

ATTACHMENT B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Numbering Resource Optimization)
)

CC Docket No. 99-200

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To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VERIZON WIRELESS
PETITION FOR CLARIFICATION AND RECONSIDERATION**

VERIZON WIRELESS

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SUMMARY

Verizon Wireless seeks clarification and reconsideration of a number of aspects of the Commission's March 31, 2000 *Report and Order*.

Definitions, Number Categories, Utilization Formula. The Commission needs to revise and clarify several of the definitions adopted in the *Report and Order*, as well as the utilization formula and some of the categories. Specifically:

- **Utilization Formula.** The formula must be revised to ensure that Aging, Administrative, Intermediate, and Reserved numbers are not treated as though they are available for assignment; instead, they should either be included in the numerator, like Assigned numbers; or excluded from the carrier's inventory in the denominator, like resources no longer available for assignment. The Commission's new formula does not represent a carrier's actual number usage or its ability to accommodate additional end users. Revising the formula will more accurately depict a carrier's utilization rate and will ensure that carriers have access to growth codes when needed to accommodate subscribers. The new formula's exclusion of these categories from utilization is not necessary to avoid abuses, given the other protections adopted in the *Report and Order* (pooling, sequential numbering, category definitions, reporting requirements, and auditing and enforcement procedures). Moreover, revising the formula will give carriers incentives to use numbering resources efficiently, instead of seeking to "game the system" in an effort to obtain needed numbering resources that would otherwise be unavailable.
- **Reserved Numbers.** The Commission should provide a "safety valve" mechanism that would allow carriers to reserve numbers beyond 45 days, when necessitated by special extraordinary circumstances, such as the Olympics or Presidential travel.
- **Sequential Numbering.** The Commission should provide carriers with some flexibility with respect to sequential number assignment. The requirement that carriers fill a thousands' block in strictly sequential order before moving on to the next block is unnecessarily rigid and may impede carriers' reasonable business practices.
- **Intermediate Numbers.** The Commission needs to clarify whether and when Intermediate numbers are reclassified as Assigned. The *Report and Order* is inconsistent on this with respect to Intermediate numbers provided to non-carrier entities such as dealers, and it fails to address whether Intermediate numbers provided to other carriers, such as resellers, will ever be reclassified as Assigned. Moreover, the Commission needs to revise or clarify the reporting obligations of underlying carriers and resellers concerning Intermediate numbers. If these numbers are reflected as Assigned only in resellers' utilization reports, they will

never be reflected as utilized in applications for growth codes for the underlying carrier, because the underlying carrier, and not the reseller, files for growth codes.

- ***Newly Assigned Numbers.*** The Commission should clarify the degree to which newly assigned numbers are to be deemed part of a carrier's inventory, for reporting purposes. While they are properly considered in determining months to exhaustion, the Commission should reaffirm that, as provided in the rules, newly assigned numbers are not to be considered for purposes of calculating utilization.
- ***"In Service."*** Given that an NXX code must be activated and placed "in service" with end users within six months of grant, the Commission should make clear that provision of numbers from that code to a reseller is sufficient. Otherwise, a carrier will not be able to open a code to accommodate resellers' needs while continuing to serve its own subscribers from an existing code, because if the new code is serving only a reseller and not the carrier's own end users, it would have to be returned.

Semi-Annual Forecast and Utilization Reports.

- ***Thousands' Block Reporting by Non-LNP Carriers.*** The Commission should not require non-LNP-capable carriers to report utilization at the thousands' block level at this time. With more than two years before "covered" CMRS carriers become subject to pooling, and with some CMRS carriers being exempt from pooling altogether, imposing this reporting requirement now is unjustified, in light of the complexity and cost of doing so.
- ***Thousands' Block Means an Entire NXX-X Block of 1000 Numbers.*** Some carriers hold numbering resources in blocks of less than 1000 numbers, such as CMRS carriers using Type 1 numbers, which are obtained in blocks of 100 numbers. The rules are unclear as to whether carriers must file utilization reports for these small blocks. The Commission should clarify that they are not required to do so. Subjecting these small blocks of numbers to thousands' block reporting would impose unnecessary burdens on the carriers (*e.g.*, a carrier with a thousand numbers might have to file as many as ten thousands' block reports) and would produce misleading results, given that the utilization would be calculated as though the carrier has the full thousands' block.
- ***Deferral of the August 1, 2000 Semi-Annual Forecast and Utilization Report.*** The Commission should defer the initial semi-annual forecast and utilization report, in light of the substantial issues raised on reconsideration. The reports should be based on the Commission's final determinations, including those reached on reconsideration, and the definitions, formulas, and data elements should be consistent from report to report. Moreover, industry is having tremendous difficulty in completing the initial report by August 1, given the short time provided for compiling, preparing, and submitting the data. The massive scale of the filing also militates in favor of deferral, given that the industry has not had adequate time to automate the data collection and correlation. There is no

point in a “test run” when neither the industry nor the NANPA is ready. Given the extensive nature of the reporting requirement, the expense and burden involved in preparing the reports, and the complexity of processing the information, it is essential that both the substance and procedures of the reporting requirement be subject to public input and revision *well in advance of the initial filing deadline*.

Clarification of State Authority to Collect Data.

