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

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June 9, 2000

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## **SUMMARY**

The information submitted by incumbent local exchange carriers regarding the magnitude of number pooling costs underscores the fact that number pooling is an expensive approach to the current numbering situation. The commenters who claim such costs are insignificant offer no evidence to support their claims. Given the amount of the costs to be recovered, SBC respectfully suggests that the costs should be recovered through an end user surcharge.

The Commission should proceed cautiously in adopting a utilization threshold, setting a relatively low rate phased in over several years. SBC continues to recommend an initial rate of 50 percent, increased to 65 percent over three years. Virtually all parties agree that an exception process is essential in order to ensure that carriers are not denied numbers that they need to provide service to customers. In any event, given the lack of available data regarding the impact of higher thresholds, the Commission should not adopt a rate over 65 percent unless and until it evaluates the impact of lower thresholds and determines that a higher rate would not prevent carriers from receiving the numbers they need to serve their customers.

The comments demonstrate the wisdom of adopting a reasonable transition period after wireless carriers implement local number portability before they begin implementing number pooling. SBC continues to support a transition period of nine months, which is in the middle of the range proposed by other wireless carriers (6-12 months).

Finally, the comments overwhelmingly oppose the idea of charging for telephone numbers. The extensive arguments demonstrating the Commission's lack of legal authority to

implement this proposal and detailed descriptions regarding the potential harm to the public interest that could be caused by such an approach show clearly that the Commission would be better served by focusing its resources on implementing and improving regulatory policies, including those adopted in this proceeding, instead of further considering the proposal to charge for telephone numbers.

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SBC Communications Inc. makes the following reply comments in this rulemaking proceeding.<sup>1</sup>

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

The cost information submitted by incumbent local exchange carriers vividly demonstrates that number pooling would be a costly means to address the current numbering situation.<sup>2</sup> SBC estimates its recoverable costs of implementing the national number pooling

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<sup>1</sup> See Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, at ¶¶ 247-53, CC Docket No. 99-200 (rel. Mar. 31, 2000) [*NRO Order*].

<sup>2</sup> SBC has long explained that number pooling would be an expensive approach to the current numbering situation. See, e.g., Numbering Resource Optimization, *Comments of SBC Communications Inc.*, at 67-68, CC Docket No. 99-200 (filed July 30, 1999) [*SBC NPRM Comments*]; The North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures, *Comments of SBC Communications Inc.*, at 5, NSD File No. L-98-134 (filed Dec. 21, 1998).

framework would be approximately \$221 million;<sup>3</sup> other incumbent local exchange carriers estimate costs in the same range or higher.<sup>4</sup>

Several commenters make the claim – without any supporting evidence – that the cost of implementing number pooling should be minimal, because the primary costs of number pooling were recovered through LNP.<sup>5</sup> This is simply incorrect. SBC’s estimated costs are new costs, in addition to those incurred to implement LNP, that will have to be incurred in order to make the specific network infrastructure and operational system support changes essential to number pooling. These costs include:<sup>6</sup>

- SBC’s projected allocated share of industry costs for the NPAC 3.0 and Number Pooling Administration;

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<sup>3</sup> See Comments of SBC Communications Inc. on Further Notice of Proposed Rulemaking, at 3 (filed May 19, 2000) [*SBC*]. These estimated costs do not include any costs of state number pooling trials. *Id.* at n.8.

<sup>4</sup> Bell Atlantic estimates its recoverable costs to be between \$105 million to \$135 million, not including overheads or the time value of money. See Further Comments of Bell Atlantic, at 3-4 (filed May 19, 2000) [*Bell Atlantic*]. US West estimates its cost to be over \$345 million. See Erratum to Comments of U S West Communications, Inc., at Workpaper 1 (filed May 22, 2000).

<sup>5</sup> See Comments of AT&T, at 14-15 (filed May 19, 2000) [*AT&T*]; Joint Comments of Pennsylvania Office of Consumer Advocate, Texas Office of Public Utility Counsel, Missouri Office of Public Counsel, Florida Office of Public Counsel, District of Columbia Office of People’s Counsel, California Office of Ratepayer Advocates, The Utility Reform Network, Maryland Office of People’s Counsel, Main Public Advocate, and Indiana Office of Utility Consumer Counsel, at 41-43 (filed May 19, 2000) [*Joint Consumer Advocate Comments*]; Further Comments of the California Public Utilities Commission and of the People of the State of California, at 12-13 (filed May 19, 2000) [*CA PUC*]; Comments of the New York State Department of Public Service, at 2 [*NY DPS*]; Comments of the New Hampshire Public Utilities Commission, at 34 (filed May 19, 2000) [*NH PUC*].

