

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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| In the Matter of  | ) |                      |
|   | ) |                      |
| Numbering Resource Optimization   | ) | CC Docket No. 99-200 |
|   | ) |                      |
| Petition for Declaratory Ruling and Request<br>For Expedited Action on the July 15, 1997<br>Order of the Pennsylvania Public Utility<br>Commission Regarding Area Codes 412, 610,<br>215, and 717 | ) | CC Docket No. 96-98  |
|   | ) |                      |
|   | ) |                      |

To: The Commission

**COMMENTS OF VERIZON WIRELESS**

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February 14, 2001

## SUMMARY

***Phased-In Overlays.*** The FCC should authorize the use of phased-in overlays (“PIOs”) as proposed by the Joint Wireless Commenters, with the conditions that there be no take-back of numbers, that PIOs be deployed alongside pooling, and that PIOs be transitioned into all-services overlays.

***Safety Valve.*** To ensure that the utilization rules do not inhibit assignment of numbers when truly needed to meet customer demand, the FCC should authorize a safety valve process as part of its fill rate regime.

***Charging for Numbers.*** The FCC lacks authority to charge for or auction numbers. Moreover, charging market-based prices would undermine the Commission’s present cornerstone to conservation: number pooling.

***Liability on Related Carriers.*** The FCC should not extend liability regarding numbering compliance to related carriers. The best deterrence will be achieved by imposing penalties on carriers that directly violate the Commission’s rules.

***Withholding Numbering Resources.*** The Commission should not withhold numbering resources from carriers that they believe are out of compliance with numbering regulations. Instead, the FCC should utilize existing enforcement powers and penalties. The FCC must ensure that a clear and efficient process for appealing penalties is available.

***State-Imposed Audits.*** The FCC should not authorize state regulatory commissions to conduct independent audits of carriers. The FCC should lead any random or for-cause audits, and offer interested states the opportunity to participate. It would be unduly costly and burdensome for carriers to face audits from 50 different states and the FCC.

***Expansion of Pooling.*** There is no basis to extend the pooling obligation to paging carriers at this time. In order to participate in pooling, paging carriers would need to undertake significant network upgrades that are not financially feasible or warranted by any competitive objective. The FCC should wait until after pooling is implemented more broadly before determining whether the marginal benefit of including paging carriers is justified when compared to the related cost.

The FCC should give its new conservation/utilization regime time to work before expanding it to include untested and potentially counter-productive rules. The FCC must maintain the important balance between conserving numbers and ensuring that carriers with legitimate numbering needs have access to numbers.

**TABLE OF CONTENTS**

**INTRODUCTION .....5**

**I. THE FCC SHOULD ADOPT THE JOINT WIRELESS PHASED-IN OVERLAY PROPOSAL .....5**

**A. Phased-In Overlays Must Not Include Take-Backs Of Existing Numbers And Must Be Implemented On A Temporary And Prospective Basis .....6**

**B. Verizon Wireless Supports Linking The Phased-In Overlay To Pooling .....8**

**C. Verizon Wireless Supports Use Of A Trigger As Proposed By The Joint Wireless Commenters..... 11**

**D. To Enable Use Of Phased-In Overlays The FCC Need Only Waive The Ten Digit Dialing Rule On A Temporary Basis..... 11**

**E. The Commission Must Be Willing To Order Relief If A State Abrogates Its Responsibility To Do So ..... 13**

**II. THE FCC SHOULD ADOPT A “SAFETY VALVE” THAT WILL ALLOW CARRIERS TO OBTAIN NEEDED NUMBERING RESOURCES WHERE THEY ARE UNABLE TO MEET THE UTILIZATION THRESHOLD IN A GIVEN RATE CENTER..... 14**

**III. THE FCC SHOULD NOT REQUIRE PAGING CARRIERS TO PARTICIPATE IN NUMBER POOLING ..... 16**

**IV. THE FCC SHOULD NOT IMPOSE LIABILITY UPON RELATED CARRIERS ..... 10**

**V. VERIZON WIRELESS OPPOSES THE SALE OF NUMBERING RESOURCES..... 19**

**A. Commission Authority To Charge For Numbers..... 22**

**1. Section 251(e) Provides No Basis For Selling Numbering Resources at Market-Based Prices..... 22**

**2. Section 254 Does Not Permit the Commission to Collect Market-Based Fees for Numbering Resources as a Source of Universal Service Funding ..... 24**

**3. The Commission Lacks Any Other Authority to Sell Numbers Under Section 309(j) of the Communications Act ..... 26**

**B. There Is No Need To Sell Numbers To Give Carriers Economic Incentives For Efficient Number Usage..... 27**

**VI. THE FCC SHOULD NOT ASSESS FEES FOR EXTENDED  
NUMBER RESERVATIONS.....33**

**VII. ACCESS TO NANPA’S DATABASE OF MANDATORY  
REPORTING DATA SHOULD BE LIMITED.....34**

**VIII. VERIZON WIRELESS OPPOSES WITHHOLDING NUMBERING  
RESOURCES.....36**

**IX. THE FCC SHOULD NOT AUTHORIZE STATE COMMISSIONS  
TO CONDUCT “FOR CAUSE” OR “RANDOM” AUDITS .....38**

**XI. CONCLUSION.....39**

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To: The Commission

**COMMENTS OF VERIZON WIRELESS**

Verizon Wireless (“VZW”) respectfully submits its comments on the Federal Communications Commission’s (“Commission” or “FCC”) *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) in this proceeding.

**INTRODUCTION**

In the past year, there has been a sea change in the way that numbering resources are requested, assigned and utilized by telecommunications carriers. Thousand block number pooling is being implemented in states across the country; carriers are submitting comprehensive utilization reports twice per year, meeting utilization requirements before applying for new codes, and returning codes that they do not need. As a result of the FCC’s numbering orders, numbers are being used more efficiently.

In some instances, however, conservation objectives are overshadowing the need for regulators to respond to legitimate numbering needs of non-pooling capable carriers.

Non-pooling capable carriers, particularly in the growing wireless sector, are being hit hardest, as states initiate thousand block number pools to meet the numbering needs of landline carriers, while delaying the area code relief necessary to provide full NXX codes for non-pooling carriers. Rationing mechanisms are being over-used to extend the lives of existing area codes artificially, making it increasingly difficult for carriers to know when or whether they will be assigned an NXX code.

The FCC must ensure that conservation and improved utilization does not come at the price of competition, by denying carriers with legitimate needs access to numbering resources. The FCC must balance the multiple “carrots” and “sticks” in its numbering policy, and ensure that the ultimate objective of providing a reliable, lasting source of numbers for all carriers remains center stage. The phased-in overlay (“PIO”) proposal, on which the Commission seeks comment, can help provide this relief. While not a perfect solution for wireless carriers—due to the temporary dialing disparity created by segregation from landline carriers—it is a second best solution that responds to the concerns of state regulators, consumer advocates and carriers. To have any effect, however, this tool must be authorized quickly. PIOs should be sanctioned on a trial basis in selected states immediately.

