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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary,  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: In the Matter of Numbering Resource Optimization  
CC Docket No. 99-200 /

Dear Ms. Salas:

Enclosed please find an original and four copies of the Comments of SBC Communications in the above-entitled docket. Included also is a diskette for Carmel Weathers as directed in the Second Further Notice of Proposed Rulemaking. Please return to us a date-stamped copy of this document in the envelope provided.

Thank you for your assistance. If you have any questions regarding this document, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William A. Brown", written in a cursive style.

William A. Brown,  
Senior Counsel

Attachments

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List A B C D E



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## SUMMARY

As part of a continuing effort to optimize numbering resources, the Commission has sought comments on various related topics. Some of these topics, such as enforcement and audits, explore ways of bolstering newly enacted numbering resource optimization mechanisms; others, such as the market-based approach, depart radically from those mechanisms. By means of these Comments, SBC adds its thoughts to this dialogue.

In its Comments, SBC continues its support for all-services overlays and opposes consideration of permanent, technology-specific overlays. At the heart of SBC's opposition to technology-specific overlays is SBC's belief that they accelerate, rather than retard, exhaustion of the NANP. SBC proposes a transitional overlay mechanism to address the needs for more immediate numbering relief.

In the discussion of rate-center consolidation, SBC opposes further rate-center consolidation because the Commission's six-months-to-exhaust requirement and its utilization threshold *at the rate-center level* prevent SBC from obtaining much needed numbering resources. Coupling these numbering resource optimization rules with rate-center consolidation imposes a disproportionate burden on ILECs and violates the section 251(e) obligation to distribute numbering resources impartially. SBC continues to advocate the application of MTE and utilization thresholds at the lowest code assignment point, which would be fair to all carriers regardless of network architecture.

SBC opposes withholding numbering resources from carriers when related (sibling) carriers fail to comply with the Commission's mandatory reporting requirements. This proposal violates core values of American jurisprudence and violates the Commission's authority under the Act, in general, and under section 251, in particular.

SBC can support state-commission access to mandatorily reported data, as long as measures are taken to guarantee that state "freedom of information" or "open records" laws do not lead to intentional or inadvertent disclosure of confidential information.

In spite of its support for the NANC proposal to allow subscribers to reserve numbers for up to 12 months, with a six-month extension, SBC must oppose any proposal to have subscribers pay a fee for number reservation. The Commission's present utilization calculation methodology jeopardizes SBC's ability to obtain needed numbering resources. SBC does not want to charge its subscribers for number reservation only to withdrawal it in order to obtain numbering resources later.

The case has not been made that the penalty options available to the Commission are inadequate to address the enforcement of the Commission's numbering resource optimization schemes. SBC cannot support the Commission's request to deny numbering resources for violations of the Commission's numbering requirements.

The Commission should not delegate authority to state commissions to conduct "for cause" or "at random" audits under the federal scheme. SBC does not oppose state-commission participation in federally conducted audits.

SBC opposes the Commission's efforts to develop a market-based approach for optimizing numbering resources. Quite simply, the Act, including section 251(e), does not grant the Commission the needed authority to adopt this approach. What's more, there are other considerations that militate against this approach. Chief among these is the fact the Commission has only just adopted other numbering optimization schemes, and these schemes have not yet been given a chance to work. SBC supports letting these alternative mechanisms, subject to certain adjustments, work before radical changes are considered.

As directed, SBC is tendering specific cost data on recoverable-shared industry and direct carrier-specific costs of thousands-block number pooling under separate cover. In light of the magnitude of these costs, SBC suggest a temporary adjustment to the LNP end-user surcharge.

Finally, SBC recommends a simple, expeditious, and verifiable-by-audit "safety valve" mechanism to replace the present waiver process for most extraordinary growth numbering resource needs. This safety-valve mechanism involves meeting a slightly lower threshold as a prerequisite, as well as a self-certification procedure and a record retention obligation. As this

issue is critical to meeting the needs of customers in the market place, SBC requests that the Commission resolve this matter on an expedited and, if necessary, stand-alone basis.



November 2002. If a TSO were implemented under the permanent plan advocated by some state commissions, even after deployment of wireless LNP, wireless and wireline subscribers would not be able to port numbers between the two services because of the segregation imposed by the TSO. In short, there would be no wireline numbers allowed in the wireless-only NPA, and no wireless numbers allowed in the de facto wireline-only NPA. This would negate the premise behind requiring LNP — to allow all subscribers to change their service provider and be able to retain their telephone number.

In addition to considering acceleration of NANP exhaustion, the Commission should evaluate whether permanent TSOs are lawful. The Commission has considered and rejected permanent TSOs in the past because it has specifically determined that TSOs were unreasonably discriminatory and TSOs would impose significant competitive disadvantages on the wireless carriers, while giving certain advantages to wireline carriers.<sup>4</sup> Nevertheless, as SBC has previously pointed out to the Commission, so-called permanent TSOs cannot be permanent because the Commission has ruled that wireless carriers must deploy LNP by November 2002. The Commission has determined that the wireless industry must also participate in thousands-block number pooling coincident with the implementation of LNP in November 2002.<sup>5</sup> Because of wireless LNP and thousands-block number pooling, wireline numbers will be integrated into the technology specific NPA. Once this occurs, TSOs become all-services overlays.

As the Commission is aware, SBC has promoted the use of all-service overlays in addressing NPA number exhaustion. Some state commissions, however, have opposed all-service overlays for various reasons, most notably the use of ten-digit local dialing. Many of these same state commissions who oppose the use of all-services overlays because of the mandatory ten-digit local dialing rule support the TSO concept. Yet, their support for TSOs is

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<sup>4</sup> *In re: Numbering Resource Optimization*, CC Docket 99-200, *Notice of Proposed Rulemaking*, FCC 99-122, ¶ 256 (rel. June 2, 1999).

<sup>5</sup> *Second Report & Order*, ¶ 51.

inconsistent with their opposition to all-service overlays and ten-digit local dialing because TSOs are overlays and are subject to the Commission's ten-digit local dialing rule. The ten-digit local dialing rule applies to any form of an overlay, all-services or technology-specific overlays. SBC believes that some advocates of permanent TSOs have not taken into account the impact of the wireless LNP mandate or the ten-digit local dialing requirement for all types of overlays.

Transitional overlays (TNOs), as proposed in SBC's November 19, 1999 *ex parte*, differ dramatically from permanent TSOs. TNOs are simply a temporary relief option needed in an exhausting NPA. TNOs only exist for a specific, transitional period of time for non-LNP providers — for wireless providers this would be no longer than November 2002 or when the existing NPA runs out of thousand blocks or full codes for wireline providers, whichever comes first. While SBC supports the implementation of mandatory ten-digit local dialing, SBC recommends that, when implementing a TNO, the state commission be allowed, at its discretion, to continue seven-digit local dialing within the affected NPAs until such time as the TNO becomes an all-services overlay.<sup>6</sup> Under this scheme, subscribers would have time to prepare for the change in dialing pattern associated with overlays, and service providers would obtain immediate numbering relief. SBC recommends TNOs to strike a balance between needed area code relief, optimal use of the NPA resource, the needs of telecommunications subscribers, and the negative perception of ten-digit local dialing by some state commissions.