<sup>6</sup> BellSouth and US West also provide descriptions of the types of costs that incumbent local exchange carriers will have to incur in order to deploy number pooling. See Comments of BellSouth, at 20-30 (filed May 19, 2000) [*BellSouth*]; Comments of U S West Communications, Inc., at Workpaper 2a – Cost Definition (filed May 19, 2000) [*U S West*].

- Costs associated with enhancements to the existing LRN infrastructure required for number pooling. These enhancements include adding the efficient data representation (EDR) functionality required to improved the capacity of the SCPs/STPs needed to support number pooling and modification to the Local Service Management Systems (LSMSs) required to support EDR.
- Costs for changes in operational support systems necessary to support thousands-block number assignment and modifications of service assurances systems to associate customer records with pooled and non-pooled numbers;
- Costs required to change current methods, procedures, and processes for number pooling; and,
- Costs to modify central office software required for number pooling.

Moreover, speculative arguments that the “avoidance of area code relief” will be sufficient to cover number pooling costs are incorrect. The Ad Hoc Telecommunications Users Committee and AT&T argue – without any factual basis or evidentiary support – the costs of implementing thousands-block pooling are most likely a negative, that is, number pooling represents a net savings over the status quo.<sup>7</sup> As the SBC, Bell Atlantic, and BellSouth comments demonstrate, this point is factually wrong – there would be no cost “savings” from number pooling, only (at best) cost deferrals, and the value of any such cost deferrals would be insignificant.<sup>8</sup> Moreover, as SBC explained, it would be entirely inappropriate for the Commission to reduce cost recovery under Section 251(e)(2) of the Act based on such speculation, particularly when incumbent local exchange carriers have been forced to bear a

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<sup>7</sup> See Comments of the Ad Hoc Telecommunications Users Committee, at 15-18 (filed May 19, 2000) [*Ad Hoc*]; *AT&T*, at 19.

In its comments, AT&T repeats the “regulatory myth” that NANP expansion is estimated to cost between \$50-150 billion. As SBC previously has explained, there is no reliable basis for this estimate. See *SBC NPRM Comments*, at 23-34.

<sup>8</sup> See *SBC*, at 5; *Bell Atlantic*, at 4; *BellSouth*, at 19.

disproportionate share of the costs of accelerated area code relief over the past few years caused in large part by new entrants.<sup>9</sup>

In light of the large amount of costs that need to be recovered for number pooling, SBC respectfully suggests that an end user surcharge would be the most appropriate cost recovery mechanism.<sup>10</sup>

### ***B. Utilization Threshold***

The comments almost unanimously express concern regarding the Commission's proposal to implement a utilization threshold of up to 80 percent that non-pooling carriers must meet in order to be assigned growth codes, particularly given the exclusion from the utilization categories of several categories of unavailable numbers and the absence of a process for exceptions. Several parties suggest or imply that the Commission abandon the idea of a utilization threshold altogether, or at least delay implementing a threshold.<sup>11</sup> Others argue that the

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<sup>9</sup> See *SBC*, at 4-6.

<sup>10</sup> *Accord Bell Atlantic*, at 6-7; Comments of Sprint Corporation, at 17-19 (filed May 19, 2000) [*Sprint*]. See also *AT&T*, at 16 n.38 (opposing cost recovery generally, but arguing for an end user surcharge if cost recovery is permitted).

<sup>11</sup> See Comments of Cox Communications, Inc., at 3-4 (filed May 19, 2000) (use MTE with 3 month inventory instead of a threshold) [*Cox*]; Comments of the General Services Administration, at 3-5 (filed May 19, 2000) [*GSA*]; Comments of the Competitive Telecommunications Association, at 2 (filed May 19, 2000) [*CompTel*]; Comments of Nextel Communications, Inc., at 3 (filed May 19, 2000) [*Nextel*]; Comments of the Personal Communications Industry Association, at 2-4 (filed May 19, 2000) (arguing against using only a utilization threshold) [*PCIA*]; Comments of VoiceStream Wireless Corporation, at 3 (filed May 19, 2000) [*VoiceStream*]; Comments of WorldCom, Inc., at 2-3 (filed May 19, 2000) (arguing for 24 month delay in implementing utilization threshold) [*WorldCom*]. See also Comments of the United States Telephone Association, at 2-3 (filed May 19, 2000) (any threshold should ensure that carriers are able to maintain a 6 month inventory) [*USTA*]; *BellSouth*, at 3 (need for utilization threshold reduced by other policies adopted in *NRO Order*); Comments of WinStar Communications, Inc., at 2-3 (filed May 19, 2000) (same) [*WinStar*]; Verizon Wireless