**I. THE FCC SHOULD ADOPT THE JOINT WIRELESS PHASED-IN OVERLAY PROPOSAL**

Verizon Wireless joined with other wireless carriers last fall to propose phased-in overlays as a compromise approach for enabling state regulatory commissions to meet

their obligation to provide access to numbering resources for all carriers.<sup>1</sup> Wireless carriers are facing numbering shortages across the country, primarily in states that have been delegated (or anticipated being delegated) authority to implement conservation measures, including thousands-block number pooling.<sup>2</sup> As non-pooling capable carriers, wireless service providers are unable to access numbers through pooling. Wireless providers are enduring dramatically reduced rationing of few remaining NXX codes, are being forced to file emergency relief petitions in order to obtain critical numbering resources, and in some cases are being denied NXX codes due to NPA exhaust. This disparate treatment of wireless carriers violates the FCC's policy that numbers be available to all carriers, when needed. The PIO proposal reconciles the objectives of minimizing customer burden from area code relief and ensuring customers access to their service provider of choice, thereby maximizing consumer welfare from the perspectives of competition, consumer convenience and number optimization.

In supporting the PIO proposal, VZW did not stake out a partial solution from which to "negotiate." While historically opposed to any segregation from competing landline service providers, major wireless providers, including VZW, agreed to accept *temporary* segregation (along with a *temporary* dialing disparity), in exchange for a reliable source of numbers to meet growing customer demands for wireless services. Given the compromise inherent in the PIO proposal, it is critical that no further segregation or competitive disparity be allowed in the final rule. Specifically, the FCC must stand by its preliminary conclusions that (1) there will be no take-backs of existing

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<sup>1</sup> See Letter from Anne E. Hoskins, Verizon Wireless, to Yog R. Varma, Deputy Chief, Common Carrier Bureau, dated November 21, 2000.

numbers; and (2) the phased-in overlay will, as the name implies, be phased-in to an all services overlay. If these requirements are not included, the phased-in overlay would be in firm on competitive, number efficiency and customer welfare grounds.

**A. Phased-In Overlays Must Not Include Take-Backs Of Existing Numbers And Must Be Implemented On A Temporary And Prospective Basis**

Verizon Wireless supports the FCC’s conclusion that transitional technology-specific (phased-in) overlays may not include mandatory “take-backs” and may only be implemented on a prospective basis.<sup>3</sup> The FCC has consistently recognized that take-backs of numbers from wireless carriers would be severely anti-competitive.<sup>4</sup> There is no need or justification to depart from the Commission’s well justified *Ameritech* precedent in order to authorize use of phased-in overlay.<sup>5</sup>

First, the process of taking back numbers would be extremely burdensome for VZW’s customers and carriers, due to the need to reprogram number changes directly into our customers’ handsets. Unlike landline carriers, VZW cannot reprogram phone numbers from a central switch location; each number needs to be reprogrammed in each individual handset. Beyond being unduly burdensome for wireless customers, forced

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<sup>2</sup> For example, the New Jersey Board of Public Utilities has delayed issuing relief in four northern New Jersey NPAs, even though one of those NPAs is fully exhausted.

<sup>3</sup> *Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, released December 29, 2000 at ¶¶ 134 (“*Second Further Notice*”).

<sup>4</sup> *Id.*

<sup>5</sup> *See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, 10 FCC Rcd 4596 (1995) (“*Ameritech Order*”).

number take-backs would take a significant amount of time to accomplish, undercutting the usefulness of PIOs in meeting the present numbering needs of non-pooling capable carriers.

Second, permanent segregation into a technology-specific overlay (“TSO”) would undermine the objective of maximizing number conservation. Number utilization will be optimized by sharing the underlying number supply across the maximum number of carriers and customers. Under the FCC’s present rules, CMRS carriers will be capable of pooling their numbering resources with landline carriers in the not too distant future. Adopting permanent technology-specific overlays during this interim period would preclude subsequent sharing of numbers. The end result would be implementation of more area codes than necessary – which will also work against the critical policy objective of preserving the NANP.

Third, it is unclear if anyone would actually benefit from a permanent technology-specific overlay. There are now many tools to improve the efficiency of number assignment and utilization (pooling, fill rates, utilization reporting, auditing) – which will ensure that area codes are implemented only when needed to meet the demands of customers. In contrast with a TSO, the phased-in overlay maximizes number efficiency by opening up the new overlaid NPA eventually to all types of service providers. In the interim period, customers, including those served by pooled codes, would not be inconvenienced due to the temporary waiver of the Commission’s ten-digit dialing rule.

**B. Verizon Wireless Supports Linking The Phased-In Overlay To Landline Pooling**

As Verizon Wireless stated in its *ex parte* letter supporting the PIO proposal, phased-in overlays should be implemented only where pooled numbers will be available for landline customers by the time non-LNP capable carriers begin taking numbers from the transitional phased-in overlay.<sup>6</sup> If area code relief is needed and landline pooling is not available, state commissions should order a traditional all-services overlay. It would be unfair to landline carriers and customers to bear a number shortage while non-LNP capable carriers are served out of a phased-in overlay. Moreover, to date, the wireless carriers' problem of gaining access to numbers is most severe in states where state regulatory commissions have been delegated (or anticipate being delegated) authority to implement pooling and other conservation measures (reclamation, fill rates, *etc.*) and are hoping that conservation measures will prevent the need for another area code. But in many instances, because the existing area codes are already too far depleted, pooling and conservation do not obviate the need for another area code. State commissions can use PIOs to help solve the number shortage problems facing wireless carriers while maintaining their commitment to promoting number conservation through pooling.

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<sup>6</sup> See Letter from Anne E. Hoskins, Verizon Wireless, to Yog R. Varma, Deputy Chief, Common Carrier Bureau, dated November 21, 2000.

**C. Verizon Wireless Supports Use Of A Trigger As Proposed By The Joint Wireless Commenters**

The phased-in overlay proposal balances (1) the need to get relief in place in time to meet the growing demands of non-pooling carriers; (2) the benefit of preserving some of the remaining NXX codes in the underlying NPA for use by the number pool; and (3) the need to minimize harm from segregation to non-pooling carriers by limiting the length of segregation. The proposal to trigger implementation of a PIO once there is remaining the greater of (1) thirty NXX codes, or (2) codes equal to the number of rate centers in the NPA provides a reasonable balance of these interests. For example, allowing a pooling administrator sole access to the final thirty NXX codes in an NPA could enable the administrator to fill numbering gaps in active rate centers, and extend the usefulness of the pool. At the same time, non-pooling carriers would not be segregated indefinitely in the PIO — the thirty codes would run out in the not too distant future, necessitating use of the PIO by landline carriers through the pooling administrator, which would convert the PIO into an all-services overlay.

