Commission a chance to determine whether carriers are being prevented from obtaining codes in adequate time to accommodate demand, and would permit the Commission to modify its approach and add more flexibility, if needed.

Given that the utilization threshold has been adopted to address numbering resource shortages, and that such shortages are *not* universal, Verizon Wireless urges the Commission to impose the utilization threshold requirement *only* in areas of the country where numbering resources are, or will soon be, in short supply. The most prudent course would be to impose this

requirement only in NPAs that are currently in jeopardy or where number pooling has been initiated. There would appear to be no justification for imposing utilization thresholds in non-pooling markets — *i.e.*, smaller markets (below the 100 largest MSAs) where no carrier has requested the initiation of LNP. Extreme measures such as pooling and utilization thresholds should be undertaken only where numbers are in short supply. The conservation, auditing, and reclamation measures adopted in the *Report and Order* are more than adequate for other areas.¹⁵

D. There Should Be a Single Fixed Utilization Threshold And “Safety Valve” Procedure for All Rate Centers in Every Subject NPA, Without State Discretion

The *Further Notice* proposes establishment of a “nationwide” utilization threshold, but then seeks comment on whether state commissions should be allowed to set the figure within some preestablished range. Any utilization threshold must be set by the Commission, not by regulators in over fifty different jurisdictions. Moreover, a “safety valve” process, as described above, is an essential part of the utilization threshold regime, and this process must, likewise, be established by the Commission. There must be a single, uniform, national utilization threshold and safety valve process applied to all rate centers in all NPAs subject to the requirement, not dozens of varying thresholds and alternative procedures.

¹⁵ In markets that are not in jeopardy and have not yet begun pooling, number conservation remains important. In those markets, however, there is no need to move to a utilization threshold for conservation of numbering resources. Instead, the Commission should rely on the number conservation regime it just established in the *Report and Order* — requiring sequential assignment of numbers and aggressively reclaiming and reusing numbering resources that are unused. *See Report and Order* at ¶¶ 237-41, 244-46. In non-jeopardy, non-pooling areas, these techniques are more than adequate to prevent waste of numbering resources.

Establishing a range for utilization thresholds within which state regulators could pick and choose would not only be inefficient (because every state commission would then have to conduct proceedings on the same issue) but would also be problematic, because state regulators' numbering decisions are not driven solely by optimal administration of the North American Numbering Plan, but are affected by innumerable local political considerations and pressures.

The inevitable result of deferring the establishment of utilization thresholds to state regulators would be a patchwork of *different* thresholds in NPAs throughout the nation, or even perhaps different thresholds for rate centers in a single NPA, based on factors potentially ranging far from efficient number administration.¹⁶ Given the Commission's statutory "exclusive jurisdiction" over numbering and its mandate to "make numbers available on an equitable basis,"¹⁷ the Commission should establish a single fixed utilization threshold that would be applied equally in every state and NPA. If the rate centers in a given NPA are subject to a utilization threshold, they should be subject to a single nationally-established threshold, given that "numbering resource optimization policy is part of [the Commission's] role as guardian of the nationwide NANP resource."¹⁸ Allowing states to set different utilization thresholds would be inconsistent with the administration of a national resource. Accordingly, the Commission should follow the approach followed in the *Report and Order* with respect to sequential

¹⁶ For example, NANPA has issued a report outlining the widely divergent procedures and processes that states have adopted pursuant to FCC delegations of authority. *See NANPA Report to the NANC* (presented April 25-26, 2000).

¹⁷ 47 U.S.C. § 251(e).

