

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

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In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)

COMMENTS OF SBC COMMUNICATIONS INC. ON
FURTHER NOTICE OF PROPOSED RULEMAKING

SBC COMMUNICATIONS INC.

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SUMMARY

SBC commends the Commission for issuing its Report and Order and Further Notice of Proposed Rulemaking on numbering resource optimization (*NRO Order*). Numbering resource optimization is an important national issue, and the *NRO Order* is an important step toward establishing uniform national numbering policies. However, the Commission needs to act promptly to resolve the outstanding issues in this proceeding – including revising its policies concerning overlay area codes in order to minimize the harm and inconvenience to customers caused by necessary area code relief.

In response to the issues raised in the further notice of proposed rulemaking, SBC urges the Commission to resolve all outstanding cost recovery issues as soon as possible. SBC estimates the cost for its incumbent local exchange carriers to implement the national number pooling framework would be approximately \$221.3 million. Because it would be wholly speculative, arbitrary, and inconsistent with Section 251(e)(2) of the Telecommunications Act, the Commission should not reduce recoverable number pooling costs by an amount equal to the estimated time value of money for the uncertain period of time that number pooling might delay area code relief projects. As SBC has explained previously, number pooling is an expensive alternative and one that carriers must have full cost recovery under Section 251(e)(2) in order to implement.

SBC continues to support a utilization threshold for non-pooling carriers; however, the Commission needs to set a workable threshold. Due to several decisions made in the *NRO Order*, reported utilization will be significantly lower than the actual use of telephone numbers in the public switched telephone network and will not accurately reflect carriers' legitimate uses of and needs for numbers. As a result, SBC respectfully suggests that the

Commission's proposed 50-80 percent utilization threshold is unworkable. It recommends, instead, a utilization threshold of 50-65 percent, phased in over three years.

SBC recommends that the Commission grant the wireless industry a transition period of nine months after implementation of local number portability before beginning the implementation of number pooling. Wireless implementation of local number portability will be the single largest network upgrade project in the history of telephony, and it will be necessary to ensure that porting is properly implemented and working without complication before the wireless industry begins implementation of number pooling.

Finally, SBC suggests that, in light of the policies adopted in the *NRO Order*, charging for telephone numbers would only lead to higher prices for consumers and create a host of intractable issues for the Commission to resolve. The *NRO Order* establishes a detailed regulatory regime to ensure that numbers are used efficiently, and price regulation would be unnecessary and inconsistent with the uniform regulatory scheme. The Commission does not have the authority to charge for numbers in the manner proposed in the *NRO Order*, and it would need to receive new statutory authority to implement the proposal. Even if the Commission received such authority and adopted charges, it would need to eliminate all regulations adopted in the *NRO Order*, and modify the regulatory schemes of other programs that would receive the revenues. As a result, SBC respectfully suggests that the Commission should focus its scarce resources on the outstanding issues in this proceeding – such as overlay area code policies, and number pooling cost recovery – rather than continuing to examine the issue of charging for telephone numbers.

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INTRODUCTION

SBC Communications Inc. (SBC), by its attorneys, commends the Commission for issuing its *Report and Order and Further Notice of Proposed Rulemaking* concerning numbering resource optimization (*NRO Order*).¹ The *NRO Order* is an important first step to establishing uniform federal policies on an important national issue.

The *NRO Order* includes a Further Notice of Proposed Rulemaking, in which the Commission requests further comment on four specific issues.² The comments below address these four issues, and do not address other issues raised by the *NRO Order*. However several important issues raised in this proceeding were not addressed in the *NRO Order* or noticed for further rulemaking – including issues associated with the use of overlay area codes and ten-digit dialing.³ SBC urges the Commission to act promptly on these issues, including adopting policies that will allow more widespread use of overlay area codes. Even after the *NRO Order* is fully implemented, customers will still have to bear the cost and inconvenience caused by introducing

¹ Numbering Resource Utilization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket 99-200 (rel. March 31, 2000) (*NRO Order*).

² *NRO Order*, at ¶¶ 247-53.

³ See *NRO Order*, at ¶¶ 8-9.

new area codes. Policies that more equitably allow overlays would help minimize harm to customers and would ensure the most efficient use of area codes. For consumers, state commissions, and the industry, it is important that the Commission act on these issues promptly.