## **B. The Rate Center Problem**

SBC has long been an advocate of rate-center consolidation. SBC local exchange carriers (LECs) have already consolidated rate centers in Texas and Missouri and have identified possible rate-center consolidation in Indiana. Yet, SBC contends that across-the-board rate-center consolidation will require significant additional study and discussion by and among state

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<sup>6</sup> Succinctly, calls made within each NPA — the original and the TNO — would use seven-digit dialing but calls between them — from the original NPA to the TNO and vice versa — would need ten-digit dialing.

commissions and the industry before any judgments can be made about its feasibility. Nevertheless, as long as the six-months-to-exhaust (MTE) requirement and utilization thresholds are maintained *at the rate-center level*, SBC can no longer support rate-center consolidation in any of its serving regions.

A rate center is a geographic area that is used to rate calls to or from subscribers in that area by distance for billing purposes. All service providers use this information for billing and inter-company settlements. Carriers use rate centers to determine local calling scopes and to establish local rates on the attributes of the local calling scope plan. A rate center may encompass the area served by one or more central-office switches. In metropolitan areas, incumbent local exchange carriers (ILECs) generally have more than one switch serving a single rate center. Competitive local exchange carriers (CLECs) usually mirror the ILEC's rate centers.

The benefits of rate-center consolidation are primarily prospective. After rate centers are consolidated, only a few of the previously assigned NXXs are likely to be returned to the NANPA because most of the assigned NXXs will have working number assignments and, therefore, cannot be returned. The chief benefits of rate-center consolidation are realized with the potential reduction in future demand for NXXs within the rate center.

Given their importance to billing, rate centers should not be consolidated unless certain conditions can be met. For example, any consolidation should be contained within the same company and retain existing local calling scopes. Moreover, there should be no rate-center consolidation without revenue neutrality; that is, carriers should neither gain nor lose revenue on account of it. The Commission should also consider the potential impacts to 911 service providers and the Public Safety Answering Points, which may require new trunking arrangements.<sup>7</sup> Rate-center consolidation may need to be limited to an area no larger than an

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<sup>7</sup> The impact of rate-center consolidation might include the incorrect assignment of Emergency Service Numbers (ESNs) used in routing 911 calls to the PSAPs. SBC's exchanges are mapped to specific PSAPs. The national selective routing software logic used by most if not all carriers resolves potential ESN assignment conflicts by looking at the exchange name associated with a customer's telephone account. If a rate center is increased to include streets with the same name

NPA or the NPA boundaries serving an overlay because consolidation beyond these boundaries will lead to customer confusion regarding which calls are local and which are toll.<sup>8</sup>

Another troubling aspect of rate-center consolidation is the possibility of splitting rate centers with an area code split. Some state commissions have consolidated rate centers and then later chosen to provide NPA relief by dividing the original NPA into two separate NPAs. If state commissions “split” the now consolidated rate center between the two NPAs, they reduce the benefits of rate-center consolidation. When rate centers are split, all service providers must obtain numbering resources from both NPAs serving the rate center sides in order to comply with the split boundary and to avoid complete ten-digit telephone number changes to their subscribers. The North American Numbering Council (NANC) made the Commission aware of this problem in two separate letters.<sup>9</sup> If the Commission adopts a policy of encouraging rate-center consolidation in the name of number optimization, then it must also adopt rules that discourage or prohibit state commissions from splitting rate centers.

Aside from these considerations, SBC is concerned about the Commission’s Numbering Resource Optimization rules,<sup>10</sup> which require allocating growth NXXs only if a carrier meets a MTE requirement and a utilization threshold *at the rate-center level*, rather than at the switch

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(e.g., Main Street) in different exchanges, the software will typically assign the ESN routing based on alphabetical order. In other words if you have Main street in the Appleton exchange and the Clinton exchange and both reside in the Outagamie Rate Center, the national selective routing software will assign the ESN number serving Appleton's Main street to the Clinton Main Street customers. This will misdirect their 911 calls to the wrong public safety answering point. Although the National Emergency Number Association (NENA) is attempting to address this issue, they have yet to resolve it. Thus, rate-center consolidation can impact 911 call routing.

<sup>8</sup> Rate center consolidation involving multiple NPAs would, in theory, allow numbers from any of the impacted NPAs to be assigned anywhere in the rate center. Thus, calls to different NPAs would no longer be distinguishable by the public to be local or toll.

<sup>9</sup> See August 26, 1999, letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to Chief, Common Carrier Bureau; and November 16, 1999, letter from John Hoffman, NANC Chair, to Chief, Common Carrier Bureau.

<sup>10</sup> 47 C.F.R. § 52.15(g)(3)(iii) and (iv).

level. SBC has consistently recommended to the Commission that any such utilization threshold must be set at the lowest code assignment point (LCAP) if the needs of all providers are to be met in a fair, equal, and non-discriminatory basis.<sup>11</sup>

As stated in SBC's prior comments, numbering resources are assigned and used by carriers in different ways based upon network architecture and design. Setting a threshold at a single level for all providers, as the Commission has with the rate-center level requirement, ignores the reality of carriers' networks and places an undue and discriminatory requirement on ILECs. In making its recommendation regarding LCAP,<sup>12</sup> SBC attempted to balance the need to optimize the use of numbering resources with the subscribers' needs for numbers from their carrier of choice and the need of all carriers to work with their existing network architecture. The LCAP is the lowest point at which a carrier assigns resources in an area and it accurately reflects the requesting carrier's actual need and use for additional numbering resources. Because the Commission's MTE and utilization threshold requirements are set at a rate-center level, SBC could be denied numbering resources to serve the legitimate needs of its subscribers.

The Dallas, Texas rate-center consolidation is an example of how rate-center consolidation and the Commission's requirement to impose the MTE/utilization thresholds *at the rate-center level* can jeopardize a carrier's ability to obtain numbering resources to serve the legitimate needs of its subscribers. In 1998, the Dallas rate center was served by approximately 22 individual switches. Southwestern Bell Telephone Company (SWBT) voluntarily agreed to consolidate 14 rate centers with the existing Dallas rate center.<sup>13</sup> After that rate center consolidation, there were 36 switches in the rate center. SWBT's ability to meet both the

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<sup>11</sup> Comments of SBC Communications Inc., CC Docket No. 99-200, pp. 7, 53, 65 (July 30, 1999). SBC *ex parte*, October 16, 2000. SBC will be filing a petition for reconsideration urging the Commission to reconsider this matter. (*SBC Comments*)

<sup>12</sup> *SBC Comments*, p. 54.

<sup>13</sup> All of these 14 rate centers were served by single switches.

utilization and the MTE requirement in these consolidated rate centers has been significantly harmed as a result of consolidation since the new rate-center configuration now has 36 switches included in the utilization and MTE computation rather than one switch in the pre-consolidation rate center. Before consolidation, these single switch rate centers calculated utilization and MTE at both the switch and the rate center levels since the serving area of the switch and the rate centers were identical. After consolidation, the serving area of the switch and the consolidated rate center are significantly different making a utilization and MTE threshold unattainable in these areas. Because of this inequitable result, SBC cannot support a policy of encouraging rate center consolidation.