**D. To Enable Use Of Phased-In Overlays The FCC Need Only Waive The Ten Digit Dialing Rule On A Temporary Basis**

A critical component of the phased-in overlay proposal is a *temporary* waiver of the Commission’s ten-digit dialing requirement. Pursuant to Section 1.3 of the FCC rules, the Commission may grant a waiver upon a showing of “good cause.” Good cause is demonstrated by special circumstances warranting a deviation from a general rule

where such deviation will serve the public interest.<sup>7</sup> A temporary waiver is justified because phased-in overlays will fill a critical gap in ensuring numbers are available for all carriers. The PIO proposal has definite triggers and stops, is designed to overcome the pitfalls associated with previous service-specific overlay proposals, and strikes a careful balance between conservation, competition and non-discriminatory access to crucial numbering resources. Non-pooling carriers will have equitable access to numbering resources, as required by the Commission's rules; and states may pursue pooling trials and other conservation initiatives, while meeting their obligations to the public and preserving competition.

In addition to the general waiver standard, the FCC has employed three factors specific to waiving the ten-digit dialing rule temporarily: (1) insufficient time to adjust telecommunications networks for the change to ten-digit dialing; (2) insufficient time to educate customers to the change in dialing patterns; and (3) conditions relating to geographic uniformity in the areas.<sup>8</sup> Both the customer education and geographic uniformity standards support waiting until all carriers are served out of the PIO before imposing the ten-digit dialing requirement. Notably, the proposal requires permissive ten-digit dialing once the first code is assigned from the new overlay code. This will enable carriers to begin the process of educating consumers and businesses about the new

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<sup>7</sup> *In the Matter of Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), Illinois Order*, CC Docket No. 96-98 (rel. March 2, 2000) at ¶ 6; *In the Matter of New York Department of Public Service Petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii), Order*, CC Docket No. 96-98 (rel. July 20, 1998) at ¶ 5; *In the Matter of Public Utility Commission of Texas Petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii) for Area Code Relief, Texas Order*, CC Docket No. 96-98 (rel. October 23, 1998) at ¶ 6.

<sup>8</sup> *Illinois Order* at ¶3; *Texas Order* at ¶7.

overlay code and thereby, minimize any confusion or disruption when mandatory ten-digit dialing is implemented.<sup>9</sup>

The Commission has stated that the purpose behind requiring ten-digit dialing with an overlay is to ensure that competition is not deterred (as a result of local dialing disparities).<sup>10</sup> Competition by and among wireless carriers is being threatened most today, however, by a shortage of available NXX codes. The dialing disparity will be minimized by the time limits incorporated within the PIO proposal. The underlying policy behind the ten-digit dialing rule, *i.e.*, the preservation of competition, is thus promoted by the PIO proposal.

Given the urgent need for numbering relief by non-pooling capable carriers, the FCC should provide a streamlined process to grant state commissions authority to utilize phased-in overlays in the interim period until the Commission establishes a rule. VZW urges the FCC to consider waiver requests for authority to implement a PIO prior to resolving all of the various issues raised in this NPRM.

**E. The Commission Must Be Willing To Order Relief If A State Abrogates Its Responsibility To Do So**

While the FCC has on multiple occasions reminded state commissions that they must provide area code relief for all carriers, including non-pooling capable carriers, wireless carriers are facing numbering shortages in states where landline carriers have

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<sup>9</sup> Under the Joint Wireless Commenters' proposal, the PIO would also become an all-services overlay once CMRS carriers are pooling capable. Sufficient time should be provided to facilitate effective customer education regarding the dialing change.

<sup>10</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996).

access to pooled numbers. Such disparity is placing wireless carriers at a clear competitive disadvantage which cannot be sanctioned by the FCC. If authorized, phased-in overlays will provide state commissions with another tool to meet their delegated obligation to ensure all carriers have access to numbers. While use of a phased-in overlay should be optional for states, compliance with the FCC's mandates should not. Consequently, the FCC must make clear to states that it will step in and order area code relief if a state chooses to forego all of the available relief tools (all-services overlays, geographic splits, phased-in overlays) when relief is necessary to meet the documented needs of carriers.

**II. THE FCC SHOULD ADOPT A “SAFETY VALVE” THAT WILL ALLOW CARRIERS TO OBTAIN NEEDED NUMBERING RESOURCES WHERE THEY ARE UNABLE TO MEET THE UTILIZATION THRESHOLD IN A GIVEN RATE CENTER**

Verizon Wireless has consistently supported the adoption of a safety valve in its advocacy before the FCC. In order to receive new numbering resources, carriers must be within six months until exhaust and must meet the prescribed fill rate of assigned numbers. Given the way the FCC has determined that fill rates must be calculated – in which only assigned numbers are treated as “unavailable” for assignment – carriers may be within six months of exhausting the numbers that are actually available to them, but still may not meet the fill rate. VZW has previously identified the problems associated with placing too much reliance on utilization thresholds for determining carriers' eligibility for growth codes.<sup>11</sup> VZW supported adoption of a single fixed utilization

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<sup>11</sup> See Verizon Wireless Comments in Response to Further Notice, CC Docket 99-200, filed May 19, 2000; See Verizon Wireless Petition for Clarification and Reconsideration, CC Docket No. 99-200, filed July 17, 2000.

threshold, to be uniformly applied in every rate center in every state, instead of fifty separate regimes. However, VZW also urged the Commission to enable some measure of flexibility through a safety valve. A safety valve would provide numbers to carriers with demonstrable needs, despite not having met the prescribed fill rate. For instance, a carrier's MTE worksheet and historical evidence may demonstrate that the carrier will need numbering resources before meeting the fill rate if, for example, the carrier assigned a block of numbers to a reseller. A safety valve also would solve the problem of securing adequate numbering resources for holidays or other seasonal demand periods (*e.g.*, national conventions, the Olympics, disaster relief) and for deploying new services.

Moreover, a safety valve would help mitigate the problem of how the fill rate is calculated. In some areas, the quantity of numbers supplied to resellers, who currently are not required to meet any fill rate under the FCC's rules, is significant. Under the *Second NRO Order*, these numbers will be treated as "intermediate" even though not controlled by VZW. Consequently, intermediate numbers have been "assigned" by VZW for all practical purposes. The inability to count these reseller numbers as assigned, plus the FCC's refusal thus far to count anything other than assigned numbers in the numerator of the fill rate ratio severely jeopardizes a carrier's ability to meet the fill rate despite high utilization rates of the numbers within its control.

The safety valve would work as follows: the carrier would delineate months-to-exhaust, and compare its FCC-calculated fill rate to a fill-rate of "unavailable" numbers. The latter would be calculated with assigned, aging and intermediate numbers in the numerator. By doing so, a carrier can demonstrate its true need for numbers to state regulators. State regulators will have the benefit of NRUF data to verify that numbers are

unavailable. If the carrier meets or exceeds the prescribed fill rate using this calculation, and shows actual demand for numbers (*e.g.*, reseller contracts), numbering resources would be provided.