DISCUSSION

A. Recovery of Shared Industry and Direct Carrier-Specific Costs of Number Pooling

Cost recovery for number pooling is one of the most important matters to be resolved in future numbering optimization orders. To this end, the Commission's adoption of a cost recovery model, and its direction to state commissions to provide a cost recovery mechanism for state number pooling trials, are important steps toward ensuring the cost recovery guaranteed by the Section 251(e)(2) of the Act.⁴ In order to select the appropriate mechanism to recover these costs, the *NRO Order* requests estimates of the amount and magnitude of recoverable shared industry (Category 1) and direct carrier-specific (Category 2) costs of number pooling.⁵

SBC previously provided the Commission with detailed estimates of the shared industry and carrier-specific costs for its incumbent local exchange carriers to implement thousands-block number pooling, and it updated its estimates as regulatory and industry forums have provided more certainty and specificity regarding systems modifications, vendor requirements, and implementation timeframes. In light of the findings in *NRO Order*, SBC once again has updated its cost estimates, incorporating all available information regarding the implementation of pooling, the separate state and federal cost recovery processes, and the different categories of costs. As set forth in the *NRO Order*, SBC allocated the estimated costs in a manner consistent with the general cost allocation framework for local number portability

⁴ See *NRO Order*, at ¶¶ 192-226; 47 U.S.C. § 252(e)(1).

(LNP), with all costs allocated to the three LNP cost categories.⁶ Costs not directly related to thousands-block pooling (Category 3) have been excluded, and only carrier-specific costs that would not have been spent “but for” number pooling and costs that would be incurred “directly in the provision of number pooling” have been included.⁷ Also, all costs associated with implementing number pooling trials ordered by state commissions have been excluded, so these cost estimates only include the costs of implementing the national numbering pooling framework.⁸

Using these standards, SBC estimates that its recoverable “first costs” to implement national number pooling would be approximately \$221.3 million, consisting of approximately \$8 million in Category 1 costs, and \$213.3 million in Category 2 costs.⁹

The *NRO Order* also requests comment regarding whether number pooling costs should take in account the differences, if any, of the costs of implementing thousands-block number pooling versus the estimated cost of future area code relief under current numbering practices.¹⁰ SBC believes that it would be inappropriate to take any such differences into account, for several reasons.

⁵ *NRO Order*, at ¶¶ 252-53.

⁶ *See NRO Order*, at ¶ 216.

⁷ *See NRO Order*, at ¶¶ 211, 216-26.

⁸ *See NRO Order*, at ¶ 197. SBC currently has been ordered by state commissions to implement number pooling trials in nine separate NPAs. No state commission has yet initiated cost recovery proceedings. SBC estimates the cost of these trials will be between \$5 and \$9 million for each state. To the extent that these states do not grant fully and timely cost recovery, some or all of the costs of these trials may need to be recovery through the federal cost recovery mechanism in order to ensure compliance with Section 251(e)(2). *Cf. NRO Order*, at ¶¶ 79, 171.

⁹ This estimate includes overhead expenditures of approximately 14.6 percent, and the net present value of the estimated expenditures amortized over a five-year recovery period at a cost of money of 11.25 percent.

¹⁰ *See NRO Order*, at ¶ 253.

First, any such estimate would be so speculative as to be arbitrary, and could not be properly relied upon by the Commission in developing public policy. There are so many unknown and unknowable variables that must be completely or largely assumed in order to make such a comparison that there is no basis to believe that any such analysis would be an accurate reflection of the costs carriers would bear versus the costs they would avoid. Such variables include the impact, if any, that number pooling may have on exhausting area codes, future number demand, the pooling rollout schedule, the timing of pooling relative to exhaust, the type of area code relief, the timing of such relief, and the time period for comparison.¹¹

Second, number pooling will not eliminate the cost of area code relief – in fact, number pooling is far more expensive for carriers than relieving all area codes with overlay area codes. Number pooling, once it is implemented in an area code that has sufficient resources available, at best would only delay implementation of relief; it would not eliminate the need for relief.¹² The Illinois (847) and California (310) number pooling trials vividly demonstrate this fact. In Illinois, two years after carriers spent significant monies to deploy number pooling, carriers already are planning relief. In California, two months before number pooling was implemented, the North American Numbering Plan Administrator advised the California Public Utilities Commission that the 310 area code would exhaust in less than nine months, even with number pooling and with severely constrained supply of central office codes through rationing.¹³

¹¹ In no event should the comparison exceed five years, which is the outside limit for traditional net present value business analysis. In a dynamic industry such as telecommunications, where the pace of technological and consumer-driven demand is even more variable, the time period should be even shorter.