As the Commission as repeatedly stated, under no circumstances should subscribers be in a position where they are denied services from their carrier of choice.<sup>14</sup> Without adequate assurance that SBC will continue to have access to sufficient numbering resources, it cannot support the further consolidation of its rate centers. Unless and until the Commission modifies its rules on MTE and utilization thresholds at the rate-center level, the Commission should not adopt any requirement to further consolidation rate centers.

### **C. Liability Of Related Carriers**

The Commission has stated that it believes that “parent companies should play an active role in number conservation efforts, even if parent companies are not themselves, [sic] reporting carriers.”<sup>15</sup> Because of this belief the Commission has asked for comments on whether “carriers should, in certain instances, have numbering resources withheld when related carriers are subject to withholding for failure to comply with [the Commission’s] mandatory reporting requirements.”<sup>16</sup> SBC opposes this proposal on the grounds that it would violate basic tenets of

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<sup>14</sup>*Second Report & Order*, ¶ 61.

<sup>15</sup> *Id.*, ¶ 150.

<sup>16</sup> *Id.*

American jurisprudence, would be beyond the Commission's authority, and would violate the Commission's obligations under section 251(e) of the Act.

Boiled down, the Commission seeks to hold a compliant carrier responsible for the failure of its sister carrier to comply with the Commission's reporting requirements because the parent corporation of both may have failed to meet some vague standard of encouraging compliance — a standard the Commission has not mandated and cannot mandate. This proposal — no matter how well intended — violates core principles of American jurisprudence. This proposal violates the principles of fair play and equity, as well as legal mandates of corporate law.

Corporations, while not natural persons, are treated in law as having many of the attributes of persons.<sup>17</sup> They are creatures of the law and, as such, they have the rights and privileges that the laws creating them have bestowed on them.<sup>18</sup> Among these rights is that of limited liability.<sup>19</sup> At the core of limited liability is the concept of separateness. The corporation is an artificial person “distinct and separate from its stockholders.”<sup>20</sup> Likewise, in the parent-subsidiary relationship, the parent and the siblings are each distinct and separate from each other. While limited liability and the separateness of corporations may be disregarded under certain circumstances — normally to prevent fraud or other rank injustice — it is still rare and exceptional for a court to do so, and the complaining party has a high burden of proof in showing itself entitled to such extraordinary relief.<sup>21</sup> The Commission's proposal does not even begin to

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<sup>17</sup> FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 7 p. 445 (Permanent Ed. 1990 revised volume) (*Fletcher*).

<sup>18</sup> It is also clear that corporations enjoy rights and privileges above and beyond those granted by legislative fiat. These include federal constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments. See *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n14 (1978).

<sup>19</sup> *Fletcher* § 5 p. 441.

<sup>20</sup> *Id.* § 7 p. 445.

<sup>21</sup> *Fletcher* § 41.2.

satisfy the requirements necessary to disregard the separateness between parent and sibling, much less to disregard the separateness among sibling corporations.

Even in the regulatory arena, the Commission must honor this separateness. The Commission lacks authority to require non-carrier, parent corporations to take any actions with respect to their subsidiary carrier's obligations to comply with numbering reporting requirements. Here, the Commission is not even seeking to impose a specific requirement; rather it seeks to have parent corporations encouraging, monitoring, and offering incentives for compliance without the bother of enacting rules setting out what is actually required. The Commission knows that it is not authorized to regulate non-carriers under the Act and, therefore, that it cannot enact such rules. The Commission hopes to bypass this limitation on its authority by disregarding corporate separateness and punishing sibling, compliant carriers for the alleged failings of the parent. This the Commission cannot do.

It should be enough that the concept — holding a compliant carrier liable for the failures of a separate, non-compliant carrier — is wholly inappropriate, but there is also a matter of authority. There is nothing in the Act that authorizes the Commission to fine or otherwise penalize one carrier because another carrier, albeit a corporate sibling, violated the Act or a Commission rule, even if the violation allegedly springs from the corporate parent's failure to adequately encourage compliance. The Commission will have to be satisfied with employing the arsenal of remedies it already has on the offending carrier. SBC is confident that, properly applied, these remedies will themselves promote the Commission's goal of having parent corporations encourage subsidiary compliance.

Section 251(e) also stands in the way of this proposal. Under this section the Commission is obligated to create or designate an impartial entity "to administer telecommunications numbering and to make such numbers available *on an equitable basis*."<sup>22</sup>

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<sup>22</sup> 47 U.S.C. § 251(e)(emphasis added). SBC understands that the term "equitable" as used in this section means "fair, just, and impartial."

By enacting a proposal under which a compliant carrier is denied numbering resources, the Commission would be preventing the numbering administrator from making those numbers available on an equitable basis.

#### **D. State Commissions' Access To Mandatory Reporting Data**

In the abstract, SBC has no objections to state-commission access to mandatorily reported data received by the NANPA; however, SBC notes that many state commissions have obligations arising under state "freedom of information" or "open record" laws. Insofar as reported data is proprietary and confidential, such laws could circumvent the protections presently provided reporting carriers. SBC can only support such access if carriers are guaranteed that such data is not disclosed by virtue of such laws or by virtue of the state commissions' inadvertently failing to take advantage of protections provided such data under those laws. The Commission should act to preempt the applicability of such laws to any data retrieved by state commissions pursuant to any scheme approved by either the Commission or the NANPA.

#### **E. Fee For Number Reservations**

SBC is encouraged to see the Commission is mindful of the unique cyclical numbering requirements that exist with Centrex subscribers on a day-to-day basis. Centrex subscribers, large and small, are constantly adding and removing numbers within their common block in order to meet the ever-changing needs of their businesses. Just as SBC's ILECs age<sup>23</sup> residence and single-line, business-customer numbers, Centrex subscribers will ask that a disconnected number be aged within their common block in order to avoid misdirected calls upon reactivation. Likewise, Centrex systems are built upon a common block containing a range of numbers that not only handles the day-to-day cyclical activity but also takes into consideration the need for expansion. Based upon cyclical and growth needs, Centrex subscribers will request that SBC

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<sup>23</sup> To "age" a telephone number is to hold a telephone number, which has been disconnected for any reason, for a period of time before re-assigning it to another end-user customer.

build a common block made up of both active and reserved numbers assigned to their specific Centrex.

Recognizing the balance between the needs of Centrex subscribers and the need to extend the life of the NANP, SBC was a strong proponent of the initial NANC recommendation that reserved numbers be allowed for 12 months with a possible six-month extension. The NANC acknowledged the need for subscribers to maintain a block of numbers indefinitely in order to handle the cyclical, day-to-day telephone number additions and removals resident in any business. Nevertheless, under the utilization rules adopted within the *First Report & Order*<sup>24</sup> and reaffirmed in the *Second Report & Order*,<sup>25</sup> SBC is forced to curtail, if not eliminate, the reservation of telephone numbers on behalf of its subscribers.

As correctly noted in the *Second Report & Order*, when a subscriber reserves a block of telephone numbers, SBC places the reserved numbers within the subscriber's common block. Once in the common block, they are assigned to the subscriber and may not be reassigned unless physically removed. Although these reserved numbers are truly assigned to a particular subscriber at its request and unavailable for reassignment to another subscriber, from a utilization perspective, SBC must treat them as if they are available. As utilization thresholds increase from 60% to 75% over three years, SBC will be forced to curtail, if not eliminate, its offering of reserve numbers altogether. After recommending extending number reservation periods, the NANC later recommended charging for number reservation as a disincentive to subscribers. SBC opposes that recommendation because it does not want to offer a service for a fee only to withdraw the service from its subscribers when SBC is unable to meet prescribed telephone

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<sup>24</sup> *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, FCC 00-104 (rel. March 31, 2000) (*First Report & Order*).