### **III. THE FCC SHOULD NOT REQUIRE PAGING CARRIERS TO PARTICIPATE IN NUMBER POOLING**

The FCC also seeks comment on whether it would be appropriate to extend pooling requirements to non-LNP capable carriers such as paging carriers and carriers outside the largest 100 MSAs who have not received a request to deploy LNP from a competing carrier.<sup>12</sup> Verizon Wireless urges the Commission to maintain its present policy of exempting paging carriers from pooling requirements. Paging carriers are not technically capable of pooling. Any possible incremental conservation benefit from forcing the paging industry to gain this capability would be dwarfed by the costs and competitive impact on the paging industry.

For example, the lack of SS7 signaling functionality is a key barrier that paging carriers would need to overcome. Pooling requires a carrier to interconnect to other carriers using SS7 signaling. Historically, one-way paging companies have interconnected to other carriers and the public switched network using multi-frequency (MF) or dual-tone (DT) MF signaling. This signaling was used primarily because paging switches do not originate traffic and because many of the enhanced features (such as the CLASS features) available through SS7 signaling are not useful to paging customers. Because paging companies originate virtually no traffic, they have no business or technical need for SS7 functionality. To implement SS7 properly would

require significant switch upgrades or replacements. Moreover, for those paging providers that interconnect at the end office employing Type 1 numbers, SS7 capability is not even available. In order to convert existing Type 1 numbers to pooling, carriers would need to change existing customers' telephone numbers (resulting in undue burdens on paging customers).

While the costs to enable paging carriers to participate in pooling would be significant, the benefits would be marginal at best. Growth in the paging industry has slowed, so it is unlikely that numbering demands from the paging industry will significantly threaten the NANP. It is more likely that paging carriers will be able to meet most of their future demand out of existing number resources, and will otherwise need to meet stringent fill rate requirements to qualify for additional NXX codes.

The FCC would work further harm on this mature business – which is already faced with substantial challenges – if it imposes a costly and technically daunting pooling requirement on paging providers. Given all of the other available conservation tools, the FCC should refrain from extending the pooling obligation to paging carriers at this time.

#### **IV. THE FCC SHOULD NOT IMPOSE LIABILITY UPON RELATED CARRIERS**

In the Further Notice, the Commission tentatively concluded that carriers should, in certain instances, have numbering resources withheld when “related carriers” are subject to withholding for failure to comply with mandatory reporting requirements.<sup>13</sup> Verizon Wireless disagrees with the Commission’s tentative conclusion because imposing liability upon related carriers, however defined, would be unfair and unworkable.

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<sup>12</sup> *Second Further Notice* at ¶185.

There is no fair, administratively straightforward method for determining which carriers are “related” for purposes of such a policy. Moreover, any such policy would be inequitable because it would not apply to *non-carrier* affiliates of carriers that use numbering resources. Thus, through necessarily uneven enforcement, the FCC would penalize some classes of companies for noncompliance by related companies, but not others, introducing incentives for certain types of business arrangements over others.

The fulfillment of the Commission’s goals is achieved most effectively by the penalizing those directly responsible for improper management of numbering resources. The Commission should, therefore, apply any penalty for failure to submit required numbering information only to the noncompliant carrier itself, in the NPA and rate center to which the lack of information pertains, and for the particular category of service involved in the offense.<sup>14</sup> The FCC must give its new regulatory scheme time to work before prematurely adopting this type of measure.

Moreover, the Commission’s proposal is unworkable because it requires a “line drawing exercise” in order to decide which relationships should give rise to punishment and which should not. The FCC seeks 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 among

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<sup>13</sup> *Second Further Notice* at ¶ 150.

<sup>14</sup> The NRUF Form requires carriers to select of one of the following categories of service: “CAP or CLEC, Incumbent Local Exchange Carrier (ILEC), Interexchange Carrier (IXC), Other Local (Shared Tenant, Private Carriers), Local Reseller, Other Mobile Service Provider, Paging and Messaging, Satellite Service Providers, SMR Dispatch, Wireless Data Service Provider, Wireless Telephony (Cellular, PCS, SMR).” FCC Form 502, Company Information, SP Service Type, available at <[http://nanpa.planet.net/pdf/NRUF/web\\_NRUF\\_Form\\_502.xls](http://nanpa.planet.net/pdf/NRUF/web_NRUF_Form_502.xls)>.

related carriers.<sup>15</sup> As noted, there does not appear to be any fair, accurate, and administratively simple way to identify which carriers are “related” for determining the entities from which NANPA would withhold numbering resources automatically under such a scheme.

At a minimum, it would be necessary to ensure that companies are deemed “related” only when they are under substantially identical ownership and control, although there is no simple way to determine this particularly in light of the ever-changing ownership of telecommunications companies. This is an issue for wireless carriers because many wireless systems are owned by partnerships or joint ventures.<sup>16</sup> Indeed, the Commission’s proposal does not even suggest how to address the situation where related carriers are not wholly owned subsidiaries of the same company. For these reasons, the proposal to impose liability upon related carriers should not be adopted.

## **V. VERIZON WIRELESS OPPOSES THE SALE OF NUMBERING RESOURCES**

In Section H of the *Second Further Notice*, the Commission again seeks comment on various ways of using market forces to allocate numbering resources — *i.e.*, selling numbers. The Commission raised this issue in the initial *NPRM* and again in the *Further Notice*. Each time, the commenters clearly demonstrated that the Commission’s proposal

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<sup>15</sup> *Second Further Notice* at ¶ 150.

<sup>16</sup> For that very reason, the Commission’s plan to apply rate integration across CMRS affiliates was unworkable. *See Interstate Interexchange Marketplace*, CC Docket 96-61, *Order*, 12 FCC Rcd 15,739 (1997) (granting stay of CMRS rate integration across “affiliates” with 5% or greater common ownership, due to the fact that many major carriers have interests in systems owned jointly with other carriers, which would require all of the owning carriers to integrate rates with the jointly owned systems).

lacked any legal basis and was at odds with the efficient administration of a resource that is held in common for the benefit of the public. Nevertheless, the Commission has again posed the issue for comment. It should be rejected. As discussed below, the Commission can lawfully introduce economic incentives for number conservation that build on, and enhance, the existing numbering administration system, *without* establishing a legally unsupportable scheme.

The sale of numbering resources, and private ownership of those resources, must be rejected as fundamentally inconsistent with the concepts underlying the NANP. This plan is based on the principle that telephone numbers are a common public resource to be managed for the benefit of telecommunications users throughout North America.<sup>17</sup> Accordingly, long-established Commission policies governing the NANP within the United States are premised on the fact that numbering resources are not property that can be bought and sold.<sup>18</sup> Congress endorsed this principle in 1996, when it gave the

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<sup>17</sup> Industry guidelines reflect this understanding: “NANP resources, including those covered in these guidelines, are collectively managed by the North American Telecommunications industry with oversight of the North American regulatory authorities. The NANP is the basic numbering scheme for the public switched telecommunications networks in the nineteen countries that are participants in the North American Numbering Plan. . . . *The NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration.*” Alliance for Telecommunications Industry Solutions, Industry Numbering Committee, *Central Office (NXX) Code Guidelines*, INC 95-0407-008, at § 2.1 (Jan. 8, 2001) (emphasis added) (“CO Code Guidelines”).