- ***Protection of Confidentiality.*** The FOIA’s trade secret protection expressly attaches to confidential information supplied pursuant to FCC mandate as part of an exclusively federal program, in which states participate only under federal authority delegated by the Commission. Under these circumstances, states receiving the confidential information must comply with FOIA protections. The Commission can safeguard the confidentiality of such information in three ways:
 - (1) Require states seeking confidential data to certify acceptance of the FOIA obligation to protect trade secrets;
 - (2) Review state procedures to ensure protection of confidential information; and
 - (3) Consider and rule upon requests by the public for access to confidential documents in accordance with the Commission’s responsibility for carrying out the requirements of FOIA, with the state bound by the Commission’s determination.
- ***Carrier-Specific NPA-Wide Utilization Rates Are Confidential.*** While the *Report and Order* held that disaggregated, carrier-specific data would be kept confidential, a recent staff public notice suggested otherwise, opining that only data at the rate center level would be deemed confidential. The Commission must reaffirm that carrier-specific data, even at the NPA level, is highly confidential. Wireless carriers, in particular, compete at the market or NPA level, and data concerning market share, utilization, or numbering reserves at the NPA level would be very competitively sensitive.
- ***State-Ordered Special-Purpose Data Collections.*** The Commission should clarify and limit states’ authority to engage in data collections. The one exception to the general ban on such data collections, intended to cover carrier-specific audits, is for “specific purpose” collections that are not “regularly-scheduled state-level reporting requirements.” This exception threatens to swallow the rule. Some states have already required broad classes of carriers to file reports, and the increasing need in California to apply for numbering resources outside the lottery/rationing system may result in carriers having to file reports frequently just to obtain codes.

Withholding of Numbering Resources by NANPA. The Commission should clarify that NANPA’s withholding of numbering resources must be no greater in scope than the carrier’s

failure to comply with reporting requirements. A carrier should not be denied codes NPA-wide or nationwide simply because it failed to submit required data for a single rate center. Any large-scale problem with a carrier's compliance should not be addressed by NANPA, but should be referred to the Commission's Enforcement Bureau for action. Moreover, any withholding by NANPA should last only until the carrier has supplied the necessary information.

Reliance Only on Utilization Thresholds for Growth Code Eligibility Is Unwarranted.

Verizon Wireless reiterates the central point of its comments and reply comments in response to the *Further Notice* — namely, that the Commission should not rely on utilization thresholds alone for awarding growth codes. Some “safety valve” procedure, which would allow carriers to overcome the presumption established by the utilization threshold, is essential.

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**VERIZON WIRELESS
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Verizon Wireless¹ hereby petitions the Commission for reconsideration and clarification of certain aspects of its March 31, 2000 *Report and Order*.²

**I. CLARIFICATION AND REVISION OF THE DEFINITIONS,
NUMBER CATEGORIES, AND UTILIZATION FORMULA**

Verizon Wireless urges the Commission to revise its utilization formula. Utilization rates are now more critical than ever to carriers' ability to serve customers, given that non-LNP-capable carriers' access to NXX codes will depend on their ability to meet a specified utilization threshold. If carriers are unable to use numbers that have been assigned to them for end users, those numbers should not be considered as unutilized inventory, thereby precluding the carriers

¹ Cellco Partnership, doing business as Verizon Wireless, is a new nationwide competitor that offers wireless products and services coast-to-coast, combining certain domestic cellular, paging, and PCS businesses of Bell Atlantic Mobile, Vodafone AirTouch, PrimeCo Personal Communications, L.P., and GTE Wireless. The relevant Bell Atlantic Mobile, Vodafone AirTouch, and PrimeCo businesses were combined on April 3, 2000, pursuant to Commission approval. See *Vodafone AirTouch, Plc, and Bell Atlantic Corporation*, DA 00-721 (Mar. 30, 2000). The relevant GTE Wireless operations were recently combined with Verizon Wireless, pursuant to Commission approval. See *GTE Corporation and Bell Atlantic Corporation*, FCC 00-221 (June 16, 2000).

² *Numbering Resource Optimization*, CC Docket 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 7574 (2000), *Erratum* (rel. July 11, 2000) (relevant portions referred to as *Report and Order and Further Notice*, respectively), summarized, 65 Fed. Reg. 37,703 (June 16, 2000), 65 Fed. Reg. 43,251 (July 13, 2000).

from getting additional numbering resources needed to serve their customers.³ Any categories of numbers that are unavailable for assignment should be treated either “as if” utilized, or not considered part of the inventory.

A. The Utilization Formula Must Be Revised to Include Aging, Administrative, Intermediate, and Reserved Numbers in Utilization (the Numerator) or to Exclude Them from Inventory (the Denominator)

As Verizon Wireless demonstrated in its Comments and Reply Comments responding to the *Further Notice*, the Commission must revise its utilization formula to account properly for numbers that are in fact used in the provision of telecommunications service and, therefore, unavailable for assignment.⁴ The Commission’s new utilization formula calculates a carrier’s utilization rate by dividing the total amount of a carrier’s assigned numbers by the total numbering resources assigned to the carrier. This calculation is an inaccurate measure of utilization because it presumes that numbers in the Aging, Administrative, Intermediate, and Reserved categories are unutilized and available for assignment. In fact, these categories of numbers are no more available for assignment by the carrier to end users than numbers that have already been assigned. Accordingly, these categories of numbers should either (a) be included in the numerator of the formula, just like assigned numbers, or (b) be subtracted from the total numbering resources assigned to the carrier in the denominator of the formula, so the denominator reflects the true inventory of numbers available for assignment to end users. The Commission’s new formula is not needed to prevent warehousing of numbers, given the

³ As the Commission knows, the wireless industry continues to grow at a ten percent or higher rate each year. The new utilization formula will start slowing growth in the industry if needed numbers are not available for assignment to end users.

⁴ See Verizon Wireless Comments in Response to Further Notice, CC Docket 99-200, at 18-21 (May 19, 2000) (Further Notice Comments); Verizon Wireless Reply Comments in Response to Further Notice, CC Docket 99-200, at 9-12 (June 9, 2000) (Further Notice Reply Comments). Verizon Wireless continues to believe that efficient number utilization is better determined through measures such as months to exhaust than utilization rates.

application of pooling to LNP-capable carriers, the adoption of limits on how long numbers can be placed in several of these categories, and the adoption of extensive auditing and enforcement mechanisms. This utilization formula promotes "gaming the system," rather than efficient utilization of numbers.