Commission should change the calculation of utilization so that intermediate, reserved, administrative, and aging numbers are treated as “assigned.”<sup>12</sup> Even some state commissions, ordinarily strong proponents of utilization thresholds, generally suggest the Commission’s utilization threshold should be well under 80 percent, and urge a process for exceptions.<sup>13</sup>

SBC has strongly supported the idea of a utilization threshold in the past, and it continues to support the idea, but it believes the concerns regarding the Commission’s current proposal are legitimate and need to be carefully considered. Although some of these concerns might more appropriately be addressed on reconsideration of the *NRO Order*, the comments underscore the fact that the utilization threshold must be set quite low if the Commission is to implement a threshold in the manner it has proposed. The Commission needs to take care not to set a utilization threshold so high that it alters carriers’ ability or incentive to offer new, innovative, and competitive products.<sup>14</sup> As Sprint notes, the Commission itself has expressed concern that state commission thresholds should not be “‘applied in such a manner as to deprive

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Comments in Response to Further Notice, at 11 (filed May 19, 2000) (apply threshold only where numbers are in short supply) [*Verizon*].

WinStar argues for a “two tiered” threshold – one (presumably a lower one) that would apply to new entrants, and another that would apply to all other carriers. *See WinStar*, at 3, 6. Of course, such an approach would discriminate in favor of new entrants and therefore should not be permitted. *See NRO Order*, at ¶ 106.

<sup>12</sup> *See* Comments of the Association for Local Telecommunications Services, at 3 (filed May 19, 2000) [*ALTS*]; *PCIA*, at 8-10; *Verizon*, at 14.

<sup>13</sup> *See* Comments of the Pennsylvania Public Utilities Commission, at 3 (filed May 19, 2000) [*PA PUC*]; Comments of the Maine Public Utilities Commission, at 2-3 (filed May 19, 2000) [*ME PUC*]; *NY PDS*, at 2.

<sup>14</sup> *See PCIA*, at 7.

customers of their choice of carriers.”<sup>15</sup> If the Commission does not alter its proposal, and proceed cautiously, it runs the risk of creating precisely the type of competition-altering results that it urged state commissions to avoid.

As SBC and others explain, the exclusion of intermediate, reserved, administrative, and aging numbers from the “numerator” of the utilization calculation requires a significantly lower utilization threshold.<sup>16</sup> SBC generally agrees with those parties that argue these categories of numbers should be counted in both the numerator and denominator of the utilization calculation, because these numbers are not available for assignment and excluding them would not create meaningful incentives for carriers to use numbers more efficiently.<sup>17</sup> If the Commission does not treat these numbers as “assigned” in the calculation of utilization, the threshold level must be lowered significantly.

Similarly, commenters – including carriers<sup>18</sup> and state commissions<sup>19</sup> – generally agree that there needs to be a reasonable exception process. AT&T, for example, argues there

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<sup>15</sup> See *Sprint*, at 3 (quoting *California Delegation Order*, 14 FCC Rcd. 17486 (1999) [1999 FCC LEXIS 4518, at ¶ 26]).

<sup>16</sup> See *SBC*, at 8-10; *CompTel*, at 5. See also Comments of the Cellular Telecommunications Industry Association, at 5 (filed May 19, 2000) (large percentage of unavailable numbers would not be included in utilization percentage) [*CTIA*]; *AT&T*, at 4 (10 to 15 percent of wireless numbers are unassigned and unavailable). Excluding “intermediate” numbers from both the numerator and denominator of the equation still yields a utilization percentage that is lower than if these numbers were included in both the numerator and denominator of the equation. See *SBC*, at 8 & n.23.