¹² The *NRO Order* acknowledges that number pooling delays, but does not eliminate, relief. See *NRO Order*, at ¶ 162.

¹³ See Letter from Kimberly Wheeler, Counsel for Neustar, Inc., to Commissioner Loretta Lynch, California Public Utilities Commission, *Orders Instituting Rulemaking and Investigation on the Comments of SBC Communications Inc.*, CC Docket No. 99-200

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As these actual examples demonstrate, it would be simply wrong to assume pooling will eliminate, or even (in some cases) substantially delay, the costs of relief.

Thus, even after carriers incur all of the costs to implement number pooling, they would still have to implement area code relief and incur the costs of relief. It would be inappropriate to exclude costs that will still have to be incurred. Even if some area code relief costs would be deferred by implementing number pooling, the value of such deferral likely would be small compared to the costs of implementing number pooling. Number pooling will not even begin to be implemented until some time next year under the *NRO Order*, and the implementation will be phased in over several years. As a result, number pooling will have little impact on area codes that are projected to exhaust in the near future. Any significant delay in area code relief likely would not be until years in the future, when the time value of money is appreciably smaller than it is today and the projections of demand and exhaust are more uncertain.

Third, the increase in area code exhaust is driven primarily by the growth in the number of local competitors and the development of new technologies, and these increased costs therefore were largely created by the Communications Act of 1996 and should be recoverable as costs of “telecommunications numbering administration arrangements” under Section 251(e)(2).¹⁴ SBC explained in detail in its comments to the Notice of Proposed Rulemaking that the development and expansion of local exchange competition has been the

Commission's Own Motion Into Competition for Local Exchange Service, R.95-04-043 & I.95-04-044 (Cal. PUC filed Jan. 18, 2000).

¹⁴ See 47 U.S.C. § 251(e)(2).

primary driver of the rapid exhaust of area codes the past few years.¹⁵ and the Commission acknowledged in the *NRO Order* that the rapid exhaust of area codes was caused in part by “competitive providers that need numbering resources to conduct their business.”¹⁶ Incumbent local exchange carriers already have been forced to bear a disproportionate amount of the costs of area code relief to date, even though have not played a significant role in the increased demand that has led to the rapid exhaust of area codes, because of the size of their networks and their comparatively larger number of switches. Rather than deducting the Act-created costs of increased area code relief from number pooling cost recovery, the Commission should examine whether the increased costs of area code relief caused by the development of local competition should be recoverable on a competitively neutral basis pursuant to Section 251(e)(2). But at a minimum, it would be contrary to Section 251(e)(2)’s mandate to reduce number pooling cost recovery based on an estimate of the avoided costs of area code relief.

B. Utilization Threshold

In the *NRO Order*, the Commission found that carriers not participating in number pooling should meet a specified utilization rate, or threshold, in order to receive growth codes, and determined that the utilization rate should be calculated using only “Assigned Numbers” (*i.e.*, excluding intermediate, reserved, aging, and administrative numbers).¹⁷ The *NRO Order* further states that the Commission will establish a single, nationwide utilization threshold, tentatively concluding (a) that the threshold should be set initially at 50 percent and (b) should

¹⁵ See Numbering Resource Optimization, *Comments of SBC Communications Inc.*, at 6-12, CC Docket No. 99-200 (filed July 30, 1999) [*SBC NPRM Comments*].

¹⁶ See *NRO Order*, at ¶ 6.

¹⁷ *NRO Order*, at ¶¶ 109, 115, 141. The text of the order suggests that “intermediate” numbers should be excluded from both the numerator and denominator of the utilization calculation. See

increase 10 percent a year to a maximum of 80 percent. The *NRO Order* requests comment on the proposed nationwide utilization rate. It also requests comment on whether the Commission should adopt a rate center-based utilization threshold,¹⁸ and it asks whether it should delegate to state commissions the authority to set this threshold rate.¹⁹

In comments on the *NRO NPRM*, SBC supported the idea of a utilization threshold, and presented a detailed proposal.²⁰ SBC proposed that the utilization threshold be applied at the carrier's "Lowest Code Assignment Point," or "LCAP." SBC recommended that the Commission to adopt a an initial threshold of 55 percent, which would increase five percent a year to a maximum of 70 percent. SBC also urged the Commission to adopt certain specific, limited exceptions, in order to avoid denying carriers needed numbering resources and to avoid unfairly penalizing carriers who, for legitimate reasons, could not meet the threshold.