1. Revising the Formula Will Produce a More Accurate Utilization Rate

While the rates resulting from these two alternate computation methods may differ slightly from each other, either method would more accurately reflect a carrier's actual utilization rate than the Commission's new formula. The Commission's formula does not provide useful information concerning a carrier's ability to accommodate end users because it ignores categories of numbers that are unavailable for assignment to end-users. The formula penalizes carriers with an unfavorable "utilization" rate if they have a considerable quantity of numbers that cannot be used to accommodate end users by denying access to necessary numbering resources. Indeed, certain market choices, such as significant sales to resellers — which the Commission's policies have long required in the case of CMRS providers — skew the utilization rate and would, as a result, create serious number shortages.

The first method — inclusion of these categories in the numerator — is the historical approach used to determine utilization rates in the telecommunications industry, and thus would allow benchmarking against historical data. The second method — exclusion of these categories from the denominator — is consistent with the recognition in the *Report and Order* that intermediate numbers "should not be counted in the code or block holder's inventory because the code or block holder does not control the provision of these numbers to end users."⁵ Logically, the utilization rate should reflect how well or poorly the carrier has utilized its inventory — the

pool of numbers, that it is capable of providing to end users. Under this approach, the carrier's utilization rate should use this definition of the "carrier's inventory" as its denominator and thereby exclude not only Intermediate numbers, but also Aging, Administrative, and Reserved numbers. The rules adopted in the *Report and Order*, however, do not recognize the fact that Aging, Administrative, Reserved and Intermediate numbers are not accessible in a carrier's inventory. Those rules state that the denominator in calculating utilization rate should be the carrier's "inventory,"⁶ but the rules' definition of "inventory" fails to exclude Aging, Administrative, Intermediate, and Reserved numbers.⁷ If the Commission chooses the second option for revising its formula, the definition of inventory should be modified to expressly exclude these categories of numbers.

2. The New Formula Is Not Necessary to Ensure Compliance

The Commission had legitimate reasons for being cautious about past abuse of some of these categories -- such as Reserved and Administrative -- to inflate utilization rates, but its concerns are fully addressed by other rules and policies adopted in the *Report and Order*. The Commission has restricted the ability of carriers to warehouse numbers in these categories by defining the various categories so as to limit carriers' ability to keep numbers out of use, and establishing reporting requirements and auditing and enforcement procedures.⁸ Carriers will no longer be able to maintain numbers as Aging or Reserved for unlimited periods of time, and their allocation of numbers to the Administrative category will be subject to close scrutiny if it

(footnote continued)

⁵ See *Report and Order* at ¶ 21.

⁶ See 47 C.F.R. § 52.15(g)(3)(ii), as adopted in the *Report and Order*.

⁷ See 47 C.F.R. § 52.7(j)(1) ("The term 'inventory' refers to all telephone numbers distributed, assigned or allocated . . . [to] a service provider . . .").

⁸ For example, the Commission's Rules preclude holding numbers in the Reserved Category longer than 45 days and may only be reserved if there is a bona fide customer. See also Section I.B *infra*.

appears to be disproportionate. Given the protections that have been adopted, there is no justification for treating these categories of numbers as though they are available for assignment. Moreover, the adoption of a pooling requirement for LNP-capable carriers and sequential thousands' block utilization for all carriers will improve utilization within thousands' blocks significantly.

3. The Proposed Changes to the Utilization Formula Will Give Carriers Proper Incentives for Efficient Utilization of Numbering Resources

If the utilization rate does not accurately reflect the use of numbers, some carriers could be incented to engage in “gaming” to ensure an adequate resource of numbers is available. Only when the utilization rate is calculated in a fashion that affects how numbers are *actually* used does it give carriers incentives to use numbering resources efficiently. By either including these categories in the numerator of the utilization formula, or excluding them from the denominator, the Commission will ensure that carriers focus on using the numbers they have in their inventory efficiently, rather than try to game the system.

B. The Definition of Reserved Numbers Should Provide for a “Safety Valve” to Permit Reservation Beyond 45 Days in Special Cases

The definition adopted for Reserved numbers specifies that “Numbers held for specific end users or customers for more than 45 days shall not be classified as reserved numbers.”⁹ While Verizon Wireless agrees that this is an appropriate maximum reservation period under most conditions, there may be instances where special extraordinary circumstances warrant a longer reservation period. For example, carriers may need to reserve large blocks of numbers for

⁹ 47 C.F.R. § 52.15(f)(1)(vi).

special events, such as the Olympics, for much longer than 45 days. Presidential travel, likewise, may require long-term reservation of numbers for security and press communications.

To address exceptional situations such as these, the rules should provide an explicit “safety valve” procedure whereby a carrier can obtain authorization from the Commission to include specific numbers in the Reserved category for a longer period of time.¹⁰ To prevent abuse, the rule should make clear that exceptions will be granted only upon a compelling showing and that long-term reservation of numbers will be permitted only in extraordinary circumstances.¹¹

C. Flexibility Is Needed Concerning Sequential Numbering

While Verizon Wireless supports the sequential numbering requirement in general, it nevertheless believes that some degree of flexibility is needed in implementing it. Under the Commission’s sequential numbering rules, carriers have little flexibility in how they make most numbering assignments to end users. Given the fact that carriers in a competitive environment, such as wireless, may provide service through a variety of sales channels, having to assign numbers strictly sequentially within a single thousands’ block imposes some difficulties, quite unnecessarily.¹²

Verizon Wireless, accordingly, asks that the Commission provide carriers with some flexibility in assigning numbers in a given rate center. There are several ways this flexibility could be provided. One way would be to allow carriers to assign numbers sequentially from

¹⁰ Verizon Wireless has also proposed that a “safety valve” be employed when using of utilization thresholds to determine non-LNP-capable carriers’ eligibility for growth codes. See Further Notice Comments at 6-11; Further Notice Reply Comments at 1-5; see also Section V, *infra*.

