

## Appendix A

## Final Rules

## PART 52 – NUMBERING

## Subpart B – Administration

1. The authority citation for Part 52 continues to read as follows:

**AUTHORITY:** Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-205, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Section 52.15 is revised to read as follows:

**§ 52.15 Central office code administration.**

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

(d) \*\*\*

(e) \*\*\*

(f) \*\*\*

(1) \*\*\*

(i) \*\*\*

(ii) \*\*\*

(iii) \*\*\*

(iv) \*\*\*

(v) \*\*\*

(vi) *Reserved numbers* are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

(2) \*\*\*

(3) *Data Collection Procedures.*

(i) \*\*\*

(ii) Reporting shall be by separate legal entity and must include company name, company headquarters address, Operating Company Number (OCN), parent company OCN(s), and the primary type of business in which the reporting carrier is engaged. The term "parent company" refers to the highest related legal entity located within the state for which the reporting carrier is reporting data.

(iii) \*\*\*

(4) \*\*\*

(5) \*\*\*

(6) \*\*\*

(7) \*\*\*

(g) *Applications for Numbering Resources.*

(1) \*\*\*

(2) \*\*\*

(3) *Growth numbering resources.*

(i) \*\*\*

(ii) \*\*\*

(iii) \*\*\*

(iv) The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an OCN. The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm or overturn the NANPA's decision to withhold numbering

resources from the carrier based on its determination of compliance with the reporting and numbering resource application requirements herein.

(4) *State Access to Applications.* State commissions shall have access to service provider's applications for numbering resources. State commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.

(h) *National Utilization Threshold.* All applicants for growth numbering resources shall achieve a 60% utilization threshold, calculated in accordance with paragraph (g)(3)(ii) of this section, for the rate center in which they are requesting growth numbering resources. This 60% utilization threshold shall increase by 5% on June 30, 2002, and annually thereafter until the utilization threshold reaches 75%.

(i) \*\*\*

(j) \*\*\*

(k) *Numbering Audits.*

(1) All telecommunications service providers shall be subject to "for cause" and random audits to verify carrier compliance with Commission regulations and applicable industry guidelines relating to numbering administration.

(2) All telecommunications service providers shall be prepared to demonstrate compliance with Commission regulations and applicable industry guidelines at all times. Service providers found to be in violation of Commission regulations and applicable industry guidelines relating to numbering administration may be subject to enforcement action.

5. Section 52.17 is revised to read as follows:

The B&C Agent shall:

(a) Calculate, assess, bill and collect payments for all numbering administration functions and distribute funds to the NANPA, or other agent designated by the Common Carrier Bureau that performs functions related to numbering administration, on a monthly basis;

(b) \*\*\*;

(c) \*\*\*;

(d) \*\*\*

(e) \*\*\*

(f) \*\*\*

6. Section 52.20 is revised to read as follows:

**§ 52.20 Thousands-block number pooling.**

(a) \*\*\*

(b) \*\*\*

(c) *Donation of thousands-blocks.*

(1) All service providers required to participate in thousands-block number pooling shall donate thousands-blocks with ten percent or less contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned.

(2) All service providers required to participate in thousands-block number pooling shall be allowed to retain at least one thousands-block per rate center, even if the thousands-block is ten percent or less contaminated, as an initial block or footprint block.

(3) \*\*\*

(d) \*\*\*

## Appendix B

## FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),<sup>413</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Notice of Proposed Rulemaking (Notice)*.<sup>414</sup> The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. In addition, pursuant to 5 U.S.C. § 604, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report and Order and Further Notice of Proposed Rulemaking (First Report and Order and Further Notice)*.<sup>415</sup> Also in the *First Report and Order and Further Notice*, pursuant to 5 U.S.C. § 603, was a second IRFA.<sup>416</sup> The Commission sought written public comment on the proposals in the *First Report and Order and Further Notice*, including comment on the second IRFA. No comments specifically addressing the second IRFA are relevant to the matters addressed in this *Second Report and Order*; however, comments received concerning small business issues in general are summarized below. This present FRFA conforms to the RFA.<sup>417</sup>

**A. Need for, and Objectives of, the Second Report and Order**

2. In the *First Report and Order and Further Notice*, we sought public comment on (a) what specific utilization threshold carriers, not participating in thousands-block number pooling, should meet in order to request growth numbering resources; (b) whether state commissions should be allowed to set rate-center based utilization thresholds based on Commission-established criteria; (c) whether covered commercial mobile radio services (CMRS) carriers should be required to participate in thousands-block number pooling immediately upon expiration of the Local Number Portability (LNP) forbearance period on November 24, 2002, or whether a transition period should be allowed; and (d) how a market-based allocation system for numbering resources could be implemented. We also sought additional information regarding: (a) cost studies that quantify the incremental costs of thousands-block number pooling; (b) cost studies that quantify shared industry and direct carrier-specific costs of thousands-block number pooling; and (c) cost studies that take into account the cost savings associated with thousands-block number pooling in comparison to the current numbering practices that result in more frequent area code changes.

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<sup>413</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>414</sup> Numbering Resource Optimization, *Notice of Proposed Rulemaking*, 14 FCC Rcd at 10433-34 (1999) (*Notice*).

<sup>415</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7699-7706, Appendix B (2000) (*First Report and Order and Further Notice*).