SBC continues to support this proposal and believes that it represents the best available method for a utilization threshold. However, several policy decisions in the *NRO Order* adversely affect the utilization rate, and, as a result, the utilization threshold needs to be significantly lower than proposed by SBC or recommended by the Commission.

First, by excluding major categories of numbers that are in actual use or are otherwise unavailable, the *NRO Order* utilization reports will present misleadingly low rates of

NRO Order, at ¶ 21. The final rules do not state that intermediate numbers should be excluded from the denominator. See Rule 52.15(g)(ii).

¹⁸ *Id.* at ¶ 248. There is some ambiguity in the *NRO Order* regarding the geographic scope of the proposed nationwide utilization threshold. The final sentence of the discussion in the FNPRM portion of the *NRO Order* suggests that the proposed "nationwide" utilization threshold would be set "at the NPA level," see *id.*, but utilization reporting is required to be by rate center, see *NRO Order*, at ¶¶ 104-05; Appendix "B, page 122 (Rule 52.15(g)(3)(B)). suggesting the threshold would be applied at the rate center level.

¹⁹ *NRO Order*, at ¶ 248.

²⁰ *SBC NPRM Comments*, at 24-29, 44-48, 53-54.

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utilization. Reported utilization will be significantly lower than actual usage of telephone numbers in the public switched telephone network.²¹ Intermediate, administrative, reserved and aging numbers are generally unavailable for use by carriers (and for that reason, are properly and logically excluded in the Commission's regulations from "available" numbers).²² SBC estimates that 15 percent or more of all numbers might be classified as intermediate, administrative, aging, or reserved in some areas. The *NRO Order*'s utilization rate thus will significantly understate the actual use of telephone numbers, and potentially will lead public policy makers and the public to conclude that the industry is using telephone numbers less efficiently.²³ Because "utilization" under the *NRO Order* will not be reflective of the actual use of numbers, and the Commission needs to set a lower threshold. Although SBC recognizes the Commission's goal of giving carriers an incentive to use the excluded number categories efficiently, the decision to exclude them from the utilization calculation requires that the utilization threshold be set at a level that is substantially lower than the rate at which carriers actually use telephone numbers.²⁴

²¹ Cf. *NRO Order*, at ¶ 115 ("[w]e believe ... that most of the suggested utilization thresholds included in the numerator were based on additional categories besides *assigned numbers*").

²² The *NRO Order* is somewhat inconsistent on the treatment of administrative, aging, reserved, and intermediate numbers. Although it concludes that there are strong public policy reasons for reporting use of these numbers as part of "utilization," it does not allow the numbers to be included in the reported utilization rate. See *NRO Order*, at ¶ 60.

²³ Excluding intermediate numbers from the utilization equation also lowers the utilization rate, although not as much as it would be lowered if the category was only excluded from the numerator. If intermediate numbers are excluded from both the numerator and the denominator of the utilization equation, the reported utilization rate is still lower than it would be if intermediates were counted in both in the numerator and denominator. As a result, utilization is skewed downward by excluding these numbers from both sides of the equation.

²⁴ While it is generally a good thing to give carriers incentives to use numbers efficiently, the *NRO Order* already establishes constraints – in some cases, severe restraints – on the excluded number categories. The definition of "reserved" numbers is so overly restrictive that it might severely limit the abilities of large users (such as businesses and governments) to reserve numbers for future use, or cause such users to have to pay for services that they do not presently use or need. Carriers have no control over "intermediate" numbers, as they must fulfill requests

Second, measuring utilization in any geographic area that is larger than the area in which numbers are used creates distortions and requires a lower utilization rate.²⁵ Averaging utilization over many LCAPs (by rate center or area code) would create situations where the average utilization rate is lower than the LCAP where telephone numbers are needed. For example, an incumbent LEC might face exhaust in one switch in a rate center or area code and need telephone numbers to serve that neighborhood or city area, but have many other switches in the same rate center or area code with lower utilization. These other switches could easily lower the overall utilization rate for the entire area below the threshold.²⁶ In such a situation, the carrier could be denied resources needed to provide service to customers. To avoid such situations, the threshold should be set at a level inversely related to the level of aggregation – the higher the level of aggregation, the lower the threshold.