¹¹ In addition, the Commission should scrutinize such requests closely to ensure that the reservation of numbers fairly reflects the quantity of numbering resources actually needed.

¹² For example, if a carrier provides 1000 phones to a dealer and the numbers are in a full thousands’ block, it is not clear whether the carrier can assign numbers out of the next thousands’ block *before* the numbers provided by the dealer are assigned to end users.

within several different hundreds' blocks during the same period. Alternatively, the Commission could allow a carrier to deviate from sequential numbering provided that some percentage of the numbers in a block are assigned sequentially. Another alternative would be to allow carriers to open a second thousands' block once a given block has been filled up to a specified percentage. The Commission could also make clear that for the purposes of sequential number assignment, assignment of numbers to Reserved, Administrative or Intermediate would allow the carrier to assign the next thousands' block. Or, instead, the Commission could entertain "safety valve" showings based on a carrier's particular circumstances. The important thing is that the Commission make the sequential numbering requirement flexible, rather than rigid.

D. Issues Concerning Intermediate Numbers Need to Be Addressed

The Commission's determination to create a new category -- Intermediate numbers (which actually includes two different types of numbers) -- leads to confusing and inconsistent results. Previously, Verizon Wireless had considered numbers to be Assigned once they had been provided to, and the associated service paid for by, an entity such as a reseller or other aggregator for ultimate reassignment to end users, while numbers made available to Verizon Wireless's own dealers for assignment to customers were deemed unavailable for assignment (other than by the dealer) until assigned to end users. Other carriers handled reseller numbers differently. The Commission rules now classify all numbers as Intermediate numbers if they are made available for use by (a) another carrier or (b) a non-carrier entity, for provision of service to end users.¹³ As discussed below, the Commission must clarify the treatment of these two types of Intermediate numbers.

¹³ See *Report and Order* at ¶ 21.

1. Clarification of Treatment of Intermediate Numbers Provided to Carrier vs. Non-Carrier Entity

First, the Commission should clarify whether and when Intermediate numbers are to be reclassified as Assigned. The current rules are completely unclear on when this occurs. In the context of Intermediate numbers assigned to non-carrier entities (*e.g.*, dealers), the *Report and Order* indicates that “the carrier making such numbers available for assignment by a *non-carrier entity* should categorize them as *intermediate numbers* only until they are assigned to an end user or customer [by] the non-carrier entity.”¹⁴ Presumably, the Commission intended that the underlying carrier would reclassify the numbers as Assigned when a non-carrier entity assigns the number to an end user, but the rules do not provide for recategorization of Intermediate numbers once they are assigned to an end user. The definitions of Assigned and Intermediate numbers in Section 52.15(f)(1) should be revised to make clear that this is the case.¹⁵

Neither the rules nor the text makes clear whether, or when, Intermediate numbers provided to another telecommunications carrier, such as a reseller, are to be reclassified as Assigned. This is particularly important if the utilization formula is *not* revised as discussed in Section I.A, because in that case any numbers provided to resellers would perpetually be treated as unutilized, whether or not the numbers were actually assigned by the reseller to end users. In reality, all “reseller” numbers should be treated as Assigned at the time of assignment to the reseller, because the numbers are assigned to the reseller only if the reseller contracts for both the numbers and associated telecommunications service. Thus, the underlying carrier should be

¹⁴ *Id.* (emphasis added).

¹⁵ This would make sense in the non-carrier context, because the end user or customer ultimately subscribes to the service provided by the carrier holding the numbering resources. Thus, the number should become Assigned, from that carrier’s perspective, when the end user’s service is initiated.

allowed to treat all Intermediate numbers provided to resellers as though Assigned, since the reseller is the underlying carrier's customer.¹⁶

In no event should the status of a carrier's Intermediate numbers depend on what the reseller has done with them. For competitive reasons, resellers may be reluctant to inform their underlying carriers about their number utilization.¹⁷ Moreover, a carrier's access to numbering resources should depend on its own utilization of the numbers available to it, and not on how well or poorly a reseller who is also a competing company has used resources that it resells. An inefficient reseller should not be an obstacle to an efficient underlying carrier obtaining numbers.

2. Clarification of Reporting of Intermediate Numbers to NANPA

In addition, the Commission should clarify how, and by whom, Intermediate numbers are to be reported to NANPA, not only in connection with semi-annual reports but also in connection with applications for growth codes. The *Report and Order* requires the underlying carrier who obtains these numbers from NANPA to report them as Intermediate numbers, but it also requires the carrier, such as a reseller, who obtains these numbers to file periodic reports on their number usage.¹⁸ However, only carriers obtaining numbers from NANPA file applications for growth numbering resources. When requesting growth codes, the underlying carrier would report any numbers assigned to resellers as Intermediate numbers, and (under the current utilization formula) its utilization would not take those numbers into account. If a utilization threshold is

¹⁶ It makes no sense to differentiate between resellers and end-users for the numbering resources assigned by a carrier because in both instances the carrier no longer has any ability to assign the number to another end-user or customer.

¹⁷ If a reseller is a facilities-based reseller, the carrier may never know whether the reseller has an end-user customer, unless the reseller informs the carrier.