<sup>416</sup> *Id.* at 7707-7710, Appendix C.

<sup>417</sup> See 5 U.S.C. § 604.

3. In doing so, we sought to (1) ensure that the limited numbering resources of the North American Numbering Plan (NANP) are used efficiently; (2) protect customers from the expense and inconvenience that result from the implementation of new area codes; (3) forestall the enormous expense that will be incurred from expanding the NANP; and (4) ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.

4. In this *Second Report and Order and Second Further Notice*, we continue to develop, adopt and implement a number of strategies to ensure that the numbering resources of the NANP are used efficiently, and that all carriers have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace. In particular, we finalize plans implementing thousands-block number pooling, and also seek comment on additional strategies to increase further the efficiency with which numbering resources are used.

#### **B. Summary of Significant Issues Raised by Public Comments**

5. Commenters expressed support and opposition to several issues addressed in this *Second Report and Order* that concern small entities. Their opinions are summarized below and, where applicable, discussed in Section E. Other comments filed by small entities which are not addressed in this *Second Report and Order*, such as those relating to carriers' cost recovery mechanisms for thousands-block number pooling and developing markets for numbering resources, will be addressed at a later date.

6. *Geographic Splits and All-Services Area Code Overlays.* One commenter described geographic splits as harmful for small businesses because the phone number plays a critical role in the identity of the business.<sup>418</sup> Geographic splits may cause small businesses to lose customers who are unaware of the phone number change. In addition, small businesses may incur additional costs on advertising materials as a result of an area code change.<sup>419</sup> Thus, all-services area code overlays are strongly preferred by commenters because small businesses would not be exposed to such costs.

7. *Audits.* Commenters generally support "for cause" and random audits.<sup>420</sup> The Small Business Alliance strongly supports "for cause", scheduled and random audits given the rapid depletion of numbering resources.<sup>421</sup> Another commenter supports "for cause" audits, but not random audits.<sup>422</sup>

8. *Mandatory Nationwide Ten-Digit Dialing.* Commenters representing small

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<sup>418</sup> Small Business Alliance for Fair Utility Regulation (Small Business Alliance) Comments at 2.

<sup>419</sup> *Id.* at 2.

<sup>420</sup> Liberty Telecom Comments at 5; PrimeCo Personal Communications, L.P. (PrimeCo) Comments at 16.

<sup>421</sup> Small Business Alliance Comments at 6.

<sup>422</sup> PrimeCo Comments at 16.

businesses support mandatory ten-digit dialing.<sup>423</sup> For example, OPASTCO believes that ten-digit dialing would be less disruptive for customers, and technical modifications would be less expensive.

**C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply**

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>424</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>425</sup> The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.<sup>426</sup> Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>427</sup>

10. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report<sup>428</sup> and the data in its *Carrier Locator: Interstate Service Providers Report*.<sup>429</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

11. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small

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<sup>423</sup> See Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) Comments at 6; Small Business Alliance Comments at 9.

<sup>424</sup> 5 U.S.C. § 603(b)(3).

<sup>425</sup> 5 U.S.C. § 601(6).

<sup>426</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register." 5 U.S.C. § 601(3).

<sup>427</sup> 15 U.S.C. § 632.

<sup>428</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>429</sup> See FCC, *Carrier Locator: Interstate Service Providers* (October 2000) (*Locator*). This report lists 4,822 companies that provided interstate telecommunications service as of December 31, 1999 and was compiled using information from FCC Form 499-A Telecommunications Reporting Worksheets filed by carriers. *Id.* at 1.

businesses when they have no more than 1,500 employees.<sup>430</sup> Below, we discuss the total estimated number of telephone companies falling within those two categories and the number of small businesses in each, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

12. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>431</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>432</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>433</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>434</sup> For example, a personal communications services (PCS) provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed regulations, herein adopted.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of

<sup>430</sup> 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

<sup>431</sup> 5 U.S.C. § 601(3).

<sup>432</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

<sup>433</sup> U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (Census Bureau).

<sup>434</sup> See generally 15 U.S.C. § 632(a)(1).

small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>435</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>436</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs that may be affected by the proposed regulations, herein adopted.

15. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>437</sup> According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.<sup>438</sup> We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed regulations, herein adopted.

16. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>439</sup> According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.<sup>440</sup> We do not have data specifying the number of these carriers that

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<sup>435</sup> Census Bureau, *supra*, at Firm Size 1-123.

<sup>436</sup> 13 CFR § 121.201, SIC code 4813.

<sup>437</sup> *Id.*

<sup>438</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>439</sup> 13 CFR § 121.201, SIC code 4813.

<sup>440</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 171 small entity IXCs that may be affected by the proposed regulations, herein adopted.

19.

17. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access service providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>441</sup> According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.<sup>442</sup> We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 212 small entity CAPs and 10 other LECs that may be affected by the proposed regulations, herein adopted.

18. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>443</sup> According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.<sup>444</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 615 small entity pay telephone operators that may be affected by the proposed regulations, herein adopted.

19. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.<sup>445</sup> According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of

<sup>441</sup> 13 CFR § 121.201, SIC code 4813.

<sup>442</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>443</sup> 13 CFR § 121.201, SIC code 4813.

<sup>444</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>445</sup> 13 CFR § 121.201, SIC code 4813.

telephone service.<sup>446</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed regulations, herein adopted.

20. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, PCS or specialized mobile radio (SMR) service providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.<sup>447</sup> According to the most recent *Locator* data, 806 carriers reported that they were engaged in the provision of wireless telephony and 427 companies reported that they were engaged in the provision of paging and messaging service.<sup>448</sup> We do not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small carriers providing wireless telephony services and fewer than 137 small companies providing paging and messaging services that may be affected by the proposed regulations, herein adopted.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

21. *Audit Program.* In the *Notice*, we identified auditing as the only legitimate method for verifying the validity and accuracy of utilization data submitted by users of numbering resources.<sup>449</sup> The *Second Report and Order* approves the Commission's proposal to supplement the need verification measures and data collection requirements, adopted in the *First Report and Order*, with a comprehensive audit program. The audits, which include "for cause" and random audits, will be used to verify carrier compliance with federal rules and orders and industry guidelines. In addition, the Commission declines to provide a specific cost recovery mechanism for carrier-specific auditing costs, including costs related to providing documentation to the auditor.<sup>450</sup> We believe that such costs are minimal and do not significantly affect a carrier's ability to compete. Nevertheless, even if such costs impose a burden on small carriers, the benefits of monitoring numbering resource use, thereby enabling us to predict accurately exhaustion of numbering resources, would far outweigh those costs.

<sup>446</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>447</sup> 13 C.F.R. § 121.201, SIC code 4813.

<sup>448</sup> *Locator* at 1-2.

<sup>449</sup> See *supra* para. 85 (citing *Notice*, 14 FCC Rcd 10358, para. 83).

<sup>450</sup> See *supra* para. 99.

22. *"For Cause" Auditing Requests.* To request a "for cause" audit, the North America Numbering Plan Administrator (NANPA), the Pooling Administrator or a state commission must draft a written request to the Auditor stating the reason for the request, such as misleading or inaccurate data, as well as supporting documentation evidencing such grounds for the audit. The audits will be performed by the Commission's auditors in the Audits Branch of the Accounting Safeguards Division in the Common Carrier Bureau, or other designated agents.

23. *Numbering Resource Application Materials.* State commissions should request copies of carriers' applications for initial and growth numbering resources directly from the carriers, instead of NANPA or the Pooling Administrator. Such an approach avoids a costly burden on the national numbering administrator while placing only a minimal burden on carriers because small and large carriers merely need to duplicate applications previously submitted to the NANPA. Carriers receiving numbering resources must comply with state requests and will be denied numbering resources for noncompliance.

**E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered***

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>451</sup>

25. *Utilization Threshold.* We require carriers to utilize 60% of their existing inventory of numbers before receiving additional resources within a particular rate center. We find that 60% is an appropriate threshold level because, for example, according to the data reported to NANPA, average industry utilization levels range from approximately 45%-65%. We considered adopting a 50% threshold as an alternative, however, we believe that a 60% utilization threshold will more successfully encourage carriers to use numbers from existing inventories while making such utilization achievable for carriers that need additional numbering resources. The threshold will increase by 5% each year starting June 30, 2002, to a maximum threshold of 75%. We establish these small yearly percentage increases in order to allow carriers, especially small carriers, sufficient time to maximize their utilization levels.

26. *Thousands-Block Number Pooling for Covered CMRS Carriers.* CMRS carriers will be required to participate in thousands-block number pooling once the LNP forbearance period expires on November 24, 2002. No transition period between the CMRS carriers' LNP implementation and participation in mandatory number pooling will be granted because such carriers have almost two years' advance notice of the pooling requirement, and technical

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<sup>451</sup> 5 U.S.C. § 603(c).

modifications for pooling and LNP are largely similar. We believe that given the deadline date for compliance, carriers, including small businesses, should have ample time to prepare for these changes without the need for a transition period.

27. *Geographic Splits and All-Services Area Code Overlays.* We considered whether to impose additional rules on state commissions or to leave the development of any rules to the states. We have decided that additional rules or guidelines will not be enumerated at the federal level with regard to geographic splits or all-services overlays. We believe that state commissions should be allowed to choose an appropriate measure, including geographic splits or overlays, for area code relief. However, state commissions must ensure that, in implementing area code relief, carriers receive numbers on an equitable basis and that such numbers are available in a timely and efficient manner. Such an approach allows state commissions to consider the surrounding local circumstances, including the needs of small, local businesses, in deciding whether or how to provide area code relief.

28. In the alternative, we could have mandated state commissions to impose all-services area code overlays as the primary method for area code relief. As discussed in Section B, small businesses that incur additional costs related to geographic splits may have benefited from this alternative proposal. However, the Commission believes that states should have the flexibility to determine the best method for area code relief given their unique knowledge of their geographic region.

29. In addition, we will continue to require ten-digit dialing within and throughout the geographic area covered by an all-services overlay. Such a requirement ensures that no dialing disparity exists to disadvantage competitors, including small businesses.

30. *Audits.* A comprehensive audit program will be established to verify carriers' actual need for numbering resources, in accordance with federal rules and industry guidelines. As discussed in Section B, small entity commenters generally support audits. This audit program, which will consist of "for cause" and random audits, should help to determine whether carriers accurately record data or inconspicuously stockpile numbers. Failure to comply with auditor requests will result in penalties. For small carriers, audits will help to ensure that large businesses are not hoarding numbers or otherwise preventing small carriers from gaining access to numbering resources. In addition, costs should not impose a significant burden on small or large carriers. However, the benefits of being able to rely on carrier data in order to monitor numbering resource use and to predict accurately exhaustion of numbering resources would far outweigh any significant costs incurred by small carriers.