¹⁸ *Report and Order* at ¶ 7. Again, the same utilization threshold should be applied nationwide, but it should be applied at the rate center level within an NPA, not to a carrier's operations nationwide.

numbering — namely, override all prior delegations of authority to states and mandate that a single uniform approach be followed in every state as of January 1, 2001.¹⁹

E. The Calculation of Utilization Needs to Be Clarified

Because a carrier's utilization rate will affect its ability to provide needed service to its customers as demand grows, the way in which the utilization rate is calculated must take the realities of the telecommunications industry into account. Carriers should not be penalized for numbers that are not "assigned" to their own retail customers but are in fact not readily available for assignment to customers. There are several categories of numbers that need to be addressed:

- Numbers in NXX codes set aside for specialized services, such as Calling Party Pays ("CPP"), when provision of such services requires a separate code;
- Numbers in NXX codes that may not generally be used to accommodate growth for valid public policy or technical reasons, such as grandfathered codes after a split, or codes that have not yet been converted from Type 1 to Type 2 interconnection;
- Intermediate numbers, such as those allocated to resellers, which are, by definition, not available to the underlying carrier for assignment to customers; and
- Aging, reserved, and administrative numbers, which are part of a carrier's inventory but are not available for assignment to customers.

In the absence of clarification,²⁰ there is a risk that utilization thresholds would impede carriers from accommodating growth, because numbers they cannot assign are, effectively, treated as available for assignment.

¹⁹ See *Report and Order* at ¶ 246.

²⁰ As noted above, Verizon Wireless plans to address the clarification or modification of several points in the *Report and Order* in a petition for clarification or reconsideration that will be filed at a later date. The calculation of a carrier's utilization rate involves several of these points. In order to comment meaningfully on the appropriate utilization threshold, Verizon Wireless addresses here factors bearing on the calculation of the utilization rate. The subsequent petition will fully address the clarification and/or modification of the *Report and Order*.

These situations should be addressed by ensuring that the calculation of utilization takes them into account properly. Alternatively, they could be addressed through the safety-valve mechanism, but that is not the best way to deal with common, entirely foreseeable issues. The utilization calculation should be refined to yield the right results.

1. Specialized Services Requiring Separate Codes, Such as Calling Party Pays, Should Be Treated Separately

Specialized services requiring separate codes should be separated out for purposes of determining utilization rate. Just as a carrier's wireline service, cellular service, and paging service are separate services that are not combined together for determining utilization, other services within these categories may, in some instances, warrant separate computation. Among the services for which separate treatment may also be appropriate are products designed to address the needs of consumers who choose services such as CPP or prepaid wireless service. The Commission has acknowledged that services such as CPP can serve the important purpose of making wireless service more affordable, and thus available, to a wider cross-section of Americans. Other specialized services for which separate treatment is warranted include wireless service that includes reverse toll billing, which permits the carrier to give subscribers the option of having a number that can be called without a toll charge over an extended area.

In some areas, the ILEC providing interconnection requires the use of separate NXX codes for these services because of the special billing arrangements.²¹ Where a CMRS carrier offering such services is required by the ILEC to use separate codes for them, the numbers used for these services cannot be commingled with standard service in a single NXX code. If the

²¹ For example, in markets in Verizon Wireless's western region, U S WEST, the ILEC providing interconnection has required use of separate NXX codes for CPP.

specialized service were not accounted for separately for utilization purposes, a carrier might be denied access to needed numbers for CPP, prepaid, or reverse toll billing service because it has numbers available in the codes used for standard wireless service, or *vice versa*. Separate treatment for special services that need separate codes would thus serve the public interest. Carriers should not be penalized for a low rate-center-wide utilization rate by being unable to obtain new codes due to a low utilization rate resulting from restrictions that render the carrier unable to use vacant numbers for the types of services customers demand.

2. Numbers Unavailable for Assignment for Regulatory Policy Reasons, Such as “Grandfathered” Numbers After a Split

Another situation that warranting separate treatment is where numbers are unavailable for assignment for important public policy reasons. In particular, a wireless carrier may have “grandfathered” numbers or codes from a pre-split NPA from a rate center located in the area now in a new NPA. In some cases, state regulators have expressly required that these grandfathered numbers be used only for allowing preexisting customers to keep their numbers, with no new assignments permitted, thereby accelerating the retirement of the code and reuse in accordance with the changed NPA boundaries.²² Such numbers are thus made unavailable for assignment for valid public policy reasons, and the numbers not already assigned would be stranded until the code is eventually cleared.