¹⁸ 47 C.F.R. § 52.15(f)(2) defines "reporting carrier" as including "a telecommunications carrier that receives numbering resources from the NANPA, a Pooling Administrator[,] or another telecommunications carrier." Reporting carriers are obligated to submit forecast data and utilization reports by § 52.15(f)(4)(i), (5)(i), and (6)(i). The Commission should clarify how double counting is to be avoided under this procedure.

applied to determine eligibility for growth codes, the carrier might fail to meet the threshold due to the fact that numbers assigned to a reseller are never deemed Assigned. Given that the reseller using those numbers, as a non-codeholder, will never file an application for growth codes, numbers assigned to resellers would be completely unaccounted for under the current scheme for seeking growth codes. In short, under the Commission's scheme, numbers assigned to resellers will never be shown as utilized in connection with a request for growth codes. In addition to revising its formula, the Commission should clarify the reporting responsibilities concerning Intermediate numbers.¹⁹

E. Treatment of Newly Assigned Numbers

Under Section 52.15(g)(3)(ii), a carrier applying for growth codes is entitled to exclude from its inventory of numbers “[n]umbering resources activated in the Local Exchange Routing Guide (LERG) within the preceding 90 days of reporting utilization levels.”²⁰ A recent staff Public Notice appears to contradict this provision.²¹ The *Staff PN*, in response to an April 19, 2000 *ex parte* filing by regulators from fifteen states,²² contains the following question and answer:

¹⁹ In clarifying the reporting obligations, the Commission should take into account the fact that reseller numbers are generally coupled with a carrier's service. Accordingly, a reseller that obtains numbers from two competing carriers in the same market cannot use the numbers from one underlying carrier to satisfy the demands of customers for the service of a different underlying carrier.

²⁰ 47 C.F.R. § 52.15(g)(3)(ii).

²¹ Public Notice, *Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding*, CC Docket 99-200, DA 00-1549 (July 11, 2000) (*Staff PN*).

²² See *Staff PN* at 1 n.5 (citing Letter to the Secretary from Trina M. Bragdon of the Maine Public Utilities Commission, dated April 19, 2000 (State *ex parte*); the letter was filed on behalf of the Arizona Corporation Commission, the California Public Utilities Commission, the Connecticut Department of Public Utilities Control, the Florida Public Service Commission, the Indiana Public Utility Regulatory Commission, the Maine Public Utilities Commission, the Massachusetts Department of Telecommunications and Energy, the Missouri Public Service Commission, the New York Public Service Commission, the North Carolina Utilities Commission, the Pennsylvania Public Utility Commission, the Texas Public Utility Commission, the Virginia State Corporation Commission, the Wisconsin Public Service Commission, and the Washington Utilities and Transportation Commission).

- Q. Are newly acquired numbering resources excluded from carriers' MTE worksheet projections (para. 111)?
- A. No. The MTE worksheets must include carriers' entire current inventory, which includes new NXX codes.²³

While this staff position is technically correct in the context that new numbers have not been and are not excluded from the MTE worksheet projections, there is a danger that this might be read as requiring new numbers to be included in inventory for purpose of calculating utilization as well. Such an interpretation would be flatly inconsistent with both the rule quoted above and the paragraph of the *Report and Order* cited in the *Staff PN*. The Commission made its intention entirely clear in both places. Paragraph 111 of the *Report and Order* states:

We define "newly acquired numbers" as those that have been activated with the LERG, and thus are available for assignment, within the preceding 90 days of reporting utilization. *Because we are aware that carriers cannot be reasonably expected to achieve significant utilization levels immediately in newly acquired numbering resources, we conclude that newly acquired numbering resources can be excluded from the calculation. Further, excluding newly acquired numbering resources allows carriers to maintain adequate inventories in preparation for specific promotional offerings and accommodates wireless carriers' seasonal fluctuations in demand.*²⁴

Consistent with both the rule and this expressed rationale for it, the Commission should clarify that that carriers must include new numbers in their inventory for purposes of the MTE worksheet, but not for utilization calculations, including those contained in applications for growth codes.

F. Definition of When Codes Are Placed "In Service"

The Rules provide that an NPA-NXX must be activated and placed "in service" with end users within six months of grant. Verizon Wireless is concerned that the requirement that the

²³ See *Staff PN* at 4.

²⁴ *Report and Order* at ¶ 111 (footnote omitted, emphasis added).

NPA-NXX combination have at least one end-user customer in six months will preclude carriers from activating NPA-NXX codes for initial use by resellers, since (1) the underlying carrier cannot control when a reseller initiates service from this code to an end-user customer and (2) the numbers assigned to the reseller will be treated as Intermediate, not Assigned numbers from the underlying carrier's perspective. This can be particularly problematic if the reseller assigns these numbers to end-user customers, but the underlying carrier is forced to give back the code because it did not place any of its own end users on the code and it is therefore deemed not "in service." Just as numbering resources assigned to resellers should be deemed Assigned, so should the code be deemed "in service" once numbers in the code are assigned to resellers *or* end users.

II. ISSUES CONCERNING SEMI-ANNUAL FORECAST AND UTILIZATION REPORTS

A. There Is No Reason for Requiring Thousands' Block Reporting by Non-LNP-Capable Carriers at This Time

The rules adopted in the *Report and Order* require all non-pooling carriers, including non-LNP-capable carriers, to report their forecast data by at the NXX level per rate center, in pooling areas, while it requires them to report their utilization level at the thousands' block level.²⁵ Verizon Wireless respectfully submits that there is no compelling reason or justification for requiring carriers who are incapable of participating in pooling at the thousands' block level to report their utilization at this point as though they were LNP-capable, especially since

²⁵ See *Report and Order* at ¶¶ 71-73; 47 C.F.R. § 52.15(f)(4)(ii)(B) (forecast data at the NXX level), (f)(5)(iii) (utilization data at the thousands' block level).