31. *Mandatory Nationwide Ten-Digit Dialing.* At the present time, we decline to adopt nationwide mandatory ten-digit dialing as a method of area code relief. Although commenters, including small entities,<sup>452</sup> supported the adoption of this measure, the burdens of implementation at this time outweigh the benefits. Such a transition would require technical modifications by both large and small carriers, at a potentially expensive cost. In addition, ten-digit dialing adds to consumer inconvenience and confusion. At this time, the need for area code

<sup>452</sup> See, e.g., OPASTCO Comments at 6; Small Business Alliance Comments at 8-9.

relief does not outweigh these burdens on carriers.

32. *Reconsideration of Reserved Number Period.* In the *First Report and Order*, we decided to allow numbers to remain in reserved status for a maximum of 45 days.<sup>453</sup> In this *Second Report and Order*, we extend the period for reserving numbers to a maximum of 180 days.<sup>454</sup> We considered extending the period to 12 months, but we believe that, at the present time, 180 days is a sufficient time period to allow small and large carriers to address their customers' needs while mitigating the effects of such reservations on the depletion of numbering resources. It also allows small and large business customers to plan for implementation and/or expansion of telephone service. For carriers requesting more time to reserve numbers, we are considering a proposal by the NANC to charge a fee for extending the reservation period and are seeking comment on this proposal in the *Second Further Notice*.

33. *Report to Congress:* The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>455</sup> In addition, the Commission will send a copy of this *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Second Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>456</sup>

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<sup>453</sup> *First Report and Order*, 15 FCC Rcd at 7587, 7588, paras. 22-23.

<sup>454</sup> *See supra* para. 114.

<sup>455</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>456</sup> *See* 5 U.S.C. § 604(b).

## Appendix C

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),<sup>457</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice in CC Docket No. 99-200 (Second Further Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided above in Section VII. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>458</sup> In addition, the *Second Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>459</sup>

**A. *Need for, and Objectives of, the Proposed Rules***

2. In the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress gave the Commission plenary jurisdiction over the North American Numbering Plan (NANP) within the United States.<sup>460</sup> In discharging our authority over numbering resources, we seek to balance two competing goals. First, we must ensure that carriers have the numbering resources that they need to compete and bring new and innovative services to the consumer marketplace. Second, we must ensure that, to the extent possible, numbering resources are used efficiently. Inefficient use of numbering resources speeds the exhaust of area codes, imposing on carriers and consumers alike the burdens and costs of implementing new area codes. It also shortens the life of the NANP as a whole.

3. The Commission is issuing this *Second Further Notice* to seek public comment on (a) the relative advantages of service-specific and technology-specific overlays as opposed to all-services overlays, and the conditions under which service-specific and technology-specific overlays, if adopted, should be implemented in order to promote competitive equity, maximize efficient use of numbering resources, and minimize customer inconvenience; (b) what policies could be implemented at the federal level to reduce the extent to which the rate center system contributes to and/or accelerates numbering resource exhaust; (c) whether carriers should be held accountable when related carriers fail to comply with reporting requirements; (d) whether state commissions should be granted direct, password-protected access to the mandatory reporting data received by the North American Numbering Plan Administrator (NANPA); (e) whether we

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<sup>457</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>458</sup> See 5 U.S.C. § 603(a).

<sup>459</sup> See *id.*

<sup>460</sup> 47 U.S.C. § 251(e)(1).

should allow extensions (for a fee or otherwise) on the 180-day reservation period for numbers; (f) what enforcement mechanisms should be applied when a carrier either fails to cooperate with an audit, or fails to resolve identified areas of noncompliance; (g) whether state commissions should be allowed to conduct audits; (h) the development of a market-based allocation system for numbering resources; (i) the costs associated with thousands-block number pooling; (j) whether the Commission should require carriers to acquire Local Number Portability (LNP) capabilities for the purpose of participating in thousands-block number pooling; and (k) whether a "safety valve" should be established for carriers that need additional numbering resources, but fail to meet the utilization threshold in a given rate center.

4. Receiving comments on such matters will help us to examine and consider ways to achieve our objectives to use numbering resources more efficiently in order to mitigate potential customer cost and inconvenience of implementing new area codes and delaying costly expansion of the NANP. For carriers, more numbering resources should encourage competition in a growing telecommunications market.

#### **B. *Legal Basis***

5. The proposed action is authorized under Sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, and 251.<sup>461</sup>

#### **C. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply***

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>462</sup> The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>463</sup> The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.<sup>464</sup> Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>465</sup>

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<sup>461</sup> 47 U.S.C. §§ 151, 153, 154, 201-205, and 251.

<sup>462</sup> 5 U.S.C. § 603(b)(3).

<sup>463</sup> 5 U.S.C. § 601(6).

<sup>464</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register." 5 U.S.C. § 601(3).

<sup>465</sup> 15 U.S.C. § 632.