<sup>18</sup> *FCC Policy Statement on Interconnection of Cellular Systems*, 59 Rad. Reg. (P&F) 2d 1275, 1284 (1986); *Administration of the North American Numbering Plan*, CC Docket 92-237, *Report and Order*, 11 FCC Rcd 2588, 2591 (1995) (*NANP Order*); see also *Administration of the North American Numbering Plan*, CC Docket 92-237, *Third Report and Order*, 12 FCC Rcd 23,040, at ¶ 4 (1997) (*Third NANP Order*).

Commission jurisdiction to oversee the administration of this public resource in Section 251(e) of the Communications Act.<sup>19</sup>

Consistent with the Congressional mandate, the numbering resource should be managed through a rational administrative process that, over time, matches the supply of numbers to demand through area code relief, elimination of artificial regulatory constraints on supply, and reasonable number conservation efforts. The sale of numbering resources at auction or otherwise will make it difficult or impossible to continue the administrative process that now exists.

As part of this administrative process, the Commission has taken many steps to improve the efficiency of number utilization, in this docket and elsewhere, for example, its policies concerning number pooling, area code relief, and auditing of number usage. The fundamental principle is that numbers are a public resource that cannot be bought and sold as private goods. If numbers are privately owned, there will be no basis for the thousands-block pooling requirement or any of the usage controls recently established in this proceeding. Moreover, Congress told the Commission to oversee the administration of the NANP, not sell it or auction numbers to the highest bidder. At bottom, the Commission's proposals are virtually guaranteed to degrade, not improve, both the availability of numbering resources and the efficiency of their usage in the NANP.<sup>20</sup>

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<sup>19</sup> 47 U.S.C. §251(e).

<sup>20</sup> In addition, the Commission's proposals are internally inconsistent, in that they would purportedly rely on "market forces" while at the same time would constrain those market forces through a combination of new regulatory mechanisms. The Commission should tread carefully in the area of creating new "markets" that cannot function effectively due to regulatory constraints. The recent experience with electric power "deregulation" in California should give regulators pause in this area.

## A. Commission Authority To Charge For Numbers

Nowhere in the Communications Act does Congress grant the FCC authority to charge for telephone numbers, either through regulatory fees or by auction. The Commission lacks authority to charge for numbers,<sup>21</sup> and there is no legal foundation for a coherent legal theory in the *Second Further Notice* to support the sale of numbers. Instead, the Commission seeks comment on whether it could be justified under the Commission's plenary authority over numbering, conferred by Section 251(e), or possibly Section 254's provisions concerning support of universal service.<sup>22</sup> These sections do not provide a legal basis for the sale of numbers.

### 1. Section 251(e) Provides No Basis For Selling Numbering Resources at Market-Based Prices

Section 251(e) gives the Commission jurisdiction over numbering *administration*, but does not give it authority to raise revenue by selling the number resource itself. Thus, the statute grants the Commission *regulatory* jurisdiction to oversee numbering, designate an impartial entity to administer numbering, and to establish a "competitively neutral" method for recovering the "cost of establishing telecommunications numbering administration arrangements."<sup>23</sup>

While Congress gave the Commission authority to regulate numbering and ensure that the cost of administration was covered, it did *not* either expressly or implicitly grant

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<sup>21</sup> See 47 U.S.C. § 251(e).

<sup>22</sup> 47 U.S.C. §§ 251(e), 254. See *Second Further Notice* at ¶¶ 158, 159.

<sup>23</sup> 47 U.S.C. § 251(e)(1)-(2).

the Commission authority to auction or sell number resources. The legislative history does not provide any support of the sale of numbers. Congress was not ambiguous about its intent. The Conference Report states only that:

[S]ection 251(e) clarifies the Commission's authority for numbering administration. The costs for numbering administration and number portability shall be borne by all providers on a competitively neutral basis.<sup>24</sup>

Likewise, the predecessor bills in the House and Senate provided only for FCC supervision of the administration of numbering by a neutral entity instead of by Bellcore and incumbent carriers.<sup>25</sup> Neither the Conference Report nor the House and Senate reports that went before it gave any indication that Congress: (1) viewed numbering resources as government property; (2) intended to grant the FCC ownership or proprietary control over these resources; or (3) intended to give the FCC authority to sell these resources. There is also no mention of such intentions in the Floor debates on the bills in the Congressional Record.

Even if the Commission's authority to recover costs under Section 251(e)(2) could be interpreted more broadly than merely covering the actual administrative costs,

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<sup>24</sup> H.R. Conf. Rep. 104-458 at 122 (Jan. 31, 1996).

<sup>25</sup> The House Bill contained language virtually identical to that in Section 251(e): Proposed Section 242(c)(2) stated, "The Commission shall designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States." H.R. 1555, 104th Cong., 1st Sess., § 101 (1995), in H.R. Rep. 104-204 (July 24, 1995). Under the Senate Bill, proposed Section 261(c)(1) provided, "A telecommunications carrier providing telephone exchange service shall comply with the guidelines, plan, or rules established by an impartial entity designated by the Commission for the administration of a nationwide neutral number system." S. 652, 104th Cong., 1st Sess. § 307 (1995), in S. Rep. 104-23 (Mar. 30, 1995).

the statutory language *cannot* be stretched to authorize charging a market-based price for numbers. This would be inconsistent with the express statutory mandate that the costs be recovered on a “competitively neutral” basis. In an NPA where numbers are in short supply, new entrants and rapidly growing competitors would have to bid against each other and pay a high price for numbers, while incumbent carriers would pay nothing for their established inventory of numbers. This result would clearly not be competitively neutral.<sup>26</sup>

**2. Section 254 Does Not Permit the Commission to Collect Market-Based Fees for Numbering Resources as a Source of Universal Service Funding**

The Commission asks for comment on whether its “authority under section 254 enables us to implement a market-based number allocation system as a means of funding universal service.”<sup>27</sup> Again, the Commission does not have such authority.

Section 254(d) requires that carriers contribute “on an equitable and nondiscriminatory basis.” Given this requirement, a carrier’s Section 254(d) contribution could not lawfully be based on the market value of the carrier’s numbering resources, because the value of such resources will vary from place to place, depending on the available supply of numbers and state of competition in the market. The number supply in any given NPA, in turn, will depend on the demand for telecommunications services in the NPA, the size and population of the NPA, whether the area is in jeopardy, whether the state

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<sup>26</sup> The Commission could not use Section 251(e)(2) as a basis for charging incumbents a market-based price for numbers already in their inventories, given that the incumbents do not need to be granted the numbering resources they have already been issued, and thus there is no application process generating costs that would need recovery.

commission has implemented area code relief in a timely manner, and other factors. Assessing carriers' universal support contributions based on market prices for numbering resources that vary arbitrarily from place to place plainly would not satisfy the statutory requirement of "equitable and nondiscriminatory" assessments.<sup>28</sup>

Moreover, as the Commission recognized, using the sale of numbers to support universal service presents "some inherent difficulties," because it would shift the support burden "from IXCs and wireless carriers to ILECs."<sup>29</sup> This is fatal to the Commission's reliance on Section 254(d). Section 254(d) requires contributions to universal service support only from telecommunications carriers "that provide[] interstate telecommunications service." It would be contrary to the Act for universal service to be supported by the sale of numbers, because numbering resources are principally used by providers of fixed or wireless local exchange service — ILECs, CLECs, and wireless carriers — and these providers may provide only a limited amount of interstate telecommunications service, if any. Interexchange carriers, who provide the greatest proportion of interstate telecommunications service, use few or no numbering resources directly in the provision of such services.