“covered” wireless carriers are not required to become LNP-capable for more than two years, on November 24, 2002.²⁶

The Commission provided scant rationale for this decision. It claimed that thousands’ block reporting by all carriers in pooling areas, including non-LNP-capable carriers, “provides a level of detail” that will improve decisionmaking concerning “the efficacy of thousands-block pooling,” the identification of thousands-blocks that can be used for pooling, and “monitoring preservation protocols for protecting uncontaminated thousands-blocks.”²⁷ It recognized that there would be up-front costs involved in developing automated systems for tracking the required data, but stated its belief that the “difference in programming costs between NXX and thousands-block reporting will be small.”²⁸

The Commission’s conclusion in this regard was unsupported by any citation to evidence, comments, studies, or anything else in the record. Indeed, the Commission’s conclusion is flat wrong. It is also counter-intuitive, in that carriers that are not LNP-capable have no current reason to track their utilization by thousands’ block and do not do so. Carriers that are subject to a pooling requirement, on the other hand, must have systems in place that allow them to track their number inventory on a thousands’ block basis. Non-pooling carriers have the ability to assess utilization on the NXX level, since they have had to develop such data, when needed, to request growth codes (although the rules require data to be reported somewhat differently than in the past, due to the new definitions adopted). Thus, preparing periodic reports of NXX-level utilization involves automating and generating reports that carriers theoretically can already generate manually on an as-needed basis. Preparing reports at the thousands’ block level, on the

²⁶ Indeed, some wireless carriers, such as paging operators, are not “covered” CMRS and are never required to be LNP-capable.

²⁷ *Report and Order* at ¶ 71.

other hand, involves writing an entirely new program that will correlate data from entirely separate databases, since non-pooling carriers have not had any reason to maintain utilization data at the thousands' block level. For example, some non-pooling carriers may be able to generate the needed data only by the expensive and time-consuming task of manually correlating switch records with billing.

Moreover, utilization data from non-LNP-capable carriers does not satisfy the rationale for requiring the filings. It will not improve the Commission's deliberations about how well pooling works, will not assist in identification of candidate blocks for pooling, and will not help protect uncontaminated blocks for use in pooling. Since pooling is more than two years away for most non-LNP carriers, their utilization data will not be of any significant value.

B. The Commission Must Clarify that Thousands' Block Means Entire NXX-X Blocks of 1000 Numbers

In the Commission's current rules, it is not clear whether carriers who hold numbering resources in blocks of *less* than 1000 numbers — *i.e.*, groups of numbers less than an entire NXX-X block — are required nonetheless to report on utilization at the thousands' block level for each thousands' block in which they hold numbers. This is a matter of concern for those wireless carriers who use Type 1 numbers, which are typically issued in blocks of 100 numbers. From the wireline carrier's perspective, these are blocks of numbers provisioned similarly to end-user DID numbers, and the wireless carrier is neither a reseller nor a code holder. The wireless carrier's inventory does not include the entire NXX-X block, and thus its utilization of the numbers cannot be computed on the basis of a thousands' block.

(footnote continued)

²⁸ Report and Order at ¶ 72.

Verizon Wireless submits that requiring carriers who may have fewer than 1,000 numbers assigned to them in a given NXX-X block to report their utilization in the entire thousands' block as though the entire block was assigned would be unreasonable. This would impose significant reporting burdens on the carriers — for example, a carrier with 100 numbers in each of ten NXX-X blocks would have to file thousands' block utilization reports on ten separate blocks — and the utilization rates of such carriers would be lower than justified in the utilization reports (in the foregoing example, the carrier would have no higher than 10% utilization even if it were using all of its numbers).

No useful purpose would be served by requiring thousands' block utilization reports on blocks of less than 1000 numbers. Wireless carriers using Type 1 numbers are not capable of LNP and, accordingly, these numbers could not be recovered for pooling. Moreover, many of the 100-block Type 1 numbers are held by small carriers that do not have the capacity to track numbers on this basis.

C. Deferral of the August 1, 2000 Semi-Annual Forecast and Utilization Report Is Warranted Pending Reconsideration and Clarification

As discussed above, there are substantial questions surrounding the utilization provisions in the *Report and Order*, including how the various categories of numbers are defined, how utilization should be computed and reported, and whether there is any justification for requiring thousands' block utilization reporting for non-LNP-capable carriers. Moreover, the rules and the Form 502 in some respects do not comport with the text of the Commission's *Report and Order*. Verizon Wireless expects that the Commission will respond to the concerns raised in this and other petitions for reconsideration, as well as the comments in response to the *Further Notice*, by clarifying and revising its reporting requirements in numerous respects. The semi-annual filings

should be based on the Commission's final decisions on the issues involved in the proceeding, rather than on the inconsistent and imperfect determinations in the *Report and Order*.

It has proven enormously difficult to compile the data required to submit the first semi-annual forecast and utilization report. Several carriers, including Verizon Wireless, have filed petitions and requests for waivers seeking an extension of the August 1, 2000 deadline.²⁹ Given the open issues affecting the first semi-annual forecast and utilization filing, the need for system programming to accomplish the reporting required, the fact that the filing is required even before the start of the pleading cycle in response to petitions for reconsideration, and the fact that there has been no opportunity for public comment on the reporting forms, Verizon Wireless respectfully submits that the Commission should not merely extend the time for the scheduled August 1 filings, but instead should defer the beginning of the semi-annual filing obligation until after the Commission has reconsidered and clarified its decision.

Deferral is especially warranted because the Commission did not officially make the reporting requirement effective until last Thursday, even though the rule requires report filings only two weeks from now.³⁰ Moreover, if there are changes, the August 1 data will not match up with either the data collected later or with historical data. This means that companies would have to incur considerable expense and bear a significant burden to attempt to collect and report data in accordance with the current reporting form, even though that data may ultimately be useless for comparison with both historical and later data due to changed definitions or formulas. In addition, the reporting form itself is brand new, having received emergency OMB approval and been made publicly available only recently. Even if none of the definitions or formulas

²⁹ See *Emergency Request for Partial Waiver of the August 1 Filing Deadline for Semiannual FCC Form 502 Utilization and Forecast Reports*, addressed to Messrs. Lawrence Strickling and Thomas Sugrue from Luisa L. Lancetti and Michael Deuel Sullivan, counsel for Verizon Wireless, CC Docket No. 99-200, dated July 14, 2000.

changes, carriers need a longer time to prepare their first filing using the new form. At a minimum, the utilization formula and definitions used in the reporting form should be consistent with the formula and definitions adopted by the Commission, including any changes on reconsideration.