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report<sup>466</sup> and the data in its *Carrier Locator: Interstate Service Providers Report*.<sup>467</sup> However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers.<sup>468</sup> These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

8. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.<sup>469</sup> Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

9. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."<sup>470</sup> The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.<sup>471</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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<sup>466</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>467</sup> See FCC, *Carrier Locator: Interstate Service Providers* (October 2000) (*Locator*). This report lists 4,822 companies that provided interstate telecommunications service as of December 31, 1999 and was compiled using information from FCC Form 499-A Telecommunications Reporting Worksheets filed by carriers. *Id.* at 1.

<sup>468</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>469</sup> 13 CFR § 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

<sup>470</sup> 5 U.S.C. § 601(3).

<sup>471</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.*, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

10. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>472</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."<sup>473</sup> For example, a personal communications system provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed regulations.

11. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>474</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.<sup>475</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs that may be affected by the proposed regulations.

12. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>476</sup> According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.<sup>477</sup> We do not have data

<sup>472</sup> U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1-123 (1995) (Census Bureau).

<sup>473</sup> See generally 15 U.S.C. § 632(a)(1).

<sup>474</sup> Census Bureau, *supra*, at Firm Size 1-123.

<sup>475</sup> 13 CFR § 121.201, SIC code 4813.

<sup>476</sup> *Id.*

<sup>477</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed regulations.

13. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>478</sup> According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.<sup>479</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 171 small entity IXCs that may be affected by the proposed regulations.

14. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>480</sup> According to the most recent *Trends in Telephone Service* data, 212 CAP carriers and Competitive Local Exchange Carriers (CLEC) and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.<sup>481</sup> We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 212 small entity CAPs and 10 other LECs that may be affected by the proposed regulations.

15. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.<sup>482</sup> According to the most recent *Trends in Telephone*

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<sup>478</sup> 13 CFR § 121.201, SIC code 4813.

<sup>479</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>480</sup> 13 CFR § 121.201, SIC code 4813.

<sup>481</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>482</sup> 13 CFR § 121.201, SIC code 4813.

Service data, 615 carriers reported that they were engaged in the provision of pay telephone services.<sup>483</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 615 small entity pay telephone operators that may be affected by the proposed regulations.

16. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.<sup>484</sup> According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.<sup>485</sup> We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed regulations.

17. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, personal communications service (PCS) or specialized mobile radio (SMR) service providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.<sup>486</sup> According to the most recent *Locator* data, 806 carriers reported that they were engaged in the provision of wireless telephony and 427 companies reported that they were engaged in the provision of paging and messaging service.<sup>487</sup> We do not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small carriers providing wireless telephony services and fewer than 137 small companies providing paging and messaging services that may be affected by the proposed regulations.

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<sup>483</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>484</sup> 13 CFR § 121.201, SIC code 4813.

<sup>485</sup> FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

<sup>486</sup> 13 C.F.R. § 121.201, SIC code 4813.

<sup>487</sup> *Locator* at 1-2.

**D. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements***

18. In this *Second Further Notice* we seek comment on whether to implement a market-based allocation system for numbering resources, and on the types of reporting requirements needed to ensure that secondary markets, if implemented, remain open, competitive and effective. Data from such reports should allow us to determine the success of reallocating numbering resources in secondary markets. We also seek comment on whether carriers should be required to file information on purchase or lease prices as well as the quantities involved in the transaction. Commenters should discuss whether such reporting requirements would pose an unreasonable burden on carriers or NANPA.

**E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered***

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>488</sup>

20. *Service-Specific and Technology-Specific Overlays.* Due to the numbering crisis, we are reconsidering our prohibition against using service-specific and technology-specific overlays as methods for area code relief. The prohibition stems from our belief that these overlays could pose a distinct competitive disadvantage on, for example, carriers with customers who would suffer the cost and inconvenience of surrendering existing numbers, changing over to new numbers, and informing callers of the new numbers. Some commenters to the *Notice* advocated that these overlays would address the demand for numbers as well as receive substantial public support, especially as a means for providing area code relief. We seek comment, especially from small entities, on when and if these overlays should occur and if so, the conditions under which service-specific and technology-specific overlays should be implemented in order to promote competitive equity, maximize the efficient use of numbering resources, and minimize customer inconvenience. In determining appropriate conditions for implementing these overlays, we will examine how such conditions would impact small businesses.

21. *The Rate Center Problem.* In this *Second Further Notice* we seek comment on rate center consolidation. We find that rate center consolidation would be a potential solution for relieving number exhaust because the existence of multiple rate centers in each Numbering Plan Area (NPA), as well as demand by most carriers to have numbering resources in each rate center

<sup>488</sup> 5 U.S.C. § 603(c).

in which they operate, greatly contribute to number exhaust. However, because of the connection between rate centers and the rating and routing of calls, such consolidation may be difficult for carriers, particularly incumbent LECs. Thus, we seek comment on ways to separate the connection between rate centers, call rating and routing. We also seek comment from industry and state commissions regarding the effects of past and present rate center consolidation efforts on carriers as well as the benefits and costs of such consolidation in the top 100 metropolitan statistical areas (MSAs). Such consolidation efforts should significantly impact numbering resources by providing small and large businesses with access to more numbers. In responding to this issue, commenters should also consider alternatives to rate center consolidation, such as extending local calling areas.