<sup>25</sup> *Second Report & Order*, ¶¶ 25-26.

number utilization thresholds in a particular area.<sup>26</sup> Therefore, unless the way in which carriers calculate utilization is changed, SBC must oppose the NANC recommendations for extending telephone number reservations beyond 180 days for a fee.

#### **F. Enforcement**

SBC shares the Commission's concerns about the enforcement of its numbering requirements and audit obligations. SBC can understand, without agreeing, why the Commission might want to deny carriers who fail to cooperate in the audit process "numbering resources in certain instances." SBC does not agree, however, that the Commission should deny numbering resources for violations of the Commission's other numbering requirements. Whatever enforcement tools the Commission decides to employ must be consistent with the Commission's authority under the Act, including its obligation to see that numbering resources are made available on an equitable basis,<sup>27</sup> and with the Commission's own principle that customers should not be denied service from their carrier of choice. SBC contends that the case has not been made that the penalty options already available to the Commission are insufficient to promote compliance or to punish noncompliance.

#### **G. State Commissions' Authority To Conduct "For Cause" And "Random" Audits**

SBC believes that the Commission should not delegate authority to state commissions to conduct "for cause" and "random" audits under the Commission's regime. Carriers may be subject to both federal and state audits; however, there ought to be only one party charged with conducting audits per jurisdiction. In no case should state commissions be conducting such federal audits *in addition to* any such audits conducted by the Commission or its appointed representative. While audits are valuable enforcement tools, they are also time consuming, resource diverting, and costly. Allowing state commissions to conduct federal audits in addition

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<sup>26</sup> SBC also questions whether the Commission can lawfully require LECs to charge for telephone numbers, including numbers held in reserve for a specific subscriber at its request.

<sup>27</sup> 47 U.S.C. § 251(e).

to or in lieu of federal audits being conducted by the Commission or its appointed representative will exposed audited parties to inconsistent standards and unnecessary expense. SBC does not object to state commissions participating in audits conducted by the Commission, if they so desire.

## **H. Developing Market-Based Approaches For Optimizing Numbering Resources**

### **1. The Commission has no authority to charge for numbers.**

In proposing to implement a system of competitive bidding for numbering resources, the Commission has identified no source of statutory authority for such an unprecedented action. Instead, the Commission has sought comment “on whether the Commission has the requisite authority,” and asked the parties to address in particular the significance of the Commission’s exclusive authority over numbering, as set forth in 47 U.S.C. § 251(e).<sup>28</sup> The short answer to the Commission’s question is that, without a specific grant of authority from Congress, the Commission may not institute a charge for numbering resources other than the charges specifically authorized in section 251(e)(2). The fact that section 251(e)(1) grants the FCC “exclusive jurisdiction” over the North American Numbering Plan (“NANP”) does not imply any such power: “an agency is not free to add extra licensing procedures and then charge a user fee merely because the agency has general authority to regulate in a particular area.”<sup>29</sup> Accordingly, the Commission’s proposed competitive bidding system would exceed the agency’s authority under law.

Indeed, the only provision of the Communications Act that *does* authorize a competitive bidding procedure — section 309(j) — demonstrates that where Congress has intended to authorize the Commission to institute a competitive bidding procedure, it has done so in great detail. To read a general power to regulate as a power to exact the types of payments at issue

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<sup>28</sup> *Second Report & Order*, ¶ 158.

<sup>29</sup> *Seafarers Int’l Union v. United States Coast Guard*, 81 F.3d 179, 186 (D.C. Cir. 1996).

here would raise serious constitutional concerns and would run directly contrary to binding Supreme Court authority. Therefore, in the absence of an explicit congressional authorization to impose charges for numbers, the Commission may not impose such charges at all.

**a. Section 251(e) does not authorize the Commission to impose charges for numbers.**

The law makes clear that an administrative agency may impose charges on regulated entities only in circumstances where Congress has clearly delegated that authority. As the Third Circuit put it in a somewhat different context, courts “will not presume Congress to have intended a statute to create the dramatic and unusual effect of requiring regulated parties to pay a large share of the administrative costs incurred by the overseeing agency unless the statutory language clearly and explicitly requires that result.”<sup>30</sup>

Section 251(e) does not provide the authority to institute a system of competitive bidding for numbers. To be sure, section 251(e)(1) provides that the Commission “shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”<sup>31</sup> But the fact that Commission jurisdiction is *exclusive* says nothing about the *extent* of its regulatory powers. That is, although Congress has made clear that the States may *not* regulate numbering administration — except to the extent the Commission delegates that authority — this does not mean that the Commission has unlimited power to act in this area. As the D.C. Circuit has held, an agency does not “possess[] *plenary* authority to act within a given area simply because Congress has endowed it with some authority to act in that area.”<sup>32</sup>

Rather, the Commission’s powers with respect to numbering are delineated in the statute. Specifically, the Commission has the power

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<sup>30</sup> *United States v. Rohm & Haas Co.*, 2 F.3d 1265, 1274 (3d Cir. 1993).

<sup>31</sup> 47 U.S.C. § 251(e)(5).

<sup>32</sup> *Comsat Corp. v. FCC*, 114 F.3d 223, 227 (D.C. Cir. 1997) (internal quotation marks omitted). The heading of subsection 251(e), which refers to “authority” and to “jurisdiction,” emphasizes this distinction.

- to create or to designate a numbering administrator;
- to ensure that the numbering administrator will make numbers available on an equitable basis;
- to delegate some of the foregoing authority to the states; and
- to determine the method for recovery of costs of numbering administration (and local number portability) within the parameters established by Congress in section 251(e)(2).<sup>33</sup>

None of these affirmative grants of delegated authority can even arguably be read to authorize the Commission to institute a system of competitive bidding for numbers. To the contrary, section 251(e)(2) provides specifically that “[t]he cost of establishing telecommunications numbering administration arrangements . . . shall be borne by *all telecommunications carriers* on a competitively neutral basis as determined by the Commission.”<sup>34</sup> The Commission has implemented that provision in section 52.17 of its rules, which provides for contributions based on carriers’ end-user telecommunications revenues, a system that is competitively neutral.<sup>35</sup> The Commission may not adopt a new system of competitive bidding for number assignments to fund numbering administration arrangements, because such a system would not be competitively neutral. Rather, the system would impose the greatest burden on those carriers with a need for additional numbering resources, and the lightest burden (or no burden) on carriers with a limited need for such numbers (or without any need for additional numbers). For this reason, a system of competitive bidding for numbers would conflict with the statutory command of section 251(e)(2).

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<sup>33</sup> See 47 U.S.C. §251(e).

<sup>34</sup> 47 U.S.C. § 251(e)(2).

<sup>35</sup> 47 C.F.R. § 52.17.