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<sup>27</sup> *Second Further Notice* at ¶ 159.

<sup>28</sup> For example, a given block of numbers in a market in the Los Angeles area, where there are very few numbers available, will command a vastly higher "market" price than the same block of numbers in an NPA with an abundance of numbers available, where numbers may carry little or no market value. As a result, carriers in NPAs with few available numbers would be assessed contributions based on an inflated price, while carriers in NPAs with no current number shortage would be assessed only a token contribution. As a result, local carriers in NPAs with the most severe numbering shortages would be responsible for most of the contributions to universal service support. Section 254 does not permit this.

<sup>29</sup> *Second Further Notice* at n.371.

As a result, if the Commission were to shift universal service support to users of numbering resources, it would eliminate support obligations from the very carriers that the statute subjects to those obligations. While the Commission admitted that using the sale of numbers to fund universal service support would cause such a shift; it actually is countermanded by the plain language of Section 254. Given that numbering resource usage has an *inverse* relationship with a carrier's likelihood of providing interstate service, this scheme is facially contrary to the statute.

**3. The Commission Lacks Any Other Authority to Sell Numbers Under Section 309(j) of the Communications Act**

Explicit statutory authorization is needed for the sale of numbers, because administrative and regulatory agencies are granted specified powers to *administer* and *regulate* their subject matter. Absent a specific delegation of authority from Congress to sell resources under its jurisdiction, the FCC cannot do so. For example, the Commission is able to auction radio spectrum only because Congress gave the Commission express authority to use competitive bidding in Section 309(j). Prior to the enactment of that section, the Commission had no authority to charge market value for spectrum licenses. Likewise, it has no authority to sell numbers now.

Section 309(j) provides no basis for proceeding with the sale of numbers, because its grant of authority to use competitive bidding expressly extends only to certain types of radio licenses. By providing narrowly cabined auction authority, Congress showed that it did not intend the Commission to be able to auction or otherwise sell all public resources under its jurisdiction. Without a specific statutory delegation of auction authority, the FCC has no power to sell numbering resources for whatever price the market will bear.

If Congress had intended the Commission to auction or otherwise sell numbering resources, it would have enacted specific legislation authorizing such sales. It has not done so. Instead, it gave the FCC authority to charge “regulatory fees” to cover the cost of regulatory responsibilities such as rulemaking and enforcement, pursuant to Section 9 of the Act,<sup>30</sup> and to recover the cost of number administration, pursuant to Section 251(e)(2).<sup>31</sup> Neither of these statutory provisions allows the Commission to charge users the “market value” of numbering resources; instead, as discussed above, the Commission may recover the cost of administration and no more.

Accordingly, Verizon Wireless submits that the Commission cannot “structure a market-based allocation system” for numbering resources “within the constraints of existing statutory authority.”<sup>32</sup> Instead, the “additional statutory authority that would be necessary”<sup>33</sup> consists of new legislation specifically authorizing the Commission to sell numbering resources and specifying the criteria governing such sales. Without such express Congressional action, the Commission cannot proceed with number sales.

**B. There Is No Need To Sell Numbers To Give Carriers Incentives For Efficient Number Usage**

Apart from the issue of legal authority, the proposal to sell numbers is inconsistent with all that the Commission has worked to achieve in the field of numbering administration. For example, it would make no sense to dictate number pooling if carri-

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<sup>30</sup> 47 U.S.C. § 159.

<sup>31</sup> 47 U.S.C. § 251(e)(2).

<sup>32</sup> *Second Further Notice* at ¶ 160.

ers could buy and sell numbers readily. Semi-annual reporting of utilization forecasts by thousand blocks and mandating that carriers reach a specified utilization threshold to qualify for more numbers are pointless policies if the Commission is going to allow carriers to buy and sell numbers at will. Considering a new approach might be appropriate if these numbering policies were ancient underbrush that may have outlived their usefulness after years of neglect. However, these policies are new; indeed, some of them were adopted in the very docket where the Commission is considering adoption of policies that are their antithesis. This is not reasoned decision-making.

To the extent the Commission believes that the current system of numbering administration does not provide carriers with sufficient incentives to engage in number conservation, it can introduce economic incentives into the existing system instead of instituting an entirely new scheme. For example, the establishment of a pooling cost allocation procedure provides the Commission with an opportunity to further the objective of greater reliance on economic forces to discipline number usage. Specifically, the Commission should consider incorporating in its cost allocation mechanism a standard related to a carrier's number usage. In the *Telephone Number Portability* proceeding, the Commission has acknowledged that "a cost allocator based on a carrier's number of active telephone numbers . . . would meet our competitive neutrality guidelines."<sup>34</sup> By incorporating number utilization into the cost allocation mechanism for pooling and local number portability, the Commission would give carriers a powerful

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<sup>33</sup> *Id.*

<sup>34</sup> *Telephone Number Portability*, CC Docket 95-116, *Fourth Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 16,459, ¶ 53 (1999), quoting *id.*, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8421-22 (1996).

economic incentive to use only such numbering resources as are economically justified. For example, carriers would think twice about occupying initial NXX codes or even thousands' blocks in rate centers where they have little or no business if their allocation of industry pooling and LNP costs increased with number usage. Likewise, carriers would have an incentive to seek growth codes only when they truly expect to be able to generate revenue from those numbers, if the number of codes they requested increased their proportionate share of LNP and pooling cost obligations.

The premise for the Commission's inconsistent pursuit of number sales is faulty. In the *Second Further Notice* the Commission said that it was proposing a scheme for the sale of numbers because of a belief that "the lack of efficiency in carrier utilization of numbers may be in part due to the failure of existing allocation rules to recognize the economic value of numbers."<sup>35</sup> VZW strongly disagrees with this premise. Numbers in the NANP have no *inherent* economic value, given that the supply of 10-digit valid numbers (about 5 billion)<sup>36</sup> vastly exceeds both the total demand for numbers and the total population of the NANP. The *perceived* economic value of numbers in the NANP is artificial, resulting from non-uniform, changeable regulatory allocation system that prevents numbers from being made available when needed.

Numbers are in short supply in given locations at given times because of regulatory policies and decisions that place a higher priority on values other than providing ef-

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<sup>35</sup> *Second Further Notice* at ¶ 161.