Third, the absence of any meaningful process for exceptions also requires a lower utilization rate. SBC explained in detail why exceptions would be needed to ensure that carriers in special circumstances receive the telephone numbers they need to serve their customers.²⁷ Such exceptions might include regulatory requirements that lower utilization, or exceptional

for service from other carriers, and incentives therefore are meaningless for this category. Aging and administrative numbers generally cannot be changed, at least in the short run, as changes would likely require modification of customer agreements or tariffs (such as limiting the time for aging of a business number) or moving administrative organizations. Thus, these “incentives” likely will not have any appreciable affect on carriers’ behavior. At the same time, creating these incentives likely will cause harm to consumers, limiting their ability to reserve numbers and potentially shortening certain aging intervals.

²⁵ SBC proposed calculating utilization by LCAP in order to ensure that utilization would be calculated at the same level that numbers are used. *See SBC NPRM Comments*, at 53-54.

²⁶ The differential in utilization between switches could be caused by a variety of factors, including, but not limited to, lower demand in one community or another, or regulatory requirements, such as extended area services between smaller communities, that require usage of dedicated numbering resources.

²⁷ *See SBC NPRM Comments*, at 46.

business growth and expansion, or seasonal needs. If a single utilization rate is to be applied without exception, the rate needs to be low enough to satisfy every reasonable circumstance in which carriers would legitimately need numbering resources.²⁸

In high growth areas or periods of seasonal demand, a high utilization rate almost certainly would prevent carriers from securing resources in a timely fashion. Industry standards require a 66 day interval after the code is assigned to open the NXX code in all carriers' switches.²⁹ Under the *NRO Order*, a carrier would not be assigned a code and begin the 66 day code opening interval until it met the threshold. At that point, the carrier could have very few resources available for assignment – the residual percentage minus numbers used for aging, intermediate, reserved, and administrative. For example, with an 80 percent threshold, a carrier with a single NXX in an area would have to have 8,000 “assigned” numbers.³⁰ If 10 percent of the numbers in the NXX were assigned to aging, administrative, reserved, (1,000 numbers total) only 1,000 numbers would remain to satisfy all future customer needs during the 66 day code opening interval, even though the reported utilization rate would only be 80 percent.³¹ In many high growth areas, that might not be sufficient to provide numbers through the code opening

²⁸ The Commission's waiver process, even if it were applicable, would not provide a meaningful or workable exception process. Carriers facing number shortages often face an emergency need arising out of unforeseen circumstances. Additionally, the Commission staff could easily be inundated with requests from individual carriers for individual central office codes in individual rate centers, particularly if the Commission sets a high threshold.

²⁹ See ATIS/INC, Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, at § 6.1.2 & Appendix B (rev. Apr. 11, 2000) <<http://www.atis.org/atis/clc/inc/incdocs.htm>>.

³⁰ This assumes no “intermediate” numbers. Of course, the same result would apply if intermediate numbers were included in total assigned resources (i.e., the denominator).

³¹ If an additional 500 numbers were “intermediate” numbers, used to provide service to other carriers, the carrier would have a mere 500 numbers available for assignment. If the “intermediate” numbers were excluded from both the numerator and denominator, the utilization rate would be 84.2 percent in this example.

interval. In some areas, SBC wireline providers activate *more than 1,000 new numbers every two weeks*. New entrants and wireless service providers may have even higher activation rates during periods of peak demand. At a minimum, the Commission's utilization threshold should be set low enough to ensure that carriers facing the highest levels of demand can receive the numbers they need during the code opening interval.