Nor can the general duty to ensure that that the numbering administrator makes numbers available on an equitable basis justify the competitive bidding system the Commission has proposed for a basic reason: it is firmly established that a statute will not be read to have delegated Congress's taxing power to an administrative agency in the absence of a clear statement of that intention. And the amounts that the Commission proposes to collect through this auction are taxes in that constitutional sense.

The Supreme Court explained in *National Cable Television Ass'n v. United States*<sup>36</sup> that “[t]axation is a legislative function, and Congress . . . is the sole organ for levying taxes.”<sup>37</sup> Congress, in determining whether to impose assessments on private individuals, may take a host of considerations into account:

The lawmaker may, in light of the “public policy or interest served,” make the assessment heavy if the lawmaker wants to discourage the activity; or it may make the levy slight if a bounty is to be bestowed; *or the lawmaker may make a substantial levy to keep entrepreneurs from exploiting a semipublic cause for their own personal aggrandizement. Such assessments are in the nature of “taxes” which under our constitutional regime are traditionally levied by Congress.*<sup>38</sup>

While Congress may delegate its taxing power,<sup>39</sup> a statute will be read to delegate such power only when the intention of Congress is clear.<sup>40</sup> In other words, Congress must “lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform.”<sup>41</sup>

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<sup>36</sup> 415 U.S. 336 (1974).

<sup>37</sup> *Id.* at 340.

<sup>38</sup> *Id.* at 341 (emphases added).

<sup>39</sup> See *Skinner v. Mid-America Pipeline Co.*, 490 U.S. 212, 220-221 (1989).

<sup>40</sup> See *id.* at 224.

<sup>41</sup> *National Cable*, 415 U.S. at 342 (quoting *Hampton & Co. v. United States*, 276 U.S. 394, 409 (1928)).

Here, there is not a word in section 251(e) to indicate that Congress intended to delegate any such taxing authority to the Commission: indeed, because the possibility of charges for numbers (other than the charges authorized in section 251(e)(2)) is not mentioned at all in the statute, any such charges would be entirely at the Commission's initiative, and would be circumscribed only by any criteria that the Commission, in its unfettered discretion, chose to set.

The D.C. Circuit, faced with a somewhat similar problem, held unequivocally that the type of procedure that the Commission has proposed is unlawful. In *Seafarers International Union*, the Coast Guard suggested that it should be permitted to charge a fee “for *any* procedures, such as the inspection of boats, so long as those procedures are conducted as part of the requirements for obtaining a license.”<sup>42</sup> The D.C. Circuit rejected that notion as “absurd,” noting that “these costs cannot be passed on to license applicants [because they] are not materially related to the requirements for a license established by Congress.”<sup>43</sup> “Moreover,” the court added, “it should be clear that an agency is not free to add extra licensing procedures and then charge a user fee merely because the agency has general authority to regulate in a particular area.”<sup>44</sup>

To impose a system of auctions for numbering resources would overstep the authority delegated by Congress in a far more egregious way than the licensing fees rejected out of hand in *Seafarers International Union*. Congress has not even given the Commission *any* authority to require licenses for the use of numbers or to sell or lease numbers — the Commission's only authority is to appoint an administrator who must “make such numbers available on an equitable basis.”<sup>45</sup> In other words, the Commission's proposal would amount to the creation of a licensing

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<sup>42</sup> 81 F.3d at 186.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 47 U.S.C. § 251(e)(1).

procedure from whole cloth, and the exploitation of that licensing procedure as a means for exacting payments from telecommunications carriers who need additional numbers to serve new customers. This would be an extreme example of the type of administrative overreaching that the D.C. Circuit explicitly disapproved.<sup>46</sup>

If this were not enough, the proposed competitive bidding procedure contains another fatal flaw: because Congress has not authorized the Commission to auction the right to use numbers, it naturally has not given any indication as to how such undreamed-of revenue might be spent. Instead, the Commission apparently considers itself at liberty to use the money for whatever purpose it deems appropriate. Thus it might use the funds collected “to offset other payments carriers currently make.”<sup>47</sup> Or, apparently, it might not. The point is that where Congress has placed no restriction on the use of funds, the assessment at issue is a tax: as then-Chief Judge Breyer put it, the question is whether “the revenue’s ultimate use . . . provides a general benefit to the public, of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency’s costs of regulation.”<sup>48</sup> Because Congress has not authorized the program at issue and has not designated any use for any funds that the Commission might decide to collect, it would be for the Commission — again in its unfettered discretion — to determine how to use the funds collected. This type of

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<sup>46</sup> Indeed, there is only one instance in history in which the FCC has imposed a spectrum licensing fee without explicit authorization from Congress. In *Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996), a divided court upheld that fee only because the FCC *did* have explicit authority to grant spectrum licenses based on its determination of the “public interest, convenience, and necessity” and because Congress had implicitly endorsed such fees by enacting a competitive bidding procedure for other spectrum licenses. As the court held, “the nature of Congress’s auction authorization . . . supports . . . the Commission’s decision.” *Id.* at 1405. In spite of this, a strong dissent found “no basis” for the fee at issue, and characterized the agency’s action as “lawless” and “border[ing] on outrageous.” *Id.* at 1411, 1414 (Edwards, J., dissenting). In any event, there is no such basis for finding comparable authority here. To the contrary, Congress has made clear in section 251(e)(2) that charges for numbering are limited to competitively neutral charges imposed on all telecommunications carriers.

<sup>47</sup> *Second Report & Order*, ¶ 159.

<sup>48</sup> *San Juan Cellular Tel. Co. v. Public Serv. Comm’n*, 967 F.2d 683, 685 (1st Cir. 1992).

appropriation function is reserved to Congress, and Congress has not delegated it to the Commission here.

**b. Nothing else in the Communications Act authorizes the Commission to institute competitive bidding for numbers.**

No other provision of the Communications Act authorizes competitive bidding for numbers either; to the contrary, other provisions simply underscore the impropriety of the Commission's proposed course.

Certainly section 254 does not authorize it.<sup>49</sup> Section 254(b)(4) provides that “[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”<sup>50</sup> As the Commission appears to recognize, to fund universal service through charges for numbers would not be equitable and nondiscriminatory because some providers of telecommunications services require access to new numbers, while others — including interexchange carriers, competitive access providers, and other telecommunications carriers who do not assign numbers to their end-users<sup>51</sup> — do not.<sup>52</sup> Accordingly, an auction for numbers is not a mechanism for funding universal service that complies with section 254.<sup>53</sup>

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<sup>49</sup> Cf. *Second Report & Order*, ¶ 159.

<sup>50</sup> 47 U.S.C. § 254(b)(4).

<sup>51</sup> For example, data CLECs do not route traffic using the NANP, but instead use Internet Protocol addresses for routing.

<sup>52</sup> See *Second Report & Order*, ¶ 159 n.371.

<sup>53</sup> To the extent the Commission would permit carriers to offset amounts paid for numbering resources against their other regulatory contributions — see *Second Report & Order*, ¶ 159 — concerns about discrimination might ease, but the possibility that the competitive bidding process would be either equitable or provide appropriate efficiency incentives would disappear. That is, a carrier with significant universal service obligations would have an incentive to use its entire universal service burden to purchase numbers since the carrier would simply be spending the government's money in any event. In short, if the competitive bidding system were to have any “bite,” it would have to exact additional funds from carriers. Such funds would either constitute general revenues — which the Commission is not authorized to raise on its own initiative — or would offset other funding mechanisms for universal service in a manner that would contravene the explicit command of section 254(b)(4).