<sup>36</sup> There are 618 usable area code prefixes in the NANP, *see Numbering Resource Optimization*, CC Docket 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 at ¶ 6 (2000), and in each area code there are 792,000 valid numbers (the NXX code cannot contain a leading 1 or 0 or be an N11 combination), resulting in a total of 4.895 billion valid NPA-NXX-XXXX numbers.

efficient access to numbering resources. For example, shortages can occur when regulators delay area code relief, impose rationing, award numbers by lottery, preserve “protected” codes, decline to implement overlays, require service providers to draw numbers from each rate center it seeks to serve, and refuse to institute 10-digit dialing. A change in any one of these policies would lessen or eliminate the “shortage.”

In this regard, the Commission has taken an important step to eliminate the “shortage” caused by the entry of CLECs that want to provide service in many different rate centers. To do so, CLECs need NXX codes in each rate center, causing vast quantities of number resources to be set aside. The Commission addressed the ensuing shortage by instituting thousands number block pooling.

Policy changes such as pooling will affect the supply of numbers and the resulting value or price of numbering resources, if these resources can be bought and sold. The so-called “market price” of a unit of numbering resources at any given time in a given NPA depends not only on demand, but on the *supply* of available numbering resources at that location, which is dependent almost entirely on the regulatory policies in effect at the time. A change in policies could convert a shortage into a glut, causing, scarcity-induced, high prices to fall to nominal prices.

To counter the perceived disadvantages of a market system, the Commission is considering a variety of regulations to level the playing field, even if a “market” system for number sales is introduced. However, if this type of new regulation is adopted, prices will not be determined by market forces; prices will be determined by the regulatory schemes. The Commission will simply have substituted a new regulatory scheme for the old. As with any system that creates market distortions, some carriers may “game the

system,” and then the rules defining the “market” system will be changed again, causing further price distortions, and so on. Moreover, the new rules may not even have their intended effect, because the existence of a secondary market would either allow the designated beneficiaries of the rules to reap windfall profits or require yet another restraint on the operation of market forces.

Instead of “reinventing the wheel,” the Commission should improve the optimization regime it has already instituted. It has taken some giant steps, such as institution of pooling and an auditing program, to improve numbering administration as part of the current rulemaking. It should allow these policies to have their intended effect on the current administrative allotment system.

At the same time, the Commission should root out and eliminate artificial constraints caused by regulation on number supply. For example, if area code relief is implemented when needed and other obstacles to number supply are eliminated, then carriers will be able to obtain access to numbering resources through a simple, predictable and equitable administrative mechanism — *e.g.*, carriers would be able to obtain initial and growth codes based on their months-to-exhaust projections, utilization rates, and similar criteria. There would be no disadvantage imposed on new entrants, and no need for new regulatory mechanisms to counter such disadvantages. Moreover, carriers would have few incentives to stockpile numbers.

In addition, Verizon Wireless submits that the very questions asked by the Commission about how it should institute the sale of numbers illustrate just how contrary to the public interest — and how far from a free market — auctioning numbers would be. For example, the Commission has suggested that it might auction off all of the numbers

in all of the NPAs in the United States part of the NANP at once and then let the secondary market sort out number usage,<sup>37</sup> or it might dole out NPAs for auctions according to some sort of pre-planned exhaust of the NANP.<sup>38</sup> None of the alternatives would improve numbering utilization, but would result in prices being determined largely by governmental decisions on how to release numbering resources for auction, as the Commission itself admits.<sup>39</sup> And, again, these alternatives would negatively affect services, new entry, and competition.

The first alternative (effectively a massive, preemptive, nationwide area code relief plan) would apparently auction NPAs up front, in advance of need, thus ensuring that a given NPA-NXX can never be moved to a place of greater need. This would place an absolute cap on growth everywhere and prices would skyrocket where the allotment is inadequate in response to demand, while prices elsewhere will fall because the allotment is much larger than ultimate demand.

The alternative of a timed liquidation of NANP resources would result in a “market” subject to ongoing manipulation by regulators; pricing would be dependent entirely upon regulators’ decisions when and where to release new NPAs. The Commission also would have to decide which NPAs would receive additional numbers to be auctioned (*e.g.*, the Commission would have to choose between a new NPA in Idaho and Southern California), and how many numbers would go to which rate centers within an NPA.

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<sup>37</sup> See *Second Further Notice* at ¶ 165.

<sup>38</sup> *Id.* at ¶ 167.

<sup>39</sup> *Id.* at ¶ 165 & n.377 (“We also seek comment on how the supply of numbers to be auctioned in each geographic area would be determined. . . . The rate at which numbers are released for auction . . . , jointly with the demand for numbers, will determine the market price.”).

Regulatory agencies have only limited ability to forecast demand for numbering resources properly based on past experience. When they do so as part of a central governmental plan for the allotment of resources, the resulting plan cannot be characterized as “market-based.”

If, alternatively, number resources were auctioned on a first-come first-served basis, again the scheme would become regulatory, rather than market-oriented, and again service and the public would suffer. The Commission would have to establish rules to determine which requests were mutually exclusive in order to create packages of requests for number resources to place in the auction, then determine how many NXXs were going to be included in one auction — again placing the Commission in the middle of trying to determine the appropriate demand for numbers. In addition, the Commission would be required to hold multiple auctions, which could drive up transaction costs.

In short, no scheme for government auctioning of numbering resources would ultimately result in numbering decisions based on market forces. The allocation of numbers, and the prices for them, would still be determined principally by regulatory decisions. In sum, not only are number sales unlawful, they would not even accomplish the Commission’s objective.

## **VI. THE FCC SHOULD NOT ASSESS FEES FOR EXTENDED NUMBER RESERVATIONS**

The FCC should not assess fees to extend number reservations. The current reservation period should be sufficient to meet the needs of most customers that require extended periods in which to reserve numbers.<sup>40</sup> In the *Second NRO Order*, the FCC

extended the reservation period to a maximum of 180 days. If additional time is necessary, carriers should be allowed to make a showing to NANPA (through a safety valve process like that proposed by VZW in Section II of these comments) that a longer period is needed to meet a specific customer request. The FCC has also accounted for the needs of certain classes of consumers by establishing the intermittent or cyclical use provision. These actions should be adequate for the vast majority of number reservation scenarios.

The overarching goal of this proceeding is to conserve numbers through efficient use. A proper balance can be struck between the goal of conservation and a flexible reservation policy. The reservation rule should deter unnecessary reservations, but provide adequate flexibility to serve the legitimate needs of customers. The FCC should encourage carriers to view the 180-day reservation period as the maximum period that should be used sparingly, and should use a safety valve process for the rare occasions when longer periods are needed to serve the needs of a specific customer.

For the same reasons VZW opposes paying additional regulatory fees for numbers or auctioning them, VZW does not support fees for number reservations. If there is a documented customer need to reserve numbers for a reasonable period of time beyond 180 days, a carrier should not be charged a fee to serve its customer. Fees for reserving numbers would place a value on numbers and would imply ownership – making it difficult to reclaim numbers that consumers perceive that they own.

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<sup>40</sup> *Id.* at ¶ 114.