<sup>17</sup> See *SBC*, at 8 & n.24; *ALTS*, at 3-4 (intermediate numbers should be treated as assigned in utilization calculation); *Bell Atlantic*, at 7 (all categories should be included); *CompTel*, at 5; *PCIA*, at 8-10.

<sup>18</sup> See *SBC*, at 10-11; *Ad Hoc*, at 5 (exception for bona fide request for a large block of consecutive numbers); *BellSouth*, at 6 (“bona fide need” exception); *AT&T*, at 6; *CompTel*, at 4 (exception should allow carriers to prove genuine need without regard to utilization rate);

should be an exception allowing carriers to receive a growth code if they can prove that they would have less than a six months' supply of numbers available, or to meet a customer request.<sup>20</sup> As these comments recognize, it is essential that the Commission develop a detailed and workable exception process under which carriers have a meaningful and timely opportunity to secure the numbers they need to provide service to customers.<sup>21</sup>

Many carriers join SBC in arguing that the Commission's proposed 80 percent threshold is unworkable.<sup>22</sup> AT&T and SBC both demonstrate that an 80 percent threshold could leave carriers with insufficient numbers available to meet customer demand in some areas even during the 66-day code opening interval.<sup>23</sup> As a result, the comments fully support SBC's position that the threshold should not be higher than 50 percent initially, and should not increase beyond 65 percent; many argue for an even lower threshold.<sup>24</sup>

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Comments of GTE Service Corporation, at 8 (filed May 19, 2000) ("low utilization appeal option" should be allowed) [*GTE*]; *PCIA*, at 11 (exceptions where circumstances warrant a deviation from threshold); *Sprint*, at 3 (exception for carriers facing "imminent exhaust").

<sup>19</sup> See *CA PUC*, at 5 (exception for 3 month inventory); *ME PUC*, at 3-4; *NH PUC*, at 6 ("imminent exhaust" exception for 6 month inventory); *NY DPS*, at 2 (exception needed for "sudden spikes in demand"). Cf. *PA PSC*, at 3-4 (arguing that states should be able to seek waivers to threshold).

<sup>20</sup> See *AT&T*, at 5.

<sup>21</sup> The *NRO Order* did not address the issue of exceptions to the threshold. Accordingly, this issue should be addressed in any future decision in this docket which addresses the issue of utilization thresholds.

<sup>22</sup> See *SBC*, at 10-11; Comments of MediaOne Group, Inc., at 4 (filed May 19, 2000) [*MediaOne*]; *Nextel*, at 4.

<sup>23</sup> See *SBC*, at 9-11; *AT&T*, at 6.

<sup>24</sup> See *SBC*, at 10-11 (50-65% threshold); *AT&T*, at 7 (45-60% threshold); *BellSouth*, at 3 (50-70% threshold) *CTIA*, at 5 (50-60% threshold); *GTE*, at 7 (50-65% threshold); *Nextel*, at 4 (50-70% threshold); *PCIA*, at 11 (50% maximum, if calculation of utilization is unchanged); *Sprint*, at 7 (50-70% threshold); *WinStar*, at 8 (40-60% threshold); *Verizon*, at 3 (60-70% threshold).

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On first blush, it appears that state commissions and NextLink urge the Commission to set a higher threshold level – generally around 75 percent.<sup>25</sup> However, on closer examination, it is clear that these comments do not take into account the exclusion definition of “utilization” established in the *NRO Order*. Several commenters argue that state commissions have set utilization rates at such levels without incident, failing to recognize that the *NRO Order* does not include intermediate, reserved, administrative, and aging numbers in the utilization percentage.<sup>26</sup> Others also make it clear that they have not taken into account the lower utilization rate that would result from the *NRO Order*’s calculation. The Maine commission, for example, argues that a 50 percent utilization threshold would leave 5,000 numbers available for assignment, ignoring that a significant percentage of these numbers likely would be unavailable for assignment to customers.<sup>27</sup> The Pennsylvania commission similarly argues that a 75 percent utilization rate would leave 2,500 numbers available for assignment, although, again, many of these numbers would not be available.<sup>28</sup> If these 75 percent proposals are reduced to take into account the lower utilization rate that will result from the *NRO Order*, assuming that the excluded categories would

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*But see* Comments of NextLink Communications, Inc., at 5, 9-10 (filed May 19, 2000) [*NextLink*].