Nor does section 4(i) provide such authority. Section 4(i) does not provide the authority to “impose a tax on an unregulated railroad or a tax on an individual for eating ice cream.”<sup>54</sup> Section 4(i) confers no additional substantive authority on the Commission; it simply provides it the ability to act in a manner “necessary in the execution of its functions.”<sup>55</sup> To rely on section 4(i) to imply a delegation of authority beyond those contained in other sections of the Act would expand the Commission’s powers almost infinitely. That is, unless the Commission is required to “link its assertion of authority” to a specific statutory provision, the Commission would “possess[] plenary authority to act within a given area simply because Congress has endowed it with some authority to act in that area.”<sup>56</sup> The courts have rejected that possibility. To impose the functional equivalent of a licensing requirement for numbers and then to charge whatever the market will bear for such numbers would be to act in a manner not authorized by Congress; section 4(i) cannot supply that missing authority.

As for the provisions of the Act that *do* address the collection of fees by the Commission, they too provide no support for the Commission’s proposed action. Section 8, 47 U.S.C. § 158, permits the collection of prescribed application fees, and therefore does not apply at all to this circumstance, in which there is no application to the Commission. Section 9, 47 U.S.C. § 159, authorizes the Commission to collect regulatory fees. But these fees are limited to the “costs of . . . regulatory activities,” as defined in section 9(b); revenues from an auction do not fit within this definition.<sup>57</sup>

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<sup>54</sup> *Comsat*, 114 F.3d at 227 (discussing 47 U.S.C. § 159).

<sup>55</sup> 47 U.S.C. § 154(i).

<sup>56</sup> *Railway Labor Executives’ Ass’n v. National Mediation Bd.*, 29 F.3d 655, 671 (D.C. Cir. 1994) (en banc), *cert. denied*, 514 U.S. 1032 (1995).

<sup>57</sup> 47 U.S.C. § 159(a), (b); *see also National Cable*, 415 U.S. at 341-43 (holding that fees cannot be charged based on a perceived furthering of public policy goals if those fees are unrelated to a specific service provided by the agency to an identifiable recipient).

The only provision of the Communications Act that does contemplate competitive bidding, section 309(j), not only provides no basis for the Commission's actions here, but it also emphasizes that the Commission's suggested reading of section 251(e) is untenable. Section 309(j) lays out in detail — a level of detail perhaps unmatched anywhere else in the Act — the precise manner in which the Commission may hold a competitive auction for wireless spectrum licenses or construction permits. Needless to say, that section does not apply here. Moreover, the fact that Congress prescribed in great detail the procedures to apply to such auctions and the use of the funds raised emphasizes the significance that Congress attached to this extraordinary delegation of authority. In light of section 309(j), it is impossible to read section 251(e) as providing the same type of authority.

In addition, the attempt to analogize the allocation of numbering resources to the allocation of wireless spectrum is fundamentally flawed. In the case of wireless spectrum, Congress has expressed its intention to “maintain the control of the United States over all the channels of radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority.”<sup>58</sup> Moreover, Congress specifically authorized the Commission to take applications for spectrum licenses, and to grant such licenses based on considerations of “public interest, convenience, and necessity.”<sup>59</sup> In the case of numbering, by contrast, Congress has never asserted either a proprietary interest in the numbering system or an intention to “maintain . . . control” over numbers. To the contrary, as the Commission itself has recognized, the numbering system is a creation of industry self-regulation: the NANP was established at the instigation of AT&T, and for half a century it was administered by AT&T and, after divestiture, Bellcore.<sup>60</sup>

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<sup>58</sup> 47 U.S.C. § 301.

<sup>59</sup> *See, e.g., id.* § 309(a).

<sup>60</sup> *See* Notice of Inquiry, *Administration of the North American Numbering Plan*, 7 FCC Rcd 6837, 6837, ¶¶ 4-6 (1992).

And when administration of the NANP was transferred away from Bellcore, it was nonetheless maintained in the hands of a private, industry-sponsored entity.<sup>61</sup> Congress legislated against the backdrop of this system; far from indicating any intention of radically changing it, Congress confirmed it. And the *only* charges that Congress authorized in section 251(e) are those that will recover “[t]he cost of establishing telecommunications numbering administration arrangements and number portability.”<sup>62</sup> Competitive bidding for numbers themselves cannot fit within this statutory mandate.

## **2. There are other considerations that militate against this scheme.**

There are other considerations that militate against the market-based proposal. Chief among these is the fact that the Commission has only recently begun to implement other numbering-optimization mechanisms.<sup>63</sup> These include thousands-block number pooling and wireless LNP. These schemes have not been tested and found wanting. Indeed, in some cases, they have not yet been implemented. The Commission should not contemplate alternative schemes before giving these mechanisms an opportunity to work — especially such a questionable mechanism as the market-based approach.<sup>64</sup>

The Commission should also realize that the carriers would be entitled to recover this new cost of doing business. This has several implications. First, as number allocation must be on an equitable basis, the method of cost recovery for price-cap and rate-of-return carriers would have to be on a par with the rights of carriers not restricted by such limitations. SBC cannot now

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<sup>61</sup> See generally Report and Order, *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588 (1995).

<sup>62</sup> 47 U.S.C. § 251(e)(2).

<sup>63</sup> The *First Report & Order* was only released on March 31, 2000, and was published on June 16, 2000.

<sup>64</sup> The market-based approach would supplant these alternative mechanisms. Consequently, the array of numbering optimization mechanisms being implemented — thousands-block number pooling, MTE requirements and utilization thresholds, audits, and the like — would be eliminated in favor of the market-based approach.

begin to speculate as to the appropriate cost-recovery method. Second, cost recovery would impose yet another burden on the consumer. Whether as a separate line item or as an overall increase in rates, the consumer would ultimately pay the cost. Given the number of increases in surcharges and fees since the adoption of the Telecommunications Act of 1996, this seems an ill-advised idea. The consumer should be enjoying cost savings as a result of increased competition, not cost increases. Third, creating a market for numbers involves creating a property interest in numbers. The law of unintended consequences would suggest that such a property interest might create barriers to numbering optimization and impede the exchange of numbers, not increase it. For example, could ownership of numbers be tied up in bankruptcy court or liquidation proceedings? How would disputes over conflicting claims of ownership be resolved concomitant with parties' Due Process rights?

While the market-based approach may appear to address the Tragedy of the Commons,<sup>65</sup> it will also force the creation of an unwieldy bureaucracy to address potential market abuses. Even the Commission's description in the *Second Report & Order* cannot hide this fact. Indeed, the discussion of the primary and secondary markets reveals that an agency on a par with the Securities and Exchange Commission might be needed to insure that the markets are "open, competitive, and effective."<sup>66</sup> The Commission may be exchanging a mechanism guided essentially by the Commission and its numbering administrator for a system involving numerous agencies and courts deciding intertwining numbering issues.

The answer for any problem of numbering resource exhaustion may lie in technology. The Commission's resources should not be squandered on creating and monitoring a market-based approach to this issue. Rather, the Commission should be fostering an industry-wide answer by assisting in the creation of technological solutions. By creating a property interest in

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<sup>65</sup> Garrett Hardin, *Tragedy of the Commons* (1968).

