

89. We decline to impose a blanket prohibition against take-backs, however. In some instances, the use of take-backs may enhance the effectiveness of SOs, from a numbering resource optimization perspective, by freeing up numbering resources in the underlying area code. Take-backs could increase the life of the underlying NPA, which, in turn, would preserve the geographic identity of a given area. Conversely, creating SOs without freeing up numbering resources in the underlying area code may not provide meaningful benefits because the life of the underlying NPA would not likely be significantly prolonged.²¹⁶ There may also be instances in which the impact of take-backs on consumers can be mitigated either through voluntary incentives for consumers to relinquish their numbers or by limiting take-backs to services or technologies in which the telephone number is not directly used by or even necessarily known to the customer.²¹⁷

90. Therefore, although we do not favor take-backs as a matter of policy, we do not completely rule out the possibility of states using take-backs under circumstances designed to mitigate their potential harmful effects. Specifically, we would likely favor service-specific overlays that include take-backs of non-geographic-based numbers, but we would likely oppose technology-specific overlays that would include take-backs of numbers that are geographically sensitive. To ensure that the costs and benefits of take-backs are given careful consideration, we will require state commissions proposing to use take-backs include a strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs. In their petitions, state commissions seeking to use take-backs would have to specifically demonstrate that the negative effects of take-backs will be mitigated by the benefits in the particular area by showing, for example, that: (1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure;²¹⁸ (2) the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers.

6. Ten-Digit Dialing

91. In the *Second Report and Order*, we asked commenters whether ten-digit dialing should be imposed for transitional SOs.²¹⁹ The JWC proposed a waiver of ten-digit dialing until either the transitional SO transformed into an all-services overlay or November 24, 2002. In response, most, but not all, commenters agree with JWC's proposal. CTIA, for example, states that any waiver of the ten-digit dialing requirement should cease when the pooling administrator receives NXX codes from the new NPA or when wireless pooling commences, whichever comes

²¹⁶ It could be argued, however, that there would be some limited benefit because the demand for additional numbering resources in the underlying NPA would be reduced.

²¹⁷ Examples of services where the telephone number is not necessarily known or used directly by the customer include ATMs, fax machines, and j-fax.

²¹⁸ Evidence of strong consumer support would weigh in favor of allowing take-backs, because consumers, especially wireless consumers, would be the primary group to be negatively impacted.

²¹⁹ See *Second Report and Order*, 16 FCC Rcd at 365, para. 137.

first.²²⁰ A number of state commissions do not support ten-digit dialing,²²¹ and the Connecticut Commission only supports ten-digit dialing once competition is demonstrated between wireline and wireless providers and the transitional SO has been converted into an all-services overlay.²²²

92. Because we continue to believe that ubiquitous ten-digit dialing when an overlay is implemented would maximize numbering resource optimization,²²³ we favor SO proposals that include ten-digit dialing in the SO NPA as well as the underlying area code, in the same manner that ten-digit dialing is required when all-services overlays are implemented. Mandatory ten-digit dialing, we believe, minimizes anti-competitive effects due to dialing disparities, which, in turn, avoids customer confusion.²²⁴ We, nevertheless, will not necessarily require ten-digit dialing with SOs at this time, at least not until we are better able to determine whether a temporary waiver of the ten-digit dialing requirement in any way increases the use and effectiveness of SOs. We emphasize that, although temporary waivers might be warranted, it is not likely that requests for permanent waiver of the ten-digit dialing requirement, especially after a transitional SO is expanded to include all services, will be granted. State commissions seeking a waiver of the ten-digit dialing requirement should clearly indicate when any requested waiver would terminate.

7. Rationing

93. Rationing is a number conservation measure that limits the amount of numbering resources made available for allocation to carriers in a given area, in accordance with an industry-implemented or state-implemented rationing plan.²²⁵ Rationing may be implemented pursuant to a declaration by the NANPA that a jeopardy situation exists, which means that the underlying area code is projected to exhaust before the new area code is scheduled to be implemented.²²⁶ Some state commissions have been delegated authority to continue an established rationing plan for six months after the new area code is activated.²²⁷ A number of

²²⁰ CTIA Comments at 8.

²²¹ See, e.g., Michigan PSC Comments at 2; New York State Department of Public Service Comments at 2; State Coordination Group Outline at 1.

²²² Connecticut Department of Public Utility Control Comments at 10.

²²³ We note that the U.S. Court of Appeals recently affirmed the Commission's authority to require ten-digit dialing when an all-services overlay is implemented. See *People of the State of New York et al. v. Federal Communications Commission*, Docket No. 99-4205 (2nd Cir. 2001).

²²⁴ See *Local Competition Second Report and Order*, 11 FCC Rcd at 19518-19, para. 287.

