

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
CC Docket No. 99-200

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

COMMENTS OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby respectfully submits these comments on the Commission's *Further Notice of Proposed Rulemaking* ("FNPRM") in the above-captioned proceeding.<sup>1</sup> CompTel is the principal industry association representing U.S. and international competitive telecommunications companies and their suppliers. Therefore, CompTel has a direct interest in this proceeding.

For the reasons stated below, the Commission should allow carriers to obtain growth codes based on documentation of genuine need without regard to utilization rate, because utilization rates cannot be the only criterion of a need-verification test. In any event, utilization thresholds should not exceed 50%, must be rate center-based, and cannot vary from state-to-state. Moreover, the FCC does not have the authority to auction numbering resources, and auctions would not improve the efficiency with which carriers utilize numbers. Finally, the FCC should not further burden access charges by allowing ILECs to recover the costs of number pooling from access charges. CompTel believes that these recommendations are crucial to

<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) ("FNPRM").

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“ensure[s] that no class of carrier or consumer is unduly favored or disfavored by [the Commission’s] optimization efforts.”<sup>2</sup>

**I. CARRIERS MUST BE ALLOWED TO OBTAIN A GROWTH CODE  
BASED ON DOCUMENTATION OF GENUINE NEED WITHOUT  
REGARD TO UTILIZATION RATE**

The FCC concluded in the *Report and Order* that all non-pooling carriers must report their utilization level for the rate center in which they are seeking growth numbering resources with all applications for additional numbering resources.<sup>3</sup> The FCC now requests comment on what specific utilization threshold non-pooling carriers must meet to qualify for growth codes.<sup>4</sup> The Commission tentatively concludes that there should be a nationwide utilization threshold, and that this threshold should be set initially at 50% and increase 10% annually until it reaches 80%.<sup>5</sup> The FCC also proposes to require carriers to meet a specific rate center-based utilization threshold for the rate center in which it is seeking additional numbering resources, and asks for comment on the appropriate threshold.<sup>6</sup> Finally, the FCC seeks comment on whether state commissions should be permitted to set the rate center threshold within any range adopted by this Commission.<sup>7</sup>

CompTel urges the Commission not to require carriers to meet a specific utilization threshold when seeking additional numbering resources. As the FCC explained in the *Report and Order*, the only purpose for requiring carriers to meet a utilization threshold is to

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<sup>2</sup> *Id.* at ¶3.

<sup>3</sup> *Id.* at ¶104.

<sup>4</sup> *Id.* at ¶248.

<sup>5</sup> *Id.*

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

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

prevent carriers from “stockpiling” or carrying excessive inventories of numbers.<sup>8</sup> However, the measures that the Commission adopted in the *Report and Order* alone will prevent carriers from stockpiling numbers. Among other things, the uniform definitions for categories of numbering usage, the mandatory and enforceable reporting requirements, the sequential assignment obligation, the streamlined reclamation process, and mandatory audits will make it very difficult, if not impossible, for carriers to stockpile numbers. These measures will make it much easier to detect stockpiling, reclaim unused numbers, and punish carriers that willfully abuse the numbering allocation process. Therefore, utilization thresholds, or for that matter any other criteria to verify need, are unnecessary, because they are not needed to prevent carriers from stockpiling numbers.

If the FCC nonetheless adopts a utilization threshold that carriers must meet to qualify for additional numbering resources, it must ensure that the utilization threshold requirement does not have a discriminatory effect on particular groups of carriers and end users. Most importantly, the FCC cannot rely solely on utilization thresholds to determine eligibility for additional numbering resources, because there are many circumstances in which carriers genuinely need additional numbering resources despite having a relatively low utilization rate. For example, a carrier with a relatively low utilization rate may nonetheless have an insufficient inventory of available numbers to (1) satisfy demand in a high growth rate area; (2) fulfill an order from a large end user; (3) introduce a new service; (4) process service requests generated by a successful marketing campaign; or (5) compete to serve a new subdivision, office park or campus.

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<sup>8</sup> *Id.* at ¶101 (citing *Notice*, 14 FCC Rcd at 10348).

Without a procedure to allow carriers with relatively low utilization rates to obtain additional numbering resources when needed, new entrants and smaller carriers will not be able to compete with incumbents and larger carriers, which have a much larger inventory of numbering resources at any given utilization rate. Competition will suffer if incumbents and larger carriers gain a nearly insurmountable advantage over new entrants and smaller carriers solely because they alone can meet consumer demand due to the size of their inventory of available numbering resources. Therefore, utilization rates cannot be the only criterion of a need-verification test; carriers must also be allowed to obtain a growth code by submitting documentation of genuine need for numbering resources without regard to utilization rate. This demonstration should not be difficult to make, and consideration of the submitted documentation should not be protracted. Carriers should be able to submit a customer order, proof of a new service offering or marketing campaign, or MTE worksheet to support their requests for growth codes.