<sup>66</sup> *Second Report & Order*, ¶ 176.

numbers, the Commission may in fact squelch incentives to create such solutions. The Commission may best foster the solution by acting as a conduit for new ideas, as well as a forum for industry discussions. From the present vantage point, it is difficult to envision the shape of these solutions. They may involve creative uses for existing technologies or entirely new technologies. SBC need not speculate in these comments as to such solutions. It is sufficient to note that numbering optimization will best be served by the Commission acting in the role of facilitator — through the encouragement of dialogue and regulatory relief — and not by the Commission acting as the police for some complicated market scheme.

### **I. Recovery Of Pooling Shared Industry And Direct Carrier-Specific Costs**

One of the most important matters to be resolved in future numbering optimization orders is number pooling cost recovery. To this end, the Commission's adoption of a cost recovery model and its direction to state commissions to provide a cost-recovery mechanism for state number pooling trials is an important first step toward ensuring the cost recovery guaranteed by the Section 252(e)(1) of the Act.<sup>67</sup> In order to select the appropriate mechanism to recover these costs, the *Second Report & Order* requests estimates of the amount and magnitude of recoverable shared industry (Category 1) and direct carrier-specific (Category 2) costs of thousands-block number pooling.<sup>68</sup>

SBC has previously provided the Commission with estimates of shared industry and its carrier-specific costs of thousands-block number pooling and SBC has updated those estimates as regulatory and industry forums have provided more certainty and specificity regarding systems modifications, vendor requirements, and the implementation schedule. In light of the direction in the *Second Report & Order*, SBC once again updated its cost estimates. As set forth in the *First Report & Order*, these estimated costs have been allocated consistently with the

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<sup>67</sup> *First Report & Order*, ¶ 193.

<sup>68</sup> *Second Report & Order*, at ¶ 182.

general LNP cost-allocation framework, with all costs allocated into the three LNP cost categories.<sup>69</sup> Costs not directly related to thousands-block pooling (Category 3) have been excluded; only carrier-specific costs that would not have been spent “but for” number pooling and costs that will be incurred “directly in the provision of number pooling” were included.<sup>70</sup> Also, all costs associated with implementing state number pooling trials have been excluded. Hence, these cost estimates only include the costs of implementing the national number pooling framework.<sup>71</sup> Additionally, the *Second Report & Order* requires that these cost estimates should take into account any cost savings associated with thousands-block number pooling, such as savings derived from fewer area code changes.<sup>72</sup>

Estimating the cost savings to area code relief attributable to number pooling is somewhat speculative.<sup>73</sup> There are many unknown and unknowable variables that can affect the estimate. Such variables include the impact, if any, that number pooling may have on exhausting area codes, the demand for numbering resources in the future, the specific area codes where number pooling will be implemented and the timing of number pooling implementation relative to exhaust, the type and timing of area code relief, and the time period for comparison.<sup>74</sup>

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<sup>69</sup> See, *First Report & Order*, ¶ 216.

<sup>70</sup> See *Id.*, ¶¶ 211, 216-26.

<sup>71</sup> See *Id.*, ¶ 197. SBC currently has been ordered by state commissions to implement number pooling trials in twenty-two separate NPAs. To the extent that these states do not grant full and timely cost recovery, some or all of the costs of these trials may need to be recovered through the federal cost-recovery mechanism in order to ensure compliance with Section 251(e)(2). Cf. *First Report & Order*, ¶¶ 79, 171.

<sup>72</sup> See *Second Report & Order*, ¶ 182.

<sup>73</sup> SBC believes that number pooling will not eliminate the cost of area code relief. To the contrary, number pooling is a far more expensive solution for carriers than relieving area codes. At best, number pooling, once it is implemented in an area code that has sufficient numbering resources available, would delay implementation of relief, but it would not eliminate the need for relief.

<sup>74</sup> In no event should the comparison time period exceed five years, which is the limit for traditional net present value business analysis even in static industries. In a dynamic industry,

With this in mind, SBC notes that it has made the following assumptions in an effort to estimate the cost savings to area code relief attributable to number pooling:

- The national rollout will begin in the fourth quarter 2001;
- All state trials will transition to the national solution in the fourth quarter 2001, even if there are more than three trials for the fourth quarter;
- Three area codes — per quarter, per region — will be converted to the national number pooling standard;
- On average, pooling will delay current projected NPA exhaust of the NANPA by three years;
- The cost study period encompasses five years, from 2000 to 2004; and
- The type of area code relief (e.g., split versus overlay) for each NPA within SBC's 13 state region — the type of relief impacts the projected cost savings.

Using these standards, SBC estimates that its recoverable “first costs” of implementing national number pooling for the 13 states in which it provides wireline local exchange service subject to rate of return or price cap regulation will be approximately \$168.62 million — consisting of approximately \$16.7 million in Category 1 costs, and \$165.41 million in Category 2 costs, adjusted by \$13.5 million in NPA relief cost savings.<sup>75</sup> All supporting documents illustrating the specific data for both Category 1 and 2 cost estimates are provided to the Commission under separate cover.

SBC's estimated costs are associated with specific network infrastructure and operational system support changes that are essential to number pooling. These costs include:

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such as telecommunications, where the pace of technological and consumer-driven demand is even more variable, the time frame should be even shorter.

<sup>75</sup> The small difference in math is caused by the automatic “rounding up” of figures in the software-generated calculation of numbers at the million dollar level. This estimate includes overhead expenditures of approximately 14.6%, and the net present value of the estimated expenditures amortized over a five-year recovery period at a cost of money of 11.25%.

- SBC's projected allocated share of industry costs for the NPAC 3.0 and Number Pooling Administration.
- Costs associated with enhancements to the existing LRN infrastructure required for number pooling. These enhancements include adding the efficient data representation (EDR) functionality required to improve the capacity of the SCPs/STPs needed to support number pooling and modification to the Local Service Management Systems (LSMSs) required to support EDR.
- Costs for changes in operational support systems necessary to support thousands-block number assignment and modifications of service assurances systems to associate subscriber records with pooled and non-pooled numbers.
- Costs required to change current methods, procedures, and processes for number pooling; and,
- Costs to modify central office software required for number pooling.

In light of the magnitude of costs to be recovered for number pooling, SBC respectfully suggests that a temporary adjustment to the LNP end-user surcharge would be the most appropriate cost-recovery mechanism.<sup>76</sup> SBC believes that recovering number pooling costs through this mechanism would result in a slight increase of the current LNP end-user surcharge within SBC's LECs' 13-state region. SBC is currently in the process of running studies in an effort to estimate the approximate increase to that surcharge in each of SBC's LEC companies.

#### **J. Thousands-Block Number Pooling For Non-LNP-Capable Carriers**

SBC chooses not to comment at this time on this matter, preferring to rely on the comments of its wireless affiliate. Nevertheless, SBC reserves the right to reply to any comments filed that might reflect on or affect SBC's LECs or other operations.

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<sup>76</sup> *Accord Bell Atlantic*, at 6-7; Comments of Sprint Corporation, at 17-19 (filed May 19, 2000) [*Sprint*]. See also *AT&T*, at 16 n.38 (opposing cost recovery generally, but arguing for an end user surcharge if cost recovery is permitted).