22. *Liability of Related Carriers.* In the *First Report and Order* the Commission established new semiannual reporting requirements to obtain more consistent, accurate and complete reporting of number resource utilization and forecast data. We tentatively conclude in this *Second Further Notice* that carriers should, in certain instances, have numbering resources withheld when related carriers fail to comply with our mandatory reporting requirements and, as a result, are denied numbers resources. We seek comment on how to identify the relationships (*i.e.*, the existence of parent and sister companies) among reporting carriers, and what geographic limitations should be placed on those relationships in determining liability.

23. *Fee for Number Reservations.* In this *Second Further Notice*, we seek further comment on the NANC's proposal to allow unlimited reservations of numbers on a month-to-month basis. We seek comment on whether unlimited reservations of numbers are necessary, or, in the alternative, whether there should be a constraint on the time period that numbers can be reserved. Commenters should also discuss the viability and reasonableness of assessing a fee for reserved numbers on carriers and permitting carriers to recover such costs from end users for whom numbers may be reserved. Such a fee could provide appropriate incentives in this context. We encourage comments regarding any unique small business needs related to these alternatives for number reservations, and the disproportionate impact, if any, of fees on small businesses.

24. *Audit Compliance and Enforcement.* In the *Second Report and Order*, we established a comprehensive audit program to verify carrier compliance with federal rules and orders and industry guidelines. In this *Second Further Notice*, we seek comment on what appropriate enforcement mechanisms should be employed to address instances in which a carrier either fails to cooperate with an audit, or fails to rectify identified areas of noncompliance. We tentatively conclude that, at a minimum, carriers that fail to cooperate with the auditor should be denied numbering resources. The imposition of penalties would encourage both large and small carriers to comply with auditors' requests.

25. *State Authority to Perform Audits.* In addition to maintaining a national audit program, we seek comment on whether state commissions, given their extensive involvement in numbering issues, should be permitted to conduct independently "for cause" and random audits of carrier data. Small businesses should comment, in particular, on whether the potential existence of differing state audit standards would be a significant cost burden for them.

26. *Market for Numbering Resources.* In this *Second Further Notice* we seek comment on whether and how a market-based number allocation system should be implemented.

Proper implementation of this system should encourage the efficient use of numbering resources by carriers as well as be competitively neutral, especially towards small businesses. The system's benefits (*i.e.*, more efficient use of numbers) should outweigh carriers' concerns over costs. We believe that alternatives to this system (*i.e.*, allocating numbers for free) would not promote the efficient use of numbers as effectively. Commenters are encouraged to propose ways to implement such a system so as to minimize any unfavorable impact on small entities.

27. *Recovery of Pooling Shared Industry and Direct Carrier Specific Costs.* We determined in this *Second Further Notice* that we still do not possess sufficient cost data to establish a cost recovery mechanism at this time. We intend to establish a national cost recovery mechanism after the national pooling roll-out schedule is finalized, because the timing and amount of pooling costs should be more readily ascertainable at that time. In the interim, we seek further comment and cost studies quantifying shared industry and direct carrier-specific costs of thousands-block number pooling. Such cost data should assist us in ascertaining an appropriate cost recovery mechanism for small carriers.

28. *Mandating LNP Capability for Thousands-Block Number Pooling.* In the *First Report and Order*, we adopted thousands-block number pooling for local number portability (LNP) capable carriers, concluding that commercial mobile radio services carriers as well as non-LNP capable wireline carriers must participate in pooling once they become LNP capable. We seek comment on whether we should require carriers to become LNP capable for the purpose of participating in thousands-block number pooling. In the alternative, we seek comment on whether carriers can utilize other network architecture to increase participation in thousands-block number pooling, or at least central office code sharing, without having fully deployed LNP. In examining alternatives to improve the efficient use of numbering resources, we request comments from all carriers, but especially small businesses that may become disadvantaged by a requirement to become LNP-capable.

29. *Waiver of Growth Numbering Resource Requirement.* Currently, carriers may obtain a waiver of growth numbering resource requirements by demonstrating their need for additional numbering resources. We seek comment in this *Second Further Notice* on whether a "safety valve" should be established for carriers that need additional numbering resources, even though they fail to meet the utilization threshold in a given rate center. In particular, we request data (especially empirical data) indicating the extent to which this problem exists. In addition, we seek comment on, among other things, the form of a "safety valve" mechanism and specific criteria that would warrant a waiver. Commenters are encouraged to provide data demonstrating small business' need for a "safety valve" mechanism as well as specific criteria for granting a waiver that would impose a minimal burden on small entities.

**F. *Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules***

30. None.

## Appendix D

## List of Parties

**I. Numbering Resource Optimization Notice of Proposed Rulemaking**

**Comments** - In addition to the parties listed below, the Commission also considered the comments, including e-mails, postcards and other correspondence, from over 3,000 citizens in this matter.