Under these circumstances, there would be no valid reason for counting the unassigned, unassignable portion of these codes as being part of the carrier’s inventory in the relevant rate

²² See, e.g., *In re Request for Board Guidance on Area Code Relief Plans for the New Jersey 609 Area Code*, New Jersey Board of Public Utilities Docket No. TO96100763, *Decision and Order*, at 28-29 (Feb. 17, 1999).

center. Nevertheless, an inflexible application of the existing rules would include not only the assigned numbers but the remaining unusable numbers as well — the entire 10,000 number NXX code — in the denominator of the utilization rate formula, as though those lines were all assignable.

There are three potential solutions to this problem. One would be to separate the NXX codes that are grandfathered from those in the new NPA, so that the existence of unused, unusable numbers in the grandfathered codes would not affect utilization rate in the new NPA. A second approach would be to exclude the unused, unusable numbers from the denominator of the utilization calculation, on the theory that those numbers should not be treated as part of the carrier's inventory. The third possible approach would be to include the unused but unusable numbers from the grandfathered codes in the numerator, treating them as though assigned. Any of these three approaches would avoid penalizing carriers for complying with a public policy determination that a grandfathered code should be used only for the accommodation of incumbent subscribers.

3. Numbers Unavailable for Technical Reasons, Such as Numbers Not Yet Transitioned from Type 1 to Type 2 Interconnection

An additional category of numbers that should be treated as unavailable, as with unused grandfathered numbers, is numbers that are not readily assignable for technical reasons. In particular, carriers may have some numbers that remain subject to Type 1 interconnection, despite conversion to Type 2 interconnection for the most part. Type 1 and Type 2 interconnection cannot be intermixed in a single NXX code. Thus, the subscribers in Type 1 NXXs are effectively “grandfathered” just as those in an old NPA. They cannot readily be transitioned to Type 2 interconnection without changing their phone numbers, and the remaining

numbers in those NXX codes are effectively unusable in a system that has largely been converted to Type 2 interconnection. In such cases, the Commission should apply similar solutions to those described above for the NPA-split grandfathering situation.

With respect to numbers subject to Type 1 interconnection, the most appropriate solution would appear to be treating those numbers separately from numbers subject to Type 2 interconnection. This would permit carriers to obtain NXX codes with Type 2 interconnection in locations where utilization of Type 1 numbers is relatively low due to the phasing out of the latter numbers through attrition. Without separate treatment, carriers would find it difficult to depopulate Type 1 number blocks, since new growth would have to be cycled right back into the Type 1 numbers that are vacated.

4. Carriers Should Not Be Penalized for Intermediate Numbers, Such As Those Used to Accommodate Resellers

It is essential that the Commission clarify how intermediate numbers, and particularly numbers used to accommodate resellers, are to be treated in calculating the utilization rate. Under the rules adopted in the *Report and Order*, intermediate numbers are *never* deemed “assigned,” even though the carrier may be paid for those numbers by a reseller and the numbers may in fact be assigned to end users by the reseller.²³

The *Report and Order* attempts to establish a uniform approach to reseller and similar numbers. Numbers that a carrier provides to resellers are deemed “intermediate numbers,”

²³ In the past, reseller numbers have received a variety of treatments that generally excluded these numbers from being considered available for assignment. In some cases, carriers have treated all reseller numbers as “assigned” and “working,” especially when the reseller pays an access fee for each number. In other cases, carriers have treated resellers’ numbers as “unavailable” until resold to an end user, when the numbers were reclassified as “assigned” and “working.”