²²⁵ See, e.g., Petition for Declaratory Ruling and Request for Expedited Action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd at 19025-19027, paras. 23-26; see also Central Office Code (NXX) Assignment Guidelines (95-0407-008), § 9.0, September 2001, available at <www.atis.org>.

²²⁶ See *id.*

²²⁷ Currently, several states have authority to continue rationing in both the overlay area code and the underlying area code for a period of six months after area code relief is implemented. See, e.g., Numbering Resource (continued....)

commenters agree with the JWC that rationing in the underlying area code should cease upon implementation of the transitional SO,²²⁸ and that rationing should not occur in the transitional SO once it is established.²²⁹ We find that any SO that achieves the purposes for which it is implemented (that is, the availability of numbering resources is increased for all carriers), should not need to be subject to rationing. Thus, we agree with commenters that neither the SO NPA nor the underlying area code(s) should be subject to rationing.

8. Thousands-Block Number Pooling

94. Most commenters argue that SOs should only be implemented in areas where thousands-block number pooling has been implemented. We disagree. We encourage states to use the numbering optimization measures available to them, but for area codes that do not qualify for pooling, implementing a SO may still be a viable option, particularly if non-pooling providers possess a significant portion of the underlying area code's numbering resources. Thus, SOs will be allowed in non-pooling areas provided the state commissions can justify the SO based on the criteria set forth in this Order. In particular, we will closely scrutinize any plans for SOs in non-pooling area codes to ensure that number utilization is sufficiently high. Also, the Commission will look favorably upon petitions from state commissions pursuing other numbering optimization measures in the underlying area code, such as rate center consolidation and unassigned number porting, and recommends that such measures be noted in their petitions. We also clarify that, as with all-services overlays, pooling must be implemented in the SOs if it covers an area in which pooling is taking place.

VI. OTHER NUMBERING RESOURCE OPTIMIZATION MEASURES

A. Audits

1. Enforcement

95. In the *Second Report and Order*, the Commission set forth a comprehensive audit program to verify carrier compliance with federal rules and orders and industry guidelines,²³⁰ and concluded that auditors in the Accounting Safeguards Division of the Common Carrier Bureau, or other Commission designated agents, would perform the audits.²³¹ The Commission also stated that carriers found to be in violation of our requirements may be subject to possible enforcement action, which may include monetary forfeitures, revocation of interstate operating

(Continued from previous page)

Optimization, *Order*, 16 FCC Rcd 15842, 15857-15858, paras. 39-42 (2001) (delegating authority to the Michigan Public Service Commission); Numbering Resource Optimization, *Order*, 16 FCC Rcd 5474, 5490-5491, paras. 37-38 (2001) (delegating authority to the West Virginia Public Service Commission); Florida Public Service Commission Petition for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, *Order*, 14 FCC Rcd 17506, 17517-17518, paras. 25-28 (1999).

²²⁸ See, e.g., BellSouth Comments at 10; CTIA Comments at 9.

²²⁹ WorldCom Comments at 3.

²³⁰ *Second Report and Order*, 16 FCC Rcd at 344-50, paras. 81-99.

²³¹ *Id.* at 347, para. 90.

authority and cease and desist orders.²³²

96. In addition to our traditional enforcement tools, the Commission tentatively concluded that carriers that violate its numbering requirements, or that fail to cooperate with the auditor to conduct either a "for cause" or random audit, should also be denied numbering resources in certain instances, and sought comment on this tentative conclusion. It also sought comment on the process by which this additional remedy should be invoked; specifically, whether only the Commission should direct the NANPA or Pooling Administrator to withhold numbering resources.²³³

97. We conclude that carriers that are audited and found to have violated our numbering requirements, or that fail to cooperate with the auditor to conduct either a "for cause" or random audit, may be denied numbering resources in appropriate cases. State and industry commenters generally support this conclusion.²³⁴ In their comments, state commissions indicate a growing need for additional penalties for, in particular, carriers that fail to file Numbering Resource Utilization Forecast (NRUF) data because they do not anticipate a need for numbering resources in the near future.²³⁵ Additional penalties may include reclamation of numbering resources, depending on the nature of the violation. By also reaching carriers that fail to cooperate with auditing efforts, we hope to increase the effectiveness of our auditing program.

98. We further conclude that, to invoke this additional remedy, only the Commission, specifically the Common Carrier Bureau and the Enforcement Bureau, shall direct the NANPA or National Pooling Administrator to withhold numbering resources from carriers for audit-related violations.²³⁶ We decline, at this time, to delegate authority to state commissions or the NANPA to determine when a carrier shall be liable under this provision, primarily to ensure that this remedy is invoked uniformly. We encourage state commissions and the NANPA to work with the Commission to identify violators and target them for enforcement. We also confine the authority to deny numbering resources to the Commission to limit the release of proprietary information contained in audit findings only to those entities that need it to determine compliance with the rules and audit procedures, and to determine liability.