1. Adamson, Grier
2. Ad Hoc Telecommunications Users Committee (Ad Hoc)
3. AirTouch Communications, Inc. (AirTouch)
4. Ameritech
5. Arsinow, Richard A.
6. Arvanitas, Ms. Peggy
7. Association for Local Telecommunications Services (ALTS)
8. AT&T Corporation (AT&T)
9. Bartel, Richard C., and Communications Venture Services, Inc. (Venture Services)
10. Bell Atlantic
11. BellSouth Corporation (BellSouth)
12. Burrows Resource Group Inc. (BRG)
13. Cablevision Lightpath, Inc. (Cablevision)
14. California Public Utilities Commission and the People of the State of California (California Commission)
15. Campbell, Bill - California Assemblyman 71<sup>st</sup> District, letter to Congressman James E. Rogan
16. Carlson, Douglas F.
17. Cellular Telecommunications Industry Association (CTIA)
18. Chambers, Rose A.
19. Cincinnati Bell Telephone Company (CinBell)
20. Citizens Utility Board, People of the State of Illinois, Cook County State's Attorney's Office, and the City of Chicago (Citizens Util. Bd., et al.)
21. Cohen, Marsha N.
22. Colpitts, Robert M., Jr.
23. Colorado Public Utilities Commission (Colorado Commission)
24. Connect Communications Corporation (Connect)
25. Connecticut Department of Public Utility Control (Connecticut Commission)
26. Cox Communications, Inc. (Cox)
27. Eyre, Richard
28. Florida Public Service Commission (Florida Commission)
29. Gethard, Elaine Meitus
30. GTE Service Corporation (GTE)
31. Illinois Chapter of National Emergency Number Association (INENA)
32. Joint Comments of Choice One Communications, Inc., and GST Telecommunications, Inc. (Choice One and GST)
33. Joint Comments of Centennial Cellular Corporation; CenturyTel Wireless, Inc.;

34. Thumb Cellular, Limited Partnership; and Trillium Cellular Corp. (Centennial, et al.)  
Joint Comments of Texas Office of Public Utility Counsel and National Association of State Utility Consumer Advocates (Texas Public Util. Counsel and NASUCA)
35. Level 3 Communications, Inc. (Level3)
36. Liberty Telecom LLC (Liberty)
37. Maine Public Utilities Commission (Maine Commission)
38. Maydak, Keith
39. Massachusetts Department of Telecommunications and Energy  
(Massachusetts Commission)
40. MCI WorldCom, Inc. (WorldCom)
41. MediaOne Group, Inc. (MediaOne)
42. Minnesota Department of Public Service (Minnesota Commission)
43. Missouri Public Service Commission (Missouri Commission)
44. Mitretek Systems, Inc.
45. Mobility Canada
46. Mohlenbrok, Gerald
47. National Association of Regulatory Utility Commissioners (NARUC)
48. National Emergency Number Association (NENA)
49. National Exchange Carriers Association (NECA)
50. National Telephone Cooperative Association (NTCA)
51. Neill, Professor Bill
52. New Hampshire Public Utilities Commission (New Hampshire Commission)
53. New Jersey Board of Public Utilities (New Jersey Commission)
54. Newman, Vicky
55. New York State Department of Public Service (New York Commission)
56. Nextel Communications, Inc. (Nextel)
57. Nextlink Communications, Inc. (Nextlink)
58. Nilsen, Beate
59. North American Numbering Plan Administrator (NANPA)
60. North American Numbering Council (NANC)
61. North Carolina Utilities Commission (North Carolina Commission)
62. Omnipoint Communications, Inc. (Omnipoint)
63. Organization for the Promotion and Advancement of Small Telecommunications  
Companies (OPASTCO)
64. Paging Network, Inc.
65. Pennsylvania Office of Consumer Advocate and NASUCA (Pennsylvania  
Consumer Advocate and NASUCA)
66. Pennsylvania Public Utility Commission (Pennsylvania Commission)
67. Personal Communications Industry Association (PCIA)
68. Prichard, Douglas R. City of Rolling Hills Estates City Manager
69. PrimeCo Personal Communications, L.P. (PrimeCo)
70. Public Service Commission of Wisconsin (Wisconsin Commission)
71. Public Utilities Commission of Ohio (Ohio Commission)
72. Public Utility Commission of Texas (Texas Commission)
73. Qwest Communications Corporation (Qwest)
74. Ravizza, Norman
75. RCN Telecom Services, Inc. (RCN)

76. REC Networks
77. Rogers Cantel, Inc.
78. Saco River Telegraph & Telephone Co.
79. Salva, Carol
80. SBC Communications, Inc. (SBC)
81. Small Business Alliance for Fair Utility Regulation (Small Business Alliance)
82. Solnit, Kenneth T.
83. Sprint Corporation (Sprint)
84. Sullivan, Mr. Michael A.
85. Texas Advisory Commission on State Emergency Communications, et al.
86. Texas Office of Public Utility Counsel
87. Time Warner
88. Thro, Dennis
89. United States Telephone Association (USTA)
90. U S West Communications, Inc. (U S West)
91. Virginia State Corporation Commission, Division of Communications
92. VoiceStream Wireless Corp. (VoiceStream)
93. WinStar Communications, Inc. (WinStar)
94. Yablon, Gilbert (Smart Dialing Systems)
95. Zamzow, Norma

#### **Reply Comments**

96. Ad Hoc
97. AirTouch
98. Allegiance Telecom, Inc. (Allegiance)
99. Ameritech
100. ALTS
101. Association of Public-Safety Communications Officials-International, Inc. and the National Emergency Number Association (APCO and NENA)
102. AT&T
103. Bell Atlantic
104. BellSouth
105. California Commission
106. CTIA
107. CenturyTel, Inc.
108. CinBell
109. Colorado Numbering Task Force
110. Competitive Telecommunications Association (CompTel)
111. Connect Communications Corporation (Connect)
112. Cook County State's Attorney's Office
113. Cox
114. Florida Commission
115. GTE
116. INENA
117. Choice One and GST
118. Level 3