CompTel also urges the FCC to amend the utilization formula or lower the utilization threshold to account for categories of numbering usage that carriers cannot use much more efficiently or which vary based on type of carrier or service. The utilization formula should not treat each category of numbering use equally, because carriers do not exercise an equal amount of control over each numbering category. Where a carrier has little or no ability to improve the efficiency with which it uses numbers in a particular category of numbering use, that category should not count against the carrier when it applies for additional numbering resources, particularly when the percentage of numbers in each category varies by type of carrier, technology, location and target market.

Specifically, the FCC should either include aging, administrative and reserved numbers in the numerator with assigned numbers in the utilization formula or reduce the utilization threshold accordingly. The INC guidelines and the rules in some states mandate that carriers age numbers for a specific period of time, during which carriers have no ability to assign these numbers to consumers or improve the efficiency of their use. Carriers likewise have absolutely no control over the amount of reserved numbers that they have because carriers can only reserve numbers at the specific request of an end user, and then can only keep the number on reserved status for 45 days. Similarly, all carriers need to use a reasonable percentage of administrative numbers. The percentage of aging, reserved and administrative numbers that a carrier has varies by carrier size and type, which would have a discriminatory effect if these numbering categories count against carriers. The FCC need not be concerned about abuse of these categories, because improper reporting will be apparent when the FCC, state commissions and the NANPA compare the relative percentages of numbers among all of the carriers within a particular rate center.

Finally, any utilization threshold that the FCC adopts must be rate center-based, not NPA- or nationwide-based. If the FCC relied upon a nationwide-based utilization rate to assess applications for growth codes, it would discourage carriers from entering MSAs or rate centers with small population densities or large concentrations of small business and residential customers because it might lower the carrier's overall utilization rate and prevent it from qualifying for additional numbering resources in rate centers with high growth rates. This would be contrary to the goals of the 1996 Act, and thus utilization thresholds should only be rate center-based. Moreover, the FCC should not authorize state commissions to vary utilization thresholds or the means for calculating utilization rates from state to state. Requirements for

obtaining growth codes that vary state-by-state could interfere with the optimization measures that the FCC adopted in the *Report and Order* and would impose unnecessary burdens and expense on the FCC, state commissions, NANPA and carriers.

**II. MARKET-BASED ALLOCATION SCHEMES EXCEED THE FCC'S STATUTORY AUTHORITY, AND THEY WOULD NOT IMPROVE EFFICIENCY**

In the *Further Notice*, the FCC seeks comment on how a market-based allocation system – numbering auctions<sup>9</sup> – would affect the efficiency of allocation of numbers among carriers.<sup>10</sup> CompTel urges the FCC not to continue consideration of numbering auctions, which distracts attention from other effective and viable means of numbering optimization, because the FCC does not have the authority under the 1996 Act to auction numbering resources.

Congress granted plenary authority over numbering administration to the FCC in Section 251(e)(1), but it limited this authority in Section 251(e)(2), which provides that:

The *cost* of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.<sup>11</sup>

Thus, the FCC has the discretion to determine the “cost” of “establishing numbering administration arrangements,” but it cannot require carriers to pay any charges or fees that exceed that “cost” or establish a price for numbers themselves. Because the FCC has already

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<sup>9</sup> See *Numbering Resource Optimization, Notice of Proposed Rulemaking*, 14 FCC Rcd 10322, 10420 at ¶233 (1999) (“*Notice*”) (“Under a market-based approach, on the other hand, prices could be set by an auction like process . . .”).

<sup>10</sup> *Id.* at ¶251.

<sup>11</sup> 47 U.S.C. § 251(e)(2) (emphasis added).

established cost recovery mechanisms for number administration, number portability and number pooling, there are no further costs to be recovered. Moreover, the FCC cannot collect fees for numbers and then use the revenues for purposes unrelated to the cost of numbering administration arrangements, such as universal service.

CompTel also strongly disagrees with Commission's assumption that auctions could identify the "societal costs" of numbering resources.<sup>12</sup> The FCC cannot reasonably equate "costs" as used in the 1996 Act, or even the societal costs of numbering resources, with the "price" that a carrier would be willing to pay at an auction for numbering resources. Under no circumstances could the FCC identify an actual cost basis that would justify auctions for numbering resources under the 1996 Act.