Taking all these factors into account, SBC respectfully suggests that the Commission's proposed 50 to 80 percent utilization rate is not reasonable or workable, whether set at the NPA level or the rate center level.³² At 80 percent, with numbers allocated to these other categories, carriers very likely would be left with very few available resources to assign to customers. As explained above, an 80 percent threshold very possibly could require a carrier to meet an actual utilization rate of *95 percent* before it could be assigned additional numbers. In such a situation, the carrier clearly would not be able to maintain a reasonable inventory to conduct its business.³³ Instead, for the reasons set forth above, the threshold should be applied at the rate center level, and be set initially at 50 percent and increase to a maximum of 65 percent over three years.³⁴

It would not be productive for the Commission to delegate to state commissions the authority to set rate center threshold levels, for two reasons. First, the administrative

³² SBC's recommendation regarding the proper utilization level is based on the best available information regarding utilization (including utilization reports provided to state commissions), adjusted to take into account the policy decisions made in the *NRO Order*. At this point, SBC is modifying its systems to report utilization by the *NRO Order's* August 1, 2000 deadline. See *NRO Order*, at ¶ 67. To the extent that such data suggests the utilization threshold should be set at a different rate, SBC will provide the Commission with that information at the time it becomes available.

³³ Compare Rule 52.15(j)(iii) (allowing service providers to maintain up to a six month inventory of numbers in making pooling donations).

complexity of keeping track of the different rates set by numerous regulatory jurisdictions, and ensuring compliance with varying utilization thresholds, would be daunting. A uniform federal requirement would be far more workable for carriers and NANPA. Second, the Commission needs to ensure that it meets its statutory mandate to ensure that all carriers have access to the telephone numbers they need to serve customers. State commissions, concerned with other priorities as well (such as, to name an obvious example, avoiding unpopular area code relief), might manipulate the thresholds in a manner that artificially restrict carriers' access to numbering resources, thereby denying carriers the numbers they need to do business and preventing the Commission from fulfilling its statutory obligation.³⁵ The Commission should not delegate authority to set utilization thresholds to state commissions.

C. Implementation of Pooling for Non-LNP-Capable Carriers

Based on the Commission's prior holding that covered CMRS carriers should implement LNP by November 24, 2002, the *NRO Order* concludes that such carriers should participate in number pooling after they implement LNP.³⁶ The *NRO Order* requests comment on whether such carriers should be required to implement number pooling at the same time as LNP, or whether number pooling should be implemented later, after a transition period.³⁷

³⁴ To the extent that the Commission adopts a NPA-wide threshold, the threshold should be set at least 10 percent lower than a rate center threshold.

³⁵ This concern is underscored by NARUC's proposal for a 75-85 percent utilization rate, which would be completely unworkable. See Letter from James Bradford Ramsay, NARUC General Counsel, to Magalie Roman Salas, at 3, *Ex Parte Notice*, CC Docket 99-200 (May 9, 2000). NARUC relies on the fact that some states already have set utilization thresholds at 75 percent; however, these states almost certainly define "utilization" differently than the *NRO Order*.

³⁶ See *NRO Order*, at ¶¶ 136-140.

³⁷ See *NRO Order*, at ¶ 249.

Wireless LNP implementation would be the largest, most extensive and ubiquitous upgrade to existing networks in the history of telephony. Unlike wireline LNP implementation, wireless LNP implementation would need to be implemented in all network switches and systems in order to support roaming capability by customers with ported numbers.³⁸ The magnitude of the challenge posed by a single, nationwide cut over to LNP should not be underestimated. Number pooling likely would require additional, substantial changes to wireless carriers' operational support systems, such as number administration databases, in addition to those required to implement LNP. As a result, it would not be appropriate to require the wireless industry to confront the dual challenge of implementing LNP and number pooling at the same time. If wireless carriers are to be required to implement both LNP and number pooling, the Commission should adopt some transition period between the implementation of the two capabilities.

SBC recommends a nine month transition period. This would be the same as the transition period permitted for wireline networks after the selection of the national number pooling administrator.³⁹ Nine months would allow time to ensure that LNP is properly and fully functioning before beginning implementation of number pooling. Moreover, under the *NRO Order*, wireline networks will not begin to implement number pooling until well into 2001. There may be several technical issues and challenges identified in wireline deployment that might affect wireless implementation of number portability and wireless-specific implementation issues might need to be investigated and studied separately. Nine months would allow the

³⁸ Even though the legal obligation to provide LNP and number pooling might be limited to the top 100 MSAs and other switches where LNP is requested, *see NRO Order*, at ¶ 249, wireless carriers would have to implement LNP capability nationwide to support roaming capability.