119. Levine, Richard
120. Maine Commission
121. WorldCom
122. MediaOne
123. NENA
124. NECA
125. NTCA
126. Neill, Professor Bill
127. New York Commission
128. Nextel
129. Nextlink
130. Omnipoint  
Pennsylvania Consumer Advocate and NASUCA
131. Pennsylvania Commission
132. PCIA
133. RCN
134. SBC
135. Small Business Alliance
136. Sprint
137. Telcordia
138. Teligent, Inc. (Teligent)
139. USTA
140. WinStar
141. Wisconsin Commission

## **II. Numbering Resource Optimization First Report and Order and First Further Notice of Proposed Rulemaking**

### **A. Further Notice Comments**

1. Ad Hoc
2. AT&T
3. ALTS
4. BellSouth
5. Bell Atlantic
6. California Commission
7. CTIA
8. 2<sup>nd</sup> Century Communications, Inc. (2<sup>nd</sup> Century)
9. CompTel
10. Cox
11. GTE
12. General Services Administration (GSA)
13. State of Illinois, Department of Central Management Services
14. Maine Commission
15. MediaOne
16. Joint Comments of Midvale Telephone Exchange, Inc., Northeast Louisiana Telephone

- Company, Inc., Interstate Telecommunications Cooperative, Inc., and Radio Paging Service
17. Missouri Commission
  18. Joint Comments of the National Exchange Carrier Association and National Telephone Cooperative Association (Joint Comments of NECA and NTCA)
  19. New Hampshire Commission
  20. New York Commission
  21. Nextel
  22. Nextlink
  23. Oregon Commission
  24. Pennsylvania Commission
  25. 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 Rate Payer Advocates, The Utility Reform Network, Maryland Office of people's Counsel, Maine Public Advocate, Indiana Office of Utility Consumer Counsel (Consumer Commenters)
  26. PCIA
  27. RCN
  28. Rural Independent Competitive Alliance
  29. SBC
  30. Sprint
  31. Telcordia
  32. Texas Commission
  33. Time Warner
  34. USTA
  35. U S WEST
  36. Verizon Wireless
  37. VoiceStream
  38. WinStar
  39. WorldCom

**B. Further Notice Reply Comments**

40. Allegiance
41. Arch Communications
42. Arvanitas, Peggy
43. AT&T
44. BellSouth
45. California Commission
46. CTIA
47. General Services Administration (GSA)
48. Illuminet, Inc.
49. Maine Commission
50. NARUC
51. NeuStar, Inc. (NeuStar)
52. Nextel
53. RCN

54. SBC
55. Sprint
56. Telcordia
57. USTA
58. U S West
59. Verizon Wireless
60. VoiceStream
61. WorldCom

**C. Petitions for Reconsideration, Clarification, Waivers and Motions for Clarification and Extension of Time**

62. ACUTA
63. Ad Hoc
64. Arkansas, Department of Information Services
65. ALTS
66. AT&T
67. Autopage & Radio Paging Services
68. BellSouth
69. Blackfoot Telephone Coop.
70. California Commission
71. Cal-Ore Telephone Co.
72. CTIA
73. CenturyTel, Inc.
74. CinBell
75. Electric Lightwave, Inc.
76. Florida Commission
77. General Communication Inc. (GCI)
78. Intermedia Communications Inc.
79. Iowa Telecom
80. Kassem, Ahmed (U. of Illinois – Chicago)
81. KMC Telecom
82. Maine Commission
83. Metropolitan Government of Nashville & Davidson County
84. NASNA
85. NENA
86. NTCA
87. Nextlink
88. OPASTCO
89. Ohio Commission
90. PCIA
91. Puerto Rico Telephone Co., & Celulares Telefonica
92. Qwest
93. RCA
94. RCN
95. SBC
96. Sprint

97. Telcordia
98. Tennessee Telecommunications Authority (TTA)
99. USTA
100. Verizon
101. Verizon Wireless
102. VoiceStream
103. Washington Department of Information Services
104. Whitmer, Glenn (U. of Illinois – Urbana-Champaign)
105. WinStar
106. WorldCom

**D. Oppositions to and Support for Petitions, Waivers and Motions**

107. AT&T
108. BellSouth
109. CinBell
110. Ohio Commission
111. PCIA
112. Texas Commission
113. Qwest
114. SBC
115. Sprint
116. USTA
117. Verizon
118. Verizon Wireless
119. VoiceStream
120. WorldCom

**III. Pennsylvania Numbering Order**

**A. Petition for Reconsideration**

1. California Cable Television Association
2. California Commission
3. Connecticut Commission
4. Maine Commission
5. Massachusetts Commission
6. MediaOne
7. NARUC
8. New Hampshire Commission
9. Pennsylvania Commission
10. SBC
11. Texas Commission

**B. Petitions for Clarification**

1. NARUC

2. SBC

**C. Comments**

1. Bell Atlantic
2. SBC
3. Vanguard

**D. Reply Comments**

1. California Cable Television Association
2. Maine Commission
3. Vanguard

**E. Opposition to Petition for Reconsideration or Clarification**

1. Bell Atlantic Mobile, Inc.
2. MCI
3. Nextel Communications

**F. Reply to Opposition to Petition for Reconsideration**

1. Pennsylvania Commission