<sup>25</sup> See *CA PUC*, at 3 (75% for a national threshold; 80% for state threshold); *Joint Consumer Advocate Comments*, at 12-15 (65-85% national threshold; state thresholds up to 10% higher); *ME PUC*, at 2 (75% to 80-85%); *NH PUC*, at 5-7 (75% national threshold; 70-80% range for state thresholds); *NextLink*, at 4, 9-10 (50-80% threshold); *NY DPS*, at 1-2 (75% threshold); *PA PUC*, at 3 (75% threshold).

<sup>26</sup> See *CA PUC*, at 4; *ME PUC*, at 4; *NH PUC*, at 2; *PA PUC*, at 3; *Joint Consumer Advocate Comments*, at 12-15; *NextLink*, at 10.

<sup>27</sup> See *ME PUC*, at 2-3.

<sup>28</sup> See *PA PUC*, at 3.

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reduce the utilization rate 10 to 15 percent,<sup>29</sup> the recommendations would be in the range of 60 to 65 percent.

Most commenters agree with SBC that the utilization threshold should not be set at the NPA level,<sup>30</sup> and several agree with SBC's proposal to apply the threshold at the Lowest Code Assignment Point (LCAP).<sup>31</sup> As Verizon notes, where area codes have been split geographically across rate center boundaries, utilization should be only for that portion of the rate center that is in the subject area code.<sup>32</sup> SBC agrees, and suggests that using the LCAP reporting area would address this problem.<sup>33</sup>

SBC agrees with Verizon's suggestion that central office codes that are used for special purposes, such as codes that are dedicated to Extended Area Service (EAS) or Calling Party Pays (CPP) service, should not be included in the utilization calculation.<sup>34</sup> The fill rate for these codes reflect only the usage of that particular service, and not the efficiency with which

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<sup>29</sup> At this point, it is impossible for SBC to estimate with any degree of certainty the amount that the excluded categories lower the utilization rate, because current systems and reports do not segregate numbers into all the categories required by the *NRO Order*. However, AT&T agrees with SBC's estimate that the excluded categories could include 15 percent or more of all assigned numbers in some areas, *see AT&T*, at 6, and no comments argue to the contrary. Depending on the percentage of numbers included in the "intermediate" category, and assuming that "intermediate" numbers are to be excluded from both the numerator and the denominator of the utilization calculation, a 10-15 percent rate would appear to be reasonable.

<sup>30</sup> *See SBC*, at 7; *Ad Hoc*, at 3; *CompTel*, at 5; *MediaOne*, at 3; *Nextel*, at 3; *NextLink*, at 4-6; *PCIA*, at 2-5; *WorldCom*, at 3. *But see CA PUC*, at 6 (apply threshold at both rate center and NPA level for wireless carriers).

<sup>31</sup> *See GTE*, at 6-7; *Bell Atlantic*, at 8.

<sup>32</sup> *See Verizon*, at 5.

<sup>33</sup> It would be advisable for the Commission to address the problems raised by area code relief plans that split rate centers in a future decision in this docket, preferably one that deals with other issues associated with overlay area codes, 10-digit dialing, and other area code relief issues. *See SBC*, at 1-2.

numbers are being used. This is particularly true for EAS services, which are mandated by state commissions without concern for numbering optimization policies, and which frequently have low utilization.

Finally, SBC agrees with commenters who argue that state commissions should not be delegated authority to set state-specific thresholds.<sup>35</sup> As AT&T notes, there is no evidence that conditions are sufficiently different between states to justify the administrative costs of state-specific thresholds.<sup>36</sup> Given the potential administration and enforcement costs of multiple threshold levels in many jurisdictions, a single, uniform threshold would be superior for the industry and regulators alike.

Finally, almost all commenters agree that the utilization rate should be phased in over a series of years.<sup>37</sup> Given that the Commission's definition of utilization is unique, it is impossible to estimate, with any degree of certainty, the effect of any threshold. A phase-in period, in which the threshold initially is set at a lower rate and then increased, would allow the Commission time to monitor the progress and the impact of lower threshold rates, and to make any necessary changes to the threshold. In any event, given the current uncertainty, the Commission should not increase the threshold above 65 percent until it evaluates the impact of

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<sup>34</sup> See *Verizon*, at 15.

<sup>35</sup> See *CompTel*, at 5; *NextLink*, at 8-10; *WorldCom*, at 3. *But see CA PUC*, at 3 (states should have discretion to set threshold); *NH PUC*, at 5 (same).