which are never to be considered “assigned” as far as the carrier is concerned.²⁴ The reseller never has to file a request for codes, however; instead, the underlying carrier is responsible for seeking growth codes. But the carrier can obtain growth codes only if its utilization rate exceeds the established threshold, which is calculated by dividing the carrier’s *own* assigned numbers by the “total numbering resources assigned to that carrier in the appropriate geographic region.”²⁵ Since the reseller numbers are not deemed the underlying carrier’s “assigned numbers,” but *are* among the resources assigned by NANPA to the carrier as code holder, the carrier’s so-called utilization rate, if calculated as the *Report and Order* directs, will always be lower than actual utilization, because *all reseller numbers would be treated as unassigned*.²⁶ Thus, the formula will result in a utilization rate that understates the percentage of numbers actually assigned by the percentage assigned to other carriers, such as resellers.

There is no reason why the Commission should seek to artificially depress a carrier’s calculated utilization rate by the percentage of numbers in reseller pools. In fact, *the Commission did not intend such a result*. The Commission stated that intermediate numbers “should not be counted in the code or block holder’s inventory because the code or block holder does not control the provision of these numbers to end users.”²⁷ Accordingly, the calculation of

²⁴ See *Report and Order* at ¶¶ 20-21 (Defining dealer pool numbers as “intermediate numbers” that “should not be categorized as *assigned* numbers because they have not been assigned to an end user.”).

²⁵ *Report and Order* at ¶ 109.

²⁶ If, for example, 40% of the numbers in a code are set aside for resellers, the carrier’s utilization rate will *never* exceed 60% — *even if all 10,000 numbers are in fact in use by end users of the carrier and customer*. By removing all reseller numbers from the numerator, the *Report and Order* will cause carriers to report utilization rates based only on their own customers — which could reduce reported utilization rates by substantial percentages, severely impacting carriers’ ability to meet the utilization thresholds.

²⁷ See *Report and Order* at ¶ 21.

the carrier's utilization rate should use the "carrier's inventory" as its denominator, thereby excluding all intermediate numbers, instead of using the "total numbering resources assigned to that carrier," as the *Report and Order* suggests in its discussion of utilization rates.²⁸ The rules do not follow this approach, however. The rules adopted in the *Report and Order* state that the denominator in calculating utilization rate should be the carrier's "inventory,"²⁹ but the rules' definition of "inventory" fails to exclude intermediate numbers.³⁰

The Commission should clarify both its policy and its rules to ensure that carriers will not be penalized for intermediate numbers, including reseller numbers. There are two ways to accomplish this: Either include intermediate numbers in both the numerator and the denominator of the utilization formula, similar to the way the calculation is performed in the industry today, or exclude them from both the numerator and denominator on the theory that these numbers are not part of the carrier's inventory.

Otherwise, utilization rates for CMRS providers, who have long been subject to a resale requirement, will be distorted — artificially depressed by the percentage in reseller pools — with the inevitable result of denying both the facility-based carriers and their resellers access to numbering resources for growth.

5. Carriers Should Not Be Penalized for Aging, Reserved, and Administrative Numbers

Just as carriers should not be penalized by being denied growth codes for having intermediate numbers, they should not be denied growth codes because of aging, reserved, and administrative numbers. These numbers should be included in the numerator when calculating

²⁸ *Report and Order* at ¶ 107.

²⁹ See 47 C.F.R. § 52.15(g)(3)(ii), as adopted in the *Report and Order*.

utilization, because these are numbers that are part of the “overhead” of providing telephone service. These numbers are not available for assignment to customers, as the definitions in the *Report and Order* reflect. It is therefore unreasonable to effectively treat these numbers as if they were available and assignable for purposes of calculating utilization rate — especially when the utilization rate will have to exceed a fixed threshold if a carrier is to obtain growth codes. The fact that a carrier has aging numbers should not be counted against it for purposes of obtaining growth codes. The aging numbers will, in due time, be recycled and become available for assignment, but until that occurs, they are not assignable.