## **K. Waiver Of Growth Numbering Requirements**

At present, the Commission may grant waivers from its rules pertaining to number allocation when a carrier cannot meet the requirements of those rules and yet still has a demonstrated need for growth numbering resources. The Commission has sought comments on the need for an alternative “safety valve” mechanism to supplant the waiver process. SBC supports the need for an alternative mechanism that can be used to secure additional numbering resources to meet a customer’s bona fide request for service. This alternative mechanism should be simple, easy to understand, expeditious, and verifiable by audit. What’s more, as this issue impacts the ability of carriers to compete on a level playing ground in the market place and, therefore, goes to the heart of the Telecommunications Act of 1996, SBC urges the Commission to consider this issue on an expedited basis and, if necessary, on a stand-alone basis. Implementation of a safety-valve mechanism ought not await resolution of the other topics discussed in the Commission’s *Second Report & Order*.

The Commission has consistently taken the position that “consumers [should] never [be] foreclosed from exercising their choice of carrier because that carrier does not have access to numbering resources. . . .”<sup>77</sup> Without a safety valve mechanism or a modification to the Commission’s utilization and MTE requirements, customers will undoubtedly face this problem. In fact, several customers are being denied service from SBC (e.g., Pacific Bell Telephone Company) because it is unable to satisfy their request within its existing numbering inventory and because it cannot meet the utilization threshold and MTE requirement needed to obtain additional numbering resources.

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<sup>77</sup> *First Report & Order*, ¶ 171; “Administration of the NANP...should give consumers easy access to the public switch telephone network.” FCC 95-283 para 15; “The Commission has repeatedly recognized that access to telephone numbering resources is crucial for entities wanting to provide telecommunications services because telephone numbers are the means by which telecommunications users gain access to and benefit from the public switch telephone network.” FCC 96-333 Para 261; “Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources.” CC 96-98 NSD File No. L-99-55 Para 9;

Pacific Bell is a case in point. It reviewed its numbering resources under the Commission's utilization and six-MTE standards in a single California NPA and determined that, using the 75%<sup>78</sup> utilization-threshold standard, it failed that standard in all seven of its rate centers in this NPA.<sup>79</sup> If California were required to comply with the Commission's present 60% utilization-threshold standard, Pacific Bell would still fail the utilization threshold in two of the seven rate centers. In addition, SBC was unable to meet the California state commission's three-month-to-exhaust<sup>80</sup> calculation in one of these seven rate centers. With the Commission's requirement that carriers must meet both the 75% utilization threshold and a six-MTE calculation before requesting additional numbering resources, Pacific Bell is barred from doing so in any rate center in which it currently offers service in this NPA. Additionally, Pacific Bell is currently unable to meet 61 DID/Centrex customers' bona fide requests for service in these seven rate centers. These requests all represent customers' specific needs for telephone numbers that are not available within the Pacific Bell's existing number inventory; yet, Pacific Bell is precluded by Commission rule from obtaining additional numbering resources. In each of these cases, customers are being denied timely access to numbering resources from the carrier of their choice. This is a clear violation of the Commission's own stated numbering objectives.

Providers should not be required to request waivers, special hearings, or other onerous requirements to meet a bona-fide request for service by a subscriber. NANPA or the Pooling

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<sup>78</sup> The Commission has determined that states using a utilization threshold that exceeds its established utilization threshold may continue to use their higher threshold (up to 75%) only where it is currently in use until it no longer exceeds the mandated threshold, at which time they must conform to the federally mandated threshold. *Second Report & Order*, ¶ 10. California uses a 75% utilization-threshold standard.

<sup>79</sup> It is worth noting that, when using the California commission's definition of utilization, one supported by SBC, only one of the seven rate centers fails the utilization test. This definition of utilization includes intermediate, reserved, administrative, and aged in the numerator for purposes of calculating the percent of utilization.

<sup>80</sup> The California commission requires providers to meet a three-months-to-exhaust standard rather than the Commission's six-MTE requirement.

Administrator (PA) should not be placed in the position of making judgements about the numbering “needs” of service providers. Furthermore, customers should not be faced with delays or uncertainty over their ability to receive service from their carrier of choice due to a lack of numbering resources. As the Commission stated when establishing the Sequential Number Assignment exceptions: “We believe that this requirement will improve carrier efficiency in utilizing numbering resources, while maintaining carrier flexibility in meeting subscriber demand.”<sup>81</sup>

When a provider makes a request for additional numbering resources, it is being done for a specific reason — often the request is by a subscriber for numbers that are not in the provider’s inventory but are required by the customer to meet a specific technical need.<sup>82</sup> Typically, these requests arise from the service needs of a governmental agency, a university, or a large business, which can require several thousand numbers for service in a specific location at a specific date. In other words, a bona fide request for service. Based upon the Commission’s rules, a provider must meet both the utilization threshold and a six-MTE calculation to request additional resources. SBC recommends that a provider be required to meet one, but not both, of these standards. If the carrier can meet either the utilization threshold or the six-MTE criteria, the provider should document the customer’s identification, service date, numbers required, etc. When the service provider submits its request for numbers to the NANPA or the PA, the

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<sup>81</sup> *First Report & Order*, ¶ 245.

<sup>82</sup> SBC also notes that other requests for numbering resources can arise from specific service offerings within a state. An example is Extended Metropolitan Services (EMS). EMS is an optional calling plan that renders all calls within the EMS area, to and from the subscriber, toll-free. The subscriber pays an additional charge for this calling plan. The service uses dedicated NPA-NXXs to allow the billing systems to identify calls terminating to EMS numbers and to not bill the toll on the call. State commissions have approved EMS and similar offerings and, in the case of Missouri, have already obligated the ILEC (SWBT) to provide it to CLECs on a parity basis. SBC recommends that the Commission exempt such specific services requiring dedicated codes from any utilization calculation and MTE requirements. In these limited situations, the Commissions should permit the NANPA and the PA to allocate numbering resources to carriers to provide these services.

provider should provide all required data on the CO Code or Block Request forms. The service provider should note on the request that it arose from a specific subscriber demand for numbers. The service provider should also note which of the two thresholds has been met. NANPA or the PA should immediately assign the requested resources to the provider.

In cases where a provider can not meet either the utilization threshold or the MTE calculation, the provider should request a waiver of the rules from the Commission. In order to meet the needs of the provider and the customer, the Commission should rule on the merits of the waiver request within ten business days of receipt of the request. The Commission would then notify the provider and the NANP or the PA of the resolution of the request for expeditious handling of the code/block request. SBC recommends that the service provider include in its waiver request regarding the customer's request (detailing the specific need for telephone numbers), the carrier's statement that it is unable to meet the specific subscriber request from its existing inventory, and the requested activation date.

Respectfully submitted,

SBC COMMUNICATIONS INC.

February 14, 2001

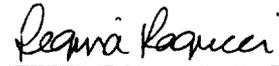
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CERTIFICATE OF SERVICE

I, Regina Ragucci, hereby certify that a true and correct copy of the above and foregoing Comments of SBC Communications were served via hand delivered on 14<sup>th</sup> day of February 2001, to the following individuals:



Regina Ragucci

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