<sup>36</sup> See *AT&T*, at 7.

<sup>37</sup> See *SBC*, at 11; *AT&T*, at 7; *BellSouth*, at 7; *PCIA*, at 12; *Verizon*, at 12. *But see CA PUC*, at 2-4; *NH PUC*, at 2-3.

lower thresholds and has data demonstrating that higher thresholds would not deny carriers and their customers the telephone numbers that they need.<sup>38</sup>

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

All commenters that have significant wireless properties recommend that the Commission adopt a transition period after wireless carriers implement Local Number Portability (LNP) before they begin to implement number pooling. SBC recommends a nine month transition; others recommend a transition period of six months to a year.<sup>39</sup> As these comments demonstrate, a transition period is necessary in light of the extensive changes to wireless systems required to implement LNP, and the fact that wireless LNP has to be implemented throughout all systems in the nation at the same time.

The parties opposing a transition period fail to present any significant argument against a transition period. Most argue that the wireless industry should somehow be denied a transition period because of the delay in the decision to implement wireless LNP.<sup>40</sup> However, the fact that substantial public policy issues delayed the decision of whether to implement wireless LNP has nothing to do with the question of whether there should be a reasonable transition period for number pooling. Moreover, the fact that there are several potential technical issues associated with implementing wireless LNP underscores the fact that wireless LNP will be different than

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<sup>38</sup> See also *Bell Atlantic*, at 8 (arguing the same for any utilization rate over 70 percent); *USTA*, at 3 (same).

<sup>39</sup> See *SBC*, at 12-13 (9 months); *BellSouth*, 9-10 (12 months); *CTIA*, at 13-16 (12 months); *GTE*, at 10 (12 months); *U S West*, at 5 (12 months); *Bell Atlantic*, at 8-9 (9 months); *Verizon*, at 23 (9 months); *PCIA*, at 13-14 (6-9 months); *VoiceStream*, at 13-15 (8 months); *AT&T*, at 9 (6 months); *Nextel*, at 5 (6 months); *Sprint*, at 10-12 (6 months).

<sup>40</sup> See, e.g., *Ad Hoc*, at 6-7; *GSA*, at 6-8; *ME PUC*, at 6; *WorldCom*, at 4.

wireline LNP, and the industry needs time to ensure that wireless LNP is properly working before wireless carriers begin to implement number pooling. Nine months is a relatively brief period, and the effect on number demand over nine months is unlikely to be so significant as to justify jeopardizing the integrity of wireless LNP. The Commission should adopt a nine month transition.

#### ***D. Charging for Numbers***

Just as last year, when FCC initially received comments on its proposal to charge for telephone numbers in response to the *NRO NPRM*, commenters almost unanimously oppose the proposal – including carriers, state commissions, and consumer advocates. Not a single commenting party endorsed the proposal, and even those that did not oppose the proposal outright expressed substantial concerns about whether it could be implemented in a manner that would promote the public interest.

As an initial matter, the comments make clear that the Commission does not have the legal authority to charge for telephone numbers. Many commenters agree with SBC that it is clear that the Commission would exceed its current statutory authority if it attempted to impose charges for telephone numbers.<sup>41</sup> In fact, not one commenter suggested that the Commission has

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<sup>41</sup> See *SBC*, at 15-16; *AT&T*, at 10-11; *BellSouth*, 12-13; *CompTel*, at 6-7; *Cox*, at 7-9; *GTE*, at 11-12; *NextLink*, at 12-13; *PCIA*, at 16-17; Comments of the Rural Independent Competitive Alliance, at 4 (filed May 19, 2000) [*RICA*]; *USTA*, at 6; *Verizon*, at 25; *VoiceStream*, at 16 & n.19; *WinStar*, at 13-17. See also *Ad Hoc*, at 11 (Commission’s legal authority must be “addressed and determined well in advance” of any decision to charge for numbers); *Joint Consumer Advocate Comments*, at 30 (the Commission “may lack” authority; the issue requires “further study and legal analysis”); Joint Comments of Midvale Telephone Exchange, Inc., Northeast Louisiana Telephone Company, Inc., Interstate Telecommunications Cooperative, Inc., and Radio Paging Service, at 2-4 (Commission has “very uncertain legal authority” to charge for

the statutory authority to charge for telephone numbers. Moreover, number charges would adversely affect carriers that have greater demand for telephone numbers, and benefit those carriers, such as interexchange carriers and data service providers, that do not require telephone numbers, in violation of the “competitively neutral” requirement of Section 251(e)(2) of the Communications Act.<sup>42</sup>