The prematurity of the August 1 filing date is especially apparent considering the massive scale of the filing — for example, Verizon Wireless is in the process of developing data for, and preparing for submission, reports covering several hundred thousand NXX-X blocks, even though none of the data has historically been maintained at the NXX-X level, all with just one month of lead time after the electronic form was made available. The task is further complicated because the data must be submitted in a specified electronic form, even though carriers have not had sufficient time to design and develop the software to permit automated collection of the data and preparation of the forms and the NANPA is not yet prepared to accept and process electronically submitted reports.

Given the massive scope of the reporting requirement, the expense and burden involved in preparing the reports, and the complexity of processing the information, it is essential that both the substance and procedures of the reporting requirement be subject to public input and revision *well in advance of the initial filing deadline*. There is no point in having a “test run” of a deeply flawed procedure that neither the industry nor the NANPA is capable of carrying out properly. There should be public forums during the reconsideration period, public input during the OMB review process, workshops, and a substantial period *after* reconsideration for the Commission to conduct additional workshops and training sessions and for affected carriers to establish systems capable of generating the required reports efficiently.

(footnote continued)

³⁰ See 65 Fed. Reg. 43,251 (July 13, 2000).

It also makes no sense to require filings which will remain unused for some significant period of time because NANPA is unable to process the data. Moreover, the August 1, 2000 data collection will cause unwarranted disruption to carriers and their customers, above and beyond the time and expense of compilation, as numbering resources needed to serve customers may be denied to carriers. For example, the August 1 data may incorrectly portray some carriers as having lower utilization than what they actually have available and the low utilization figures could result in the triggering of audits or the denial of needed numbering resources. Numbers should not be taken away because of inadequate responses to a reporting requirement imposed before the rules are settled and absent adequate time for automating the information retrieval.

III. CLARIFICATION OF STATE AUTHORITY TO COLLECT DATA FROM CARRIERS AND/OR NANPA

Verizon Wireless requests that the Commission clarify two aspects of state regulators' authority to collect confidential data from carriers and/or NANPA pursuant to the policies adopted in the *Report and Order*. The first issue concerns the confidentiality protections that states must afford to such confidential data, and the second pertains to specific-purpose state-ordered reporting requirements.

1. Protection of Confidentiality

The *Report and Order* provides that "disaggregated, carrier-specific forecast and utilization data" will be given confidential treatment,³¹ but allows states to obtain access to this confidential data from NANPA or directly from carriers, as well as carriers' applications for initial and growth codes, "provided that the state commission has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary

³¹ *Report and Order* at ¶ 79.

under state law) that would preclude disclosure to any entity other than the NANPA or the Commission.”³² The Commission declined to specify a particular method for ensuring confidential treatment, but said that it would “work with” states having laws that may pose difficulties to protecting the confidentiality of such documents.³³ Verizon Wireless submits that more should be done to protect the confidentiality of such materials.

There is a relatively simple way to provide such protection, and the key is set forth right in the Commission’s *Report and Order*. Specifically, the Commission stated:

We . . . find that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and *should be exempt from public disclosure under [the FOIA trade secret exemption,] 5 U.S.C. § 552(b)(4)*.³⁴

The Commission should make clear that FOIA’s trade secret protection expressly attaches to the confidential information supplied to state regulators when they require it pursuant to authority delegated by the Commission. When states obtain such information in this way, they are acting not as sovereign states but as the agents of the Commission in carrying out a federal program under federal law. Section 251(e)(1) makes clear that the Commission has “exclusive jurisdiction” over numbering administration, and that states may hold only such authority as the Commission delegates.³⁵ Thus, Congress has preempted states from directly asserting jurisdiction over numbering administration as sovereigns, and state authorities can act only as the subsidiary agents of the Commission in carrying out federal policy.

When a state acts as an agent of the federal government, not merely as a recipient of federal funds, it can be required to comply with the protections afforded by FOIA. It is well

³² *Report and Order* at ¶¶ 80, 81.

³³ *Id.*

³⁴ *Report and Order* at ¶ 78 (emphasis added).

³⁵ See 47 U.S.C. § 251(e)(1).

established that an entity that is not part of the federal government can be subjected to the provisions of the Freedom of Information Act, including the FOIA exemption for trade secrets, 5 U.S.C. § 552(b)(4), when the organization either (a) is subject to substantial federal supervision and control, or (b) acts as a functional equivalent of an agency of the federal government.³⁶

Thus, one commentator noted that it is “possible that a private entity could be subject to FOIA’s definition of “agency” if it is a delegated function by the government, and if it has the power of the state . . . or where its methods of judgment are particularly important to the public If the [federal government] delegates a function that affects the public welfare and makes the need for accountability high, it can be argued that the entity is performing a public function and should be a state actor for all purposes, including the FOIA.”³⁷

Here, the states can gather and use the information at issue only by acting as delegates or agents of the Commission, pursuant to authority exclusively reserved by Congress to the Commission. The states can use the information only in the process of carrying out their duties as delegated authorities under the Commission. The data is collected from the carriers only because of Commission requirements, pursuant to exclusive federal jurisdiction. Clearly, the Commission is obligated to ensure that data collected under its authority for Commission purposes is protected to the same extent as if the Commission itself collected it.

The Commission can carry out this obligation in three ways without prescribing a specific protection mechanism. First, it can require any state that seeks access to confidential information to certify that it accepts the obligation to protect trade secrets in accordance with the

³⁶ See, e.g., *Forsham v. Harris*, 445 U.S. 169, 180 n.11 (1980); *United States v. Orleans*, 425 U.S. 807 (1986); *Soucie v. David*, 448 F.2d 1067 (D.C. Cir. 1971); *Washington Research Project, Inc. v. Department of Health, Education, and Welfare*, 504 F.2d 238 (D.C. Cir. 1974).