³⁹ *See NRO Order*, at ¶ 161.

wireless industry time to investigate any such issues, develop wireless industry solutions, and perform necessary network and systems upgrades necessary to begin number pooling implementation.

D. Charging for Numbers

The *NRO Order* requests further comment regarding the Commission's proposal to charge for telephone numbers.⁴⁰ The *NRO NPRM*, however, suggested charging for telephone numbers as an *alternative* means to improve the allocation and utilization of numbering resources, not as an additional burden that the Commission might impose on top of the detailed regulatory requirements adopted in the *NRO Order*.⁴¹ As SBC explained in its comments to the *NRO NPRM*, charging for telephone numbers in addition to imposing detailed regulatory requirements would do little to increase the efficient use of telephone numbers, and would impose needless costs on society and consumers.⁴² The *NRO Order* already has created strong incentives for carriers to use telephone numbers efficiently, and in some instances, may have adopted some regulations that are too stringent. At this point, charging for telephone numbers would provide little or no additional benefits, and would harm consumers and society. A quick summary of some of the major effects of the *NRO Order* underscores this point.

Carriers Will Pay For Telephone Numbers. Because of NPAC transaction fees, carriers (and therefore society) will have to pay a charge for every pooled telephone number. These are additional costs that will be imposed on all carriers for every telephone number, costs in addition to the extensive costs carriers already incur to acquire, manage, and maintain

⁴⁰ See *NRO Order*, at ¶¶ 250-51.

⁴¹ See Numbering Resource Optimization, *Notice of Proposed Rulemaking*, CC Docket No. 99-200, at ¶ 225 (rel. June 2, 1999).

⁴² See *SBC NPRM Comments*, at 106-115.

telephone number inventories. As a result, with thousand block number pooling, carriers and customers will pay an additional fee for every pooled telephone number. These shared industry NPAC costs are estimated to be quite substantial – potentially as much as \$2.16 per pooled telephone number.⁴³

Usage Definitions and Utilization Thresholds Increase Efficiency Incentives.

Uniform number use categories and a utilization threshold provide incentives to increase utilization. Once the utilization threshold is established and implemented, carriers will have the powerful incentive to use numbers efficiently in order to receive additional resources.

Consumers, Industry, and Society Will Incur Substantial Costs For Utilization Tracking And Reporting. The extensive regulation and reporting of telephone number utilization will require that carriers improve utilization, even in the absence of mandated utilization thresholds. Society will have to bear the costs associated with improvements to carriers' existing systems into order to comply with the detailed requirements of the *NRO Order*. Compliance audits, when instituted, will impose further societal costs and further increase incentives of carriers to track and report utilization and number use appropriately.

Thus, charging for telephone numbers would provide little or no benefit, and would likely cause significant harm to consumers and society. If, in spite of all this, the Commission continues to consider this idea, it needs to address the following points before adopting any public policy.

⁴³ This only reflects the industry shared costs. SBC estimates that its allocated share of these industry costs, excluding the cost of number pooling administration, would be between \$0.50 and \$0.60 per pooled telephone number. Of course, SBC and other carriers also will incur additional direct costs in order to obtain additional numbering resources in pooled areas, including, but not limited to, the costs to modify their LRN infrastructure.

First and foremost, the Commission would need the statutory authority to implement this proposal. Although Section 251(e)(2) permits the Commission to develop a scheme to allocate costs of number administration and number portability, that statutory authority would not allow charges of the type contemplated in this proceeding.⁴⁴ The authority granted the Commission in Section 251(e)(2) is limited to collecting funds for the purposes identified in the statute. It does not authorize collection of funds to better administer numbers or to serve the general public interest. The amount of funds that can be collected under Section 251(e)(2) is also limited. Commission would exceed its authority if it attempted to impose charges on carriers that recovered more than the costs of numbering administration functions, number portability, and number pooling. Moreover, charges under Section 251(e)(2) must be imposed “on a competitively neutral basis,” and charges for telephone numbers clearly would not be “competitively neutral.” Charging for telephone numbers would disproportionately harm those carriers that require comparatively more telephone numbers to provide service, while giving other carriers, such as interexchange and data service providers, a free ride. It would be difficult to imagine a numbering administration scheme that would more clearly violate Section 251(e)(2)’s competitive neutrality requirement. In short, Section 251(e)(2) does not provide the Commission with the authority that it needs; the Commission would need an additional grant of legislative authority in order to adopt such charges.