Auctions would also create difficulties in the international context, because the FCC has no authority over the seventeen countries that are members of the North American Numbering Plan outside of the United States. Therefore, the FCC would not be able to require carriers from these countries to participate in auctions or determine how to use any auction proceeds received from carriers from other NANP countries.<sup>13</sup> This provides further confirmation that Congress did not authorize the FCC to auction numbering resources.

The FCC should let the measures it adopted in the *Report and Order* take effect before exploring drastic numbering optimization measures, which would undoubtedly disrupt implementation of number pooling and the other optimization measures. Auctions, which are based on the concept that numbers are a tradable commodity, cannot be reconciled with the

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<sup>12</sup> Notice at ¶¶233-34.

<sup>13</sup> *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, ¶16 (1998).

FCC's current numbering policies, which are based on the concept that numbers are a public resource in which no carrier or end user has an ownership interest.<sup>14</sup> Therefore, the FCC cannot implement auctions for numbering resources and retain its current numbering policies.

In any event, auctions would not improve the efficiency with which carriers utilize numbering resources.<sup>15</sup> In the absence of rate center consolidation, new entrants would still be forced to request the same amount of numbers in order to compete with the incumbent. Auctions would simply reward the carrier who is willing and able to pay the highest price, not the carrier who is using numbering resources efficiently. Therefore, auctioning would either prevent competitive carriers from entering the market altogether or raise their costs unnecessarily, but it would have no effect on the quantity of numbers that these carriers would be forced to request or on the efficiency with which carriers utilize numbering resources. This result is inconsistent with the 1996 Act, and should be rejected without further consideration.

### **III. THE COSTS OF NUMBER POOLING SHOULD NOT BE RECOVERED THROUGH ACCESS CHARGES**

In the *Further Notice*, the FCC states that “[s]everal parties agree with the tentative conclusion that thousands-block number pooling costs should not be recovered through a federal charge assessed on end users, but should be recovered through access charges.”<sup>16</sup> CompTel vehemently disagrees with the FCC's tentative conclusion that number pooling costs should be recovered through access charges. The inclusion of these costs within access charges

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<sup>14</sup> See, e.g., *id.* (finding that auctions and lotteries would encourage brokerage and manipulation of numbers).

<sup>15</sup> See, e.g., *id.* (finding that auctions would not lead to an orderly or efficient allocation of toll free vanity numbers).

<sup>16</sup> *Further Notice* at ¶252.

would be a major step backwards, because recovering the costs of number pooling through an implicit support mechanism is inconsistent with the 1996 Act. Section 254 of the 1996 Act prohibits implicit support mechanisms, and specifies that all universal service support “should be explicit.”<sup>17</sup> Accordingly, the FCC should not add another implicit cost recovery mechanism to access charges.

The FCC first adopted cost-based access charges as a fundamental objective of its access policies more than 15 years ago.<sup>18</sup> From the first day, the FCC’s basic approach to achieve cost-based access rates has been to eliminate subsidies in usage rates.<sup>19</sup> The need for a cost-based end point to the Commission’s access policies is more critical today than it was in 1983. The only real access “issue” has been not the goal of cost-based rates, but the transition to achieve that goal.

Given the FCC’s emphasis on the need to promote efficient investment and innovation in the industry,<sup>20</sup> it is imperative that the FCC begin to move interstate access rates to cost-based levels now. This means, among other things, that the FCC should reject any consideration of adding implicit support mechanisms, or including increases for the cost of number pooling, back into access charges.

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<sup>17</sup> See 47 U.S.C. §254(b)(5), (d)-(e). See, e.g., *Joint Explanatory Statement of the Conference*, S. Cong. Rep. No. 230, 104<sup>th</sup> Cong., 2d Sess. 131 (1996)(Joint Explanatory Statement).

<sup>18</sup> *MTS and WATS Market Structure*, 93 F.C.C. 2d 241 (1983), *reconsideration, MTS and WATS Market Structure*, 97 F.C.C. 2d 682 (Memorandum Opinion and Order) (1983) (“*MTS/WATS Reconsideration Order*”).

<sup>19</sup> *MTS/WATS Reconsideration Order* at 686.

<sup>20</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, rel. Nov. 5, 1999, at ¶¶ 1-15 (Third Report and Order and Fourth Further Notice of Proposed Rulemaking); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-330, rel. Nov. 9, 1999, at ¶ 1.

**CONCLUSION**

For the foregoing reasons, the Commission should allow carriers to obtain growth codes based on documentation of genuine need without regard to utilization rate and reject proposals to auction numbering resources or to allow ILECs to recover the costs of number pooling from access charges.

Respectfully submitted,

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May 19, 2000

**CERTIFICATE OF SERVICE**

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