Even if the Commission had the legal authority – which it clearly does not – the comments persuasively show that charging for telephone numbers would not be in the public interest. As many commenters note, and as SBC explained last year in response to the *NRO NPRM*,<sup>43</sup> there is little reason to believe that charging for numbers would significantly improve efficiency – in fact, charging paradoxically could create incentives to treat telephone numbers as commodities and potentially hasten, not retard, number exhaust.<sup>44</sup> Many commenters also

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numbers) [*Joint Industry Comments*]; *MediaOne*, at 7 (“substantial question exists” whether the Commission has such authority).

<sup>42</sup> See *SBC*, at 16; *NextLink*, at 14. Such disparate impact would occur whether charges are applied only on new numbers, or on all numbers. However, the impact would be significantly worse if applied to the embedded base of numbers, and it would be arbitrary and grossly unfair to attempt to apply charges developed for today’s market conditions to numbers already assigned to carriers. Thus, any number charging scheme could rationally only be applied to numbers assigned in the future.

<sup>43</sup> *SBC NPRM Comments*, at 110-14.

<sup>44</sup> See *ALTS*, at 8-9; *Bell Atlantic*, at 9; *CompTel*, at 8; *GTE*, at 12; *NH PUC*, at 15-16; Initial Comments of the Missouri Public Service Commission, at 4 (filed May 19, 2000) [*MO PSC*]; *Nextel*, at 6-7; Comments of 2<sup>nd</sup> Century Communications, at 3 (filed May 19, 2000) [*2<sup>nd</sup> Century*]; *Verizon*, at 26; *VoiceStream*, at 17; *WinStar*, at 17-21; *WorldCom*, at 9. See also *Joint Industry Comments*, at 4 (no proof that charging will increase efficiency); *Joint Consumer Advocate Comments*, at 24 (charges would not address issues with current system).

As RICA notes, the Commission also would have to explain in detail why its conclusion that charges would hasten exhaust for toll-free numbers would not apply to other numbers. See *RICA*, at 5-6 (quoting *In the Matter of Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 11162, 11189 (1997)).

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explain, as SBC did last year, that charging for numbers would create a host of intractable administrative problems, including the central problem of administratively setting a market-clearing price (especially, as MediaOne correctly notes, if the supply is artificially constrained as it is under the current number assignment paradigm).<sup>45</sup> Particularly in light of the *NRO Order*'s detailed and costly regulatory scheme to increase efficiency (including the decision to implement thousands-block number pooling), there is no empirical basis in the record on which to conclude that charging for numbers would provide any appreciable increase in the efficient use of telephone numbers.

As many carriers note, charging for numbers would create a very different regulatory paradigm, one that is inconsistent with prior regulatory decisions and the detailed regulatory approach adopted in the *NRO Order*.<sup>46</sup> As a result, if the Commission were to implement charges for numbers, it would need to eliminate the regulations in the *NRO Order* and change a host of other policies as well. It would seem particularly unwise for the Commission to require carriers to spend significant monies to implement number pooling, develop detailed

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<sup>45</sup> See *SBC NPRM Comments*, at 107-13; *Ad Hoc*, at 9-13; *Bell Atlantic*, at 10-11; *BellSouth*, at 16; *CA PUC*, at 10-12; *Joint Consumer Advocate Comments*, at 22-32; *GTE*, at 13; *Joint Industry Comments*, at 8-9 (collecting arguments made last year by other commenters); *MediaOne*, at 8; *NH PUC*, at 18-19; *NextLink*, at 15; *PCIA*, at 20-21; *2<sup>nd</sup> Century*, at 2; *VoiceStream*, at 17-18; *WinStar*, at 14; *WorldCom*, at 5-8, 17, 19-20. See also *USTA*, at 6 (charging would create property rights issues); *Joint Consumer Advocate Comments*, at 8-9 (same); *Verizon*, at 26 (same).