The Commission need not keep these out of the numerator out of concern about warehousing numbers, because the new definitions and regulations adopted in the *Report and Order* are expressly designed to ensure that such abuses do not occur, and that unused numbers will be reclaimed.

F. If the Foregoing Requirements Are Established, Verizon Wireless Supports a Utilization Threshold of 60% Increasing to 65% and then 70%

Verizon Wireless is willing to support CTIA’s year-old proposal to establish the utilization threshold at 60%, increasing to 65% after one year and 70% after a further year. These are levels that will permit efficient wireless carriers to obtain the numbering resources needed to serve their customers, provided that the essential criteria discussed in the preceding sections are included.

Again, these levels are premised on certain critical assumptions about how the utilization rate is calculated, however — namely, the appropriate treatment of intermediate, aging,

³⁰ See 47 C.F.R. § 52.7(j)(1) (“The term ‘inventory’ refers to all telephone numbers distributed, assigned or allocated . . . [t]o a service provider . . .”).

administrative, and reserved numbers. If, for example, reseller numbers are considered to be part of a carrier's inventory but never deemed assigned, obviously the utilization threshold would have to be lower, to account for the fact that a carrier will never be able to get credit for numbers that are resold. Similarly, if aging, administrative, and reserved numbers are treated as available for assignment, even though they are actually overhead that cannot arbitrarily be assigned to customers, it will be necessary to reduce the utilization threshold even further.

Verizon Wireless also opposes increasing the utilization threshold any higher, however. Setting the threshold at 80%, for example, will provide carriers with insufficient numbers to meet customer needs during the time needed to process a request for additional numbering resources until the numbers are effective in the LERG. (Currently, it takes a minimum of sixty-six days from request to effective date, pursuant to industry standards.³¹) Given wireless carriers' high seasonal growth rates, an available inventory of numbers as low as 20% at the time of requesting additional codes is simply too low for reliance on a utilization threshold. Carriers would not have sufficient numbering resources to supply the public's needs for the length of time it takes to get growth codes. As a result, carriers would run into a lack of numbers at their peak season. By keeping the threshold in the 60%-70% range, the Commission will give carriers enough of a buffer to last through the time needed to request and deploy new codes. This will also permit the Commission to assess the results of its utilization threshold program *before* deciding whether the

³¹ In jeopardy NPAs, the use of a lottery may extend this time by a week or two for a carrier that is granted a code in the lottery. The time will be substantially longer if the carrier is *not* granted a code in the lottery. For example, in the 909 NPA, Verizon Wireless anticipates waiting at least 18 months for a growth code before obtaining one, without regard to its documented need for numbers, due to its eighteenth-slot position on the lottery priority list for the NPA, where only one code is available per month.

threshold needs to be adjusted upward or downward in future years for number resource optimization purposes.

II. THERE SHOULD BE A TRANSITION PERIOD FOR IMPLEMENTATION OF POOLING FOR NON-LNP-CAPABLE CARRIERS

Verizon Wireless agrees with the Commission's alternative proposal in paragraph 249 of the *Further Notice* to provide a transition period between CMRS carriers' implementation of LNP and the start of their participation in number pooling. The current date for the implementation of LNP by CMRS carriers, November 24, 2002, was set because of the technical obstacles, such as separation of the MDN from the MIN, that must be overcome first.³² The Commission balanced the time, cost, and complexity of addressing these obstacles against the public interest in deploying LNP promptly in settling on this implementation date. The Commission did *not*, however, take into account the added cost and complexity of implementing number pooling in setting that date. Thus, any requirement that number pooling be implemented simultaneously with LNP capability would require a rebalancing of the factors and jeopardize carriers' ability to carry out the rollout of both, given the work that must be done.