Second, if the Commission were to charge for numbers, it would need adopt a regulatory framework to prohibit regulators from requiring inefficient use of numbers. The Commission and state commissions should not be permitted to adopt proposals that would require use of dedicated central office codes or area codes (such as extended area service, which

⁴⁴ See 47 U.S.C. § 251(e)(2).
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requires a separate, dedicated NXX code in each rate center). The Commission would need to ensure that state commissions do not adopt inefficient area code splits in order to maintain seven-digit dialing, including prohibiting relief plans that split rate centers. This would require an extensive reallocation of the authority between the Commission and state commissions, presumably requiring that the Commission take back much of the authority delegated to state commissions (including some or all of the authority to decide area code relief).

Third, the Commission would have to conduct a complete and thorough analysis of the societal costs and benefits of charging for telephone numbers. As suggested above, SBC submits that a proper analysis would show that the comparative costs, including the higher societal costs, would clearly outweigh any perceived benefits.

Finally, even if the Commission were to receive additional legislative authority permitting it to charge for telephone numbers, and it attempted to use those funds to support other programs, as suggested in the *NRO Order*,⁴⁵ the Commission would have to reevaluate the allocation of funds and contributions to other programs in order to ensure that the skewed source of these funds were consistent with intent and purpose of those regulatory programs. Thus, the Commission to have to reevaluate many of the policy choices made in these other proceedings (including monetary contributions of carriers to those programs) in order to ensure that the skewed source of funds from number charges were consistent with the policies and purposes of those funds.

As a result, SBC respectfully suggests that the Commission should focus its scarce resources on the outstanding issues in this docket – such as overlay area code policies, and

⁴⁵ See *NRO Order*, at ¶ 251.

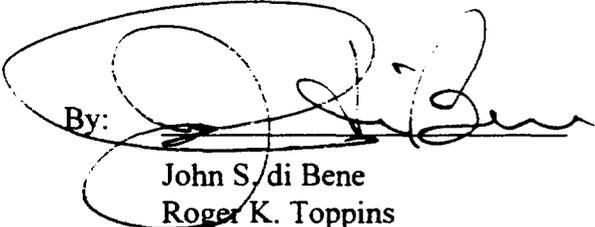
number pooling cost recovery – rather than continuing to examine the issue of charging for telephone numbers.

CONCLUSION

As set forth above, the Commission should (1) promptly resolve all number pooling cost recovery issues, including adopting the cost recovery mechanism, and it should not attempt to exclude the estimated costs of area code relief from recoverable pooling costs; (2) adopt a workable utilization rate in light of the *NRO Order*'s exclusion of major categories of numbers that are in use – 50 to 65 percent if applied at the rate center level; (3) allow the wireless industry a nine month transition period after the implementation of LNP before beginning implementation of number pooling; and (4) not impose additional societal costs on consumers and the industry by charging for telephone numbers. SBC urges the Commission to act promptly on these issues, and the other outstanding issues in this proceeding.

Respectfully submitted,

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Date: May 19, 2000.

CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that copies of the "Comments of SBC Communications Inc. on Further Notice of Proposed Rulemaking" in CC Docket No. 99-200, were served by first class United States Mail, postage prepaid, upon the parties appearing on the attached service list on the date set forth below.



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ROBERT ATKINSON
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Service List

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<p>THE HONORABLE JANET GAIL BESSER, CHAIR COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY 100 CAMBRIDGE STREET, 12TH FLOOR BOSTON, MA 02202</p>	<p>THE HONORABLE JAMES CONNELLY, COMMISSIONER COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY 100 CAMBRIDGE STREET, 12TH FLOOR BOSTON, MA 02202</p>
<p>THE HONORABLE W. ROBERT KEATING, COMM. COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY 100 CAMBRIDGE STREET, 12TH FLOOR BOSTON, MA 02202</p>	<p>PAUL B. VASINGTON, COMMISSIONER COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY 100 CAMBRIDGE STREET, 12TH FLOOR BOSTON, MA 02202</p>
<p>EUGENE J. SULLIVAN, JR., COMMISSIONER COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY 100 CAMBRIDGE STREET, 12TH FLOOR BOSTON, MA 02202</p>	