<sup>46</sup> See *SBC*, at 14-18; *Ad Hoc*, at 13; *BellSouth*, at 14; *CompTel*, at 6-8; *Joint Consumer Advocate Comments*, at 27; *Joint Industry Comments*, at 4, 9; *NextLink*, at 13; *PCIA*, at 19; *2<sup>nd</sup> Century*, at 4; *Verizon*, at 26; *WinStar*, at 19 n.28. See also Comments of RCN Telecom Services, Inc., at 2 (filed May 19, 2000) (opposing imposition of both charges and regulatory requirements on small carriers) [*RCN*]. But see *MO PSC*, at 5 (regulation still required); *NH PUC*, at 13, 18-19 (same).

utilization surveys, and comply with the other detailed requirements of the *NRO Order*, and then eliminate those regulations and in favor of a market-based approach. However, if the Commission wants to implement market-based regulation, it needs to recognize that it would need to eliminate the detailed regulatory requirements that it has imposed on the industry.

Many commenters – including a broad cross-section of state commissions, consumer advocates, and industry participants – also correctly note that charging for numbers would further increase carriers’ costs of doing business and these costs very likely would be borne, at least in part, by consumers. Several commenters emphasize that number administration already is costly for carriers, and will become even more expensive as carriers implement the *NRO Order* requirements.<sup>47</sup> Charging for numbers would impose even further costs on society, including the potentially significant transactions costs of administering the charging scheme (such as the costs of auctions).<sup>48</sup> There is simply no justification to further increase societal costs at this time, particularly if those costs would be in addition to the extensive costs for the regulations adopted in the *NRO Order*, including, but not limited to, the significant societal costs of implementing thousands-block number pooling.

To move forward on this proposal, then, the Commission would not only need to demonstrate the legal authority to charge for numbers; it also would have to rebut the detailed and persuasive arguments made by the industry, regulators, and consumers that charging would not be

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<sup>47</sup> *SBC*, at 14-15; *Bell Atlantic*, at 9-10; *MediaOne*, at 8; *Nextel*, at 6-7; *RCN*, at 3; *USTA*, at 6. *See also Cox*, at 7-8 (charges would be a type of “tax” on carriers); *WorldCom*, at 17-18 (if prices are set too high, could be a deadweight loss on society).

<sup>48</sup> *See SBC*, at 14-15; *AT&T*, at 12-13; *CA PUC*, at 11-12; *Joint Consumer Advocate Comments*, at 28; *GSA*, at 8-9; *NH PUC*, at 4, 16; *USTA*, at 6; *VoiceStream*, at 19; *WinStar*, at 20.

in the public interest. At a minimum, this would require a comprehensive cost-benefit analysis.<sup>49</sup> SBC respectfully suggests that such an analysis would show that the costs would clearly and unequivocally outweigh the benefits of the proposal. Thus, at this point, the Commission should follow the recommendation of SBC and other commenters and focus its efforts on implementing the *NRO Order* and other regulatory policies, rather than further considering the proposal to charge for telephone numbers.<sup>50</sup>

### **CONCLUSION**

For the foregoing reasons, SBC urges the Commission to (1) use an end user surcharge to recover number pooling costs; (2) phase in over three years a utilization threshold of 50 to 65 percent, applied at the LCAP level, with a recognized and meaningful process for exceptions, with the utilization rate calculated to include all unavailable numbers; (3) allow a nine month transition between the implementation of wireless LNP and the beginning of wireless number portability implementation; (4) focus the Commission's resources on the current regulatory framework, including implementing the *NRO Order* and addressing the outstanding

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<sup>49</sup> See *SBC*, at 16-17; *Bell Atlantic*, at 10-11; *CA PUC*, at 11-12; *Joint Commenters*, at 5; *2<sup>nd</sup> Century*, at 5.

<sup>50</sup> See *SBC*, at 17; *Ad Hoc*, at 14; *Bell Atlantic*, at 10; *BellSouth*, at 15, 17; *CompTel*, at 7-8; *GTE*, at 13; *Nextel*, at 6; *PCIA*, at 19; *RICA*, at 5; *2<sup>nd</sup> Century*, at 3-4; *Time Warner*, at 8; *WinStar*, at 19.

issues in this proceeding, rather than considering further the proposal to charge for telephone numbers.

Respectfully submitted,

SBC COMMUNICATIONS INC.

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Date: June 9, 2000.

Reply Comments of SBC Communications Inc.  
CC Docket No. 99-200  
June 9, 2000

**CERTIFICATE OF SERVICE**

I, Loretia Hill, do hereby certify that copies of the “Reply 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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*/S/*

Loretia Hill

June 9, 2000.