Verizon Wireless urges, instead, that the Commission provide a nine-month transition period for implementation of number pooling by CMRS carriers after they become LNP-capable. In imposing a nationwide pooling requirement on LNP-capable *wireline* carriers, the Commission found that a nine-month period was appropriate for implementation, after selection of a national pooling coordinator.³³ Moreover, the Commission found that a staggered rollout was

³² See CTIA Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, 14 F.C.C.R. 3092 (1999), *recon. denied*, FCC 00-47, 2000 FCC LEXIS 788 (February 23, 2000).

³³ See *Report and Order* at ¶ 156.

necessary for wireline pooling to avoid the adverse consequences that would result from a flash-cut implementation.³⁴

The technical challenges of implementing CMRS number pooling are considerable. Much more is involved than simply having LNP capability. Converting CMRS networks to number pooling will involve massive redesign of provisioning systems. Implementing this at the same time as LNP would pose considerable cost and technical resource constraints on CMRS carriers, if it were even possible to accomplish both simultaneously. This immediate requirement is unnecessary, given that the CMRS carriers would be subject to the utilization threshold. The public would be far better served by giving CMRS carriers an opportunity to implement LNP capability properly and get the “bugs” out before implementing a second huge change to their operational systems — and particularly the systems that make nationwide seamless roaming possible. Requiring CMRS carriers to begin number pooling at the same time as they begin LNP could pose risks to the reliability or availability of roaming service. Taking “one step at a time” would clearly be more prudent, given the public interest in ensuring the continuity of nationwide seamless roaming.

III. NUMBERING RESOURCES SHOULD NOT BE SOLD

Verizon Wireless opposes the Commission’s proposal to sell numbering resources, as described in paragraphs 250 and 251 of the *Further Notice*. The Commission has been vested by Congress with plenary authority over the United States portion of the North American Numbering Plan.³⁵ This proceeding was initiated to address the fact that the NANP is running out of available numbers. While the remaining life of the NANP remains a subject of debate, it

³⁴ See *Report and Order* at ¶ 159.

³⁵ See 47 U.S.C. § 251(e)(1).

is not more than a dozen or so years, and may be even less. It would be a much more productive use of the Commission's limited resources to begin addressing and planning for the expansion of the NANP than to pursue schemes to get revenue from sale of the limited existing number resource.

At a minimum, the Commission lacks any clear statutory authority to establish a so-called "market allocation system for numbering resources." The Commission is authorized to oversee numbering, designate an impartial entity to administer numbering, and to establish a "competitively neutral" method for recovering the "cost of establishing telecommunications numbering administration arrangements."³⁶ Congress has *not*, however, granted the Commission express authority to auction or sell number resources.³⁷ Congress decidedly did *not* grant the Commission authority to collect funds through such a scheme and use them to cover the costs of Commission programs not related to numbering administration. Accordingly, the Commission cannot lawfully adopt a market-based allocation scheme.³⁸

³⁶ 47 U.S.C. § 251(e)(1)-(2).

³⁷ Section 251(e) gives the Commission jurisdiction over numbering *administration*, but does not give it authority to raise revenue by selling the number resource itself. Given the complete silence of Congress with respect to *proprietary* control over the number resource, the Commission has no statutory right to charge for use of this public resource.

³⁸ The Commission is able to auction radio spectrum only because Congress gave the Commission express authority to use competitive bidding. 47 U.S.C. § 309(j). Prior to that, the Commission lacked express legal authority to charge market value for spectrum. The courts have repeatedly held that the Independent Offices Appropriations Act severely limits the Commission's ability to charge for its services, absent separate explicit statutory authorization. See *NCTA v. United States*, 415 U.S. 336 (1974); *Capital Cities Communications, Inc. v. FCC*, 554 F.2d 1135 (D.C. Cir. 1976); *NAB v. FCC*, 554 F.2d 1118 (1976); *NCTA v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976).