³⁷ Craig Feiser, *Privatization and the FOIA: An Analysis of Public Access to Private Entities Under Federal Law*, 52 Fed. Comm. L.J. 21, 60-61 (1999) (footnotes omitted).

*purpose, as long as these data reporting requirements do not become regularly scheduled state-level reporting requirement[s].*⁴⁰

Verizon Wireless is concerned that this limited exception, which was designed to address states that are auditing a specific carrier, swallows the rule against state-ordered reporting. Some states have already begun exploring the outer reaches of this exception. California, for example, has required a variety of carriers to file reports on specified occasions, even though these filings are not connected with an audit of any specific carrier.⁴¹ Moreover, in states such as California that have failed to establish NPA relief plans, carriers will increasingly need to seek the assignment of numbering resources outside the rationing plan, necessitating emergency filings that will inevitably result in multiple carriers being required to submit extensive “special” reports that violate the letter and spirit of the Commission’s policy. Surely the fact that the Commission expressly barred states from requiring carriers to submit reports except non-regularly-scheduled, carrier-specific reports needed “for a specific purpose” does not leave states free to require carriers in a given area to submit reports several times a year for non-specific purposes. The length of the reporting interval should not matter; reporting every time a carrier needs numbers is the equivalent of a “regularly scheduled” reporting requirement, even though the intervals between reports are not always the same.

The bar on “regularly scheduled” reporting requirements becomes meaningless, and the exception swallows the rule, if states are free to require industry-wide reports that are unrelated to any special circumstance and to do so as often as once a year or even more. Accordingly,

⁴⁰ *Id.* (emphasis added).

⁴¹ For example, California has required wireless carriers in many markets to provide historical and forecast data. It requires utilization reports from carriers in markets where it institutes pooling. Moreover, its failure to put area code relief plans in place so as to provide adequate numbering resources for growth, and the failure of its lottery-based rationing system to provide carriers with numbers based on need, will result in carriers having to request emergency numbering relief on a more and more frequent basis, which provides California with yet another opportunity to demand numbering usage reports from carriers.

Verizon Wireless asks that the Commission clarify that states may not subject multiple carriers to substantially identical reporting requirements during any six-month period, may not require a given carrier to submit a report more than once in a given eighteen-month period, and must have a carrier-specific reason other than the carrier's need for numbers as the basis for requiring the report. Moreover, the Commission should make clear that states may *not* propound data requests to carriers that duplicate reports or filings already required by the Commission.

IV. CLARIFICATION CONCERNING THE WITHHOLDING OF NUMBERING RESOURCES BY NANPA

Under Section 52.15(g)(3) (iv), as adopted in the *Report and Order*, NANPA is directed to “withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part.”⁴² While Verizon Wireless supports this principle in concept, some clarification is needed.

First, the scope of the numbering resource withholding is unclear — is it rate-center-specific, NPA-wide, OCN-wide, or affiliated-OCN-wide? Verizon Wireless submits that the *maximum* scope of the withholding should be limited by the scope of the noncompliance.⁴³ A carrier that fails to file the necessary report concerning numbers in a given rate center, or whose application for a growth code fails to demonstrate its entitlement to a code in a particular rate center should be subject to numbering resource withholding *in that rate center* with respect to any applicants for growth codes in that rate center. However, if that carrier also requests a growth code in a *different rate center* in the same or a different NPA and has met all information

⁴² 47 U.S.C. § 52.15(g)(3)(iv).

⁴³ The withholding should not necessarily be coextensive with the noncompliance, however. For example, a carrier's inability to timely provide all of the information called for in the August 1, 2000 forecast and utilization filing despite good faith efforts to do so does not justify withholding of growth codes where all of the documentation for those growth codes is supplied. Likewise, a carrier that is unable to supply certain information may request a

(continued on next page)

and application requirements, its request should be granted. Likewise, a failure to comply with reporting requirements for a given rate center should not have consequences company-wide or across affiliates.

Withholding numbering resources for which related documentation has not been submitted is an appropriate ministerial task for NANPA, which can enforce the filing requirements only by granting or withholding the requested resources. NANPA's withholding numbering resources due to a deficient filing is akin to a license coordinator or Commission staff's dismissal, rejection or denial of a license application that does not contain the required information. Withholding numbering resources beyond that scope is not a ministerial task for the NANPA, any more than the Commission staff should be empowered to place a "hold" on a given carrier's license applications because one of its license applications is defective.

The second issue concerns the duration of the withholding. Verizon Wireless submits that NANPA should withhold the resources until the carrier submits the information needed to process the request, and no longer. The purpose of withholding is to enforce the filing requirements, not to punish the carrier. Any broader penalties, if warranted, should be pursued by the Enforcement Bureau in accordance with the procedures established by the Communications Act.

V. EXCLUSIVE RELIANCE ON UTILIZATION THRESHOLDS FOR GROWTH CODE ELIGIBILITY IS UNWARRANTED

Verizon Wireless demonstrated in its Comments in response to the *Further Notice* that exclusive reliance on utilization thresholds for determining carriers' eligibility for growth codes

(footnote continued)

waiver from the Commission or seek "safety valve" relief (*see* Section V, *infra*); in that case, the carrier should not be denied access to needed codes.

is unwise. In addition to suggesting changes to how utilization should be computed, Verizon Wireless pointed out the need for flexibility — and, in particular, the need for a “safety valve” procedure that would allow carriers to overcome the presumption that they are not entitled to a growth code based on their utilization rate. Rather than repeating the explanation for why a safety-valve procedure is needed, Verizon Wireless hereby incorporates its Comments and Reply Comments by reference.⁴⁴

CONCLUSION

For the foregoing reasons, Verizon Wireless urges the Commission to reconsider and clarify its rules and policies adopted in the *Report and Order*.

Respectfully submitted,

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⁴⁴ See Further Notice Comments at 6-11; Further Notice Reply Comments at 1-5.