## **VII. ACCESS TO NANPA'S DATABASE OF MANDATORY REPORTING DATA SHOULD BE LIMITED**

The Commission has tentatively concluded that states should have password-protected access to mandatory reported data received by NANPA.<sup>41</sup> VZW opposes password-protected access to NANPA's database of NRUF data for the following reasons: (1) the measures already in place should prove sufficient to accommodate the states' needs for data to support area code relief decisions and number conservation initiatives without password-protected access; and (2) VZW has concerns over the integrity and security of the database where number utilization and forecast information is housed. The risk of unauthorized access increases exponentially with granting access to multiple outside parties to raw NRUF data. Password protection alone may not prevent breaches of security.

The FCC already has provided for states to receive NRUF data in electronic or paper versions directly from NANPA, and NANPA is required to provide customized reports to requesting states at reasonable rates.<sup>42</sup> Receiving the data from NANPA electronically would offer the same benefits as password-protected access for reviewing the data. NRUF data has just recently been reported for a second time. This reporting scheme should be given an opportunity to work, before broadening access to the NRUF database.

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<sup>41</sup> The FCC should clarify that states may only access that portion of NRUF data that pertains to their state. There is no justification for full access to carriers' utilization and forecast data from other states.

<sup>42</sup> *Second Further Notice* at ¶¶118-119.

If the FCC chooses to authorize password-protected access, the Commission must require that NANPA and states abide by specific procedures to protect the integrity and security of the data. For example, states should be required to: (1) designate particular staff member(s) responsible for accessing the NRUF database; (2) have specific procedures in place for reviewing or handling the data; (3) undergo training from NANPA about its database; and (4) use nondisclosure agreements in the absence of state commission rules or state statutory provisions penalizing breaches of confidentiality. NANPA should be required to provide the data in read-only format.

## **VIII. VERIZON WIRELESS OPPOSES WITHHOLDING NUMBERING RESOURCES**

The key to any comprehensive conservation scheme is the ability of carriers to receive additional numbering resources to meet the needs of their customers. There are already in place a number of requirements that threaten a carrier's ability to retain existing numbers and access additional numbers, including reclamation procedures and code application standards. There is no need at this time to add an additional penalty – particularly one as severe as withholding numbering resources – if a carrier is not in complete compliance with the FCC's regulations. Beyond the reclamation and code application hurdles, there are also significant enforcement penalties that the FCC can levy on non-complying carriers. The FCC should use the traditional enforcement procedures administered by the Enforcement Bureau for the purpose of withholding numbers or other penalty.<sup>43</sup>

If the Commission determines to sanction number withholding, the use of this penalty must be tightly restricted to the most serious violations of the rules (*e.g.*, only for willful and intentional non-compliance) and stringent standards and processes must be delineated to protect the due process rights of carriers. Not all possible violations of FCC numbering regulations are of equal magnitude. For example, failure to timely file NRUF data is not the same as intentionally declining to file despite clear requirements in the FCC's rules.

Withholding numbers essentially denies a carrier the ability to provide service to new customers. Consequently, the due process implications from withholding numbers are significant. The FCC is the only agency that should be able to wield this power over carriers, as the federal agency ultimately responsible for a carrier's authorization to provide telecommunications services. The FCC should not delegate any authority to withhold numbers, nor should it share authority with multiple states. Moreover, if a violation is found that is so serious as to potentially justify number withholding, carriers must be provided notice and an opportunity to cure the violation in a reasonable time period. The objective is compliance, not punishment, since preservation of the NANP is the overarching goal. No matter what type of penalty is imposed, the FCC must ensure that carriers' due process rights are adequately protected before any penalties are determined. Given the nature of withholding numbers, after-the-fact appeals will not correct an initial, erroneous deprivation.

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<sup>43</sup> State Commissions, under Section 208 of the Communications Act, may petition the FCC to bring a formal complaint against a carrier for alleged violations of FCC rules. 47 U.S.C. § 208.

**IX. THE FCC SHOULD NOT AUTHORIZE STATE COMMISSIONS TO CONDUCT “FOR CAUSE” OR “RANDOM” AUDITS**

The FCC has developed an audit program employing for-cause and random audits to be performed by auditors in the Accounting Safeguards Division of the Common Carrier Bureau and agents selected by the Common Carrier Bureau.<sup>44</sup> The FCC, stating that state commissions would benefit from having a role in auditing, queries whether states should be given authority to conduct independent audits, either in lieu of or in addition to the national audit program.<sup>45</sup> Verizon Wireless does not support independent state audits, whether in addition to or in lieu of federal audits. First, the nationwide, uniform process that the FCC adopted in the *Second NRO Order* for conducting random and for-cause audits is sufficient.<sup>46</sup> By employing both types of audits, the Commission has a mechanism for auditing carriers when justified by certain objective criteria that serves as a deterrent for non-compliance. The Commission declined to impose regularly scheduled audits partly because of the costs to the industry.<sup>47</sup> Allowing states to perform additional audits would drive up costs, while not serving any purpose not already met by the federal audit program: verifying accuracy of carrier NRUF reports, ensuring compliance with FCC rules for number conservation, promoting efficiency through deterrence, and identification of inefficiencies.

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<sup>44</sup> *Second Further Notice* at ¶¶ 90 & 155.

<sup>45</sup> *Id.* at ¶ 155.

<sup>46</sup> *Id.* at ¶¶ 81-88.

<sup>47</sup> *Id.* at ¶ 85.

Verizon Wireless is a nationwide carrier and is concerned not only about the sheer volume of audits that would result from states being given independent authority to perform audits, but also about the varying standards used by different states to perform and evaluate those audits, even using the federal processes. The FCC correctly prevented carriers from having to comply with differing demands in multiple states by adopting a national framework and by declining to delegate authority to states to perform audits under the national program. As suggested in the *Second NRO Order*, states that have the staff and resources can opt to participate with FCC-led audits of the NPAs or rate centers in their state.

### **CONCLUSION**

For the foregoing reasons, the FCC should authorize the use of phased-in overlays, as proposed by the Joint Wireless Commenters, with the conditions that there be no take-back of numbers, that PIOs be deployed alongside pooling, and that PIOs be transitioned into all-services overlays. To ensure that its utilization rules do not inhibit assignment of numbers when truly needed to meet customer demand, the FCC should authorize a safety valve process as part of its fill rate regime.

Before imposing any more regulatory requirements (such as charging for numbers, imposing liability on related carriers, withholding numbering resources, authorizing states to conduct audits, or requiring paging carriers to pool), the FCC should give its new conservation/utilization regime time to work. As discussed above, there is an important balance that must be maintained between conserving numbers and providing numbers to eligible carriers. If the pendulum swings too far, and carriers with legitimate numbering needs are denied access to numbers, competition, and ultimately customers,

will suffer. The FCC should wait at least until a few more rounds of NRUF data are filed before imposing any additional regulatory burdens on the competitive telecommunications industry.

Respectfully submitted,

**VERIZON WIRELESS**

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February 14, 2001