Such a scheme would not serve the public interest, in any event. The availability of numbers for use by the consuming public should not be based on a carrier's or a customer's willingness to pay. The Commission has repeatedly held that the number resource is a public resource that belongs to the public at large, not property that can be bought or sold.³⁹ That public resource should be managed to benefit the public at large, not the carriers and customers willing to pay the highest price for numbers. This will lead to differential treatment of services, as some services (and new service entrants) may be less able to "buy" numbers to support their service offerings. The public should not be denied competitive services on this basis.

The sale or auction of numbering resources would be contrary to the public interest for additional reasons. Given the limited availability of numbers in many locations, speculation, warehousing, and hoarding may result from the sale or auction of numbering resources. If codes and numbers were subject to sale, barter, or lease, the administrative controls on which the CO Code Guidelines are based would no longer work. All of the problems posed by "cybersquatting" and 800-code-grabbing might be extended to NXX codes. Instead of codes being made available to carriers with a legitimate need to assign numbers to consumers, codes could become the subject of a bidding war. Moreover, if numbers were sold, issues of ownership would ensue that the Commission has thus far kept at bay. Furthermore, if carriers or customers acquired ownership rights in numbers, reclamation would be a far more difficult and expensive

³⁹ *FCC Policy Statement on Interconnection of Cellular Systems*, 59 Rad. Reg. (P&F) 2d 1275, 1284 (1986); *Administration of the North American Numbering Plan*, CC Docket 92-237, Report and Order, 11 F.C.C.R. 2588, 2591 (1995) (*NANP Order*); see also *Administration of the North American Numbering Plan*, CC Docket 92-237, Third Report and Order, 12 F.C.C.R. 23,040, at ¶ 4 (1997) (*Third NANP Order*). The CO Code Guidelines state that "The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration." CO Code Guidelines § 2.1.

task. Lastly, such a system would require the Commission to develop artificial scarcity of numbering resources, because auctioning numbers would amount to rationing them on the basis of price, which would maximize revenue and diminish the supply of numbers without regard to availability or use of numbers by carriers. Clearly, this would aggravate, not solve, the numbering crisis.

In sum, there is no basis for departing from the reasoned administrative control of numbering resources — which is, after all, what Congress mandated. Accordingly, Verizon Wireless strongly opposes allowing number resources on the auction block or otherwise allowing them to be “sold, brokered, bartered, or leased.”⁴⁰

IV. RECOVERY OF SHARED INDUSTRY AND DIRECT CARRIER-SPECIFIC COSTS

Verizon Wireless agrees that the cost categories used for number portability should also be used for number pooling and that shared industry costs become carrier-specific costs once they are distributed among carriers, which should be done according to the NANPA formula.⁴¹ States should not be permitted to have their own formulas for cost recovery. Instead, a single nationwide standard should be applied.⁴²

CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to establish a single nationwide utilization threshold that will be applied only at the level of a rate center in an NPA for determining access to growth codes by non-LNP-capable carriers, subject to the

⁴⁰ CO Code Guidelines § 2.1.

⁴¹ See *Report and Order* at ¶¶ 203-04, 207.

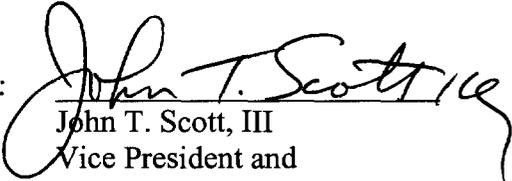
⁴² See *Report and Order* at ¶¶ 196-97.

qualifications set forth herein — including the safety-valve process, and the clarification that carriers will not be penalized in calculating their utilization rates by treating unavailable numbers, such as intermediate, aging, administrative, and reserved numbers, as though they were available for assignment. Likewise, the Commission should make clear that available numbers in specialized-purpose NXX codes are not necessarily usable for general assignment and can be treated separately.

The Commission should establish a nine-month transition period for CMRS carriers between their becoming LNP-capable and being subject to pooling, for the reasons discussed above. Moreover, the Commission should reject its proposal to engage in sale of numbering resources.

Respectfully submitted,

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