²³² *Id.* at 349, para. 96.

²³³ The Commission noted that section 220(f) bars public release of audit findings by a member, officer, or employee of the Commission except as directed by the Commission or court. 47 U.S.C. § 220(f).

²³⁴ *See, e.g.*, ALTS Comments at 14; California PUC Comments at 10-11; Cingular Wireless Comments at 17-19; Connecticut Department of Public Utility Control Comments at 3-4; Maine PUC Comments at 5-6; Maryland PSC Comments at 2; Michigan PSC Comments at 6; NASUCA Comments at 32-33; New Hampshire PUC Comments at 1; Ohio PUC Comments at 22; Pennsylvania PUC Comments at 1.

²³⁵ That is, unless they need numbering resources there is no incentive for these carriers to file NRUF reports because currently the only penalty is denial of resources until the data is filed. *See, e.g.*, Maine PUC Comments at 1; Maryland PSC Comments at 2; New Hampshire PUC Comments at 1.

²³⁶ NANPA shall continue to withhold numbering resources from carriers who fail to comply with the mandatory reporting requirements. *First Report and Order*, 15 FCC Rcd at 7609, para. 84.

2. State Commissions' Authority to Conduct Audits

99. In the *Second Report and Order*, the Commission determined that the audit program would consist of "for cause" and random audits, performed by an auditor designated by the Common Carrier Bureau.²³⁷ Although the Commission recognized that a national program will provide uniformity in the way that audits are conducted, it also recognized that state commissions would benefit from having a role in conducting these carrier audits.²³⁸ The Commission therefore sought comment on whether state commissions should be given independent authority to conduct "for cause" and random audits in lieu of or in addition to the national audit program established in the *Second Further Notice*, and what parameters should apply to any such authority.²³⁹ In particular, commenters were asked to address concerns about state commissions employing different standards in performing "for cause" and random audits that might force carriers operating in multiple states to comply with different demands.²⁴⁰ In seeking comment on this issue, the Commission did not address state commissions' authority to perform audits under state law.²⁴¹

100. Comments by state commissions generally support giving authority to conduct audits in addition to, but not in lieu of, the national audit program.²⁴² Many contend that state level and national level audit results could and should be shared, possibly by incorporating state results into a national audit and vice versa.²⁴³ Several industry commenters, on the other hand, do not support giving states authority in addition to or in lieu of the national audit program. AT&T, for example, argues that the audits conducted by the states would have the same objective as the national audit plan, thus negating any reason to empower more than one body.²⁴⁴ In addition, some industry commenters indicate that the Commission has already taken appropriate steps to ensure an adequate level of state participation in its audit program.²⁴⁵

101. The Commission values input from the states and considers coordination with them to be vitally important to advancing our shared policy goals of administering numbering

²³⁷ *Second Report and Order*, 16 FCC Rcd at 344-50, paras. 81-99.

²³⁸ *Id.* at 347, para. 92.

²³⁹ *Id.* at 370, para. 155.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *See, e.g.*, Connecticut Department of Public Utility Control Comments at 13; New Hampshire PUC Comments at 6; New York State DPS Comments at 6; Pennsylvania PUC Comments at 7; *but see* Ohio PUC Comments at 24.

²⁴³ *See, e.g.*, California PUC Comments at 11; Connecticut Department of Public Utility Control Comments at 3-4; Maine PUC Comments at 1; Maryland PSC Comments at 2; New Hampshire PUC Comments at 1; Texas PUC Comments at 14.

²⁴⁴ AT&T Comments at 14-15.

²⁴⁵ *See, e.g.*, ALTS Comments at 14-15; BellSouth Comments at 21; Cingular Comments at 19-20.

resources efficiently. We reaffirm that states continue to have authority to conduct audits to the extent permitted under state law. Moreover, in recognition that states can serve a valuable role in helping the Commission to monitor carriers' number use, we clarify that states may conduct audits, at their own expense, to determine whether a particular carrier is in compliance with the Commission's numbering rules to discharge their own responsibilities. For example, state audits that seek to gather information needed to facilitate area code relief decisions would be appropriate to the extent that the information sought is not available through another source, such as NRUF data reports.²⁴⁶ This ability, coupled with the states' right to request "for cause" audits under the national auditing program, should provide states with sufficient and effective tools for carrying out their area code relief responsibilities. We expect that state commissions will not conduct audits that are duplicative of our national audits or that request information readily available from other sources. This should alleviate concerns by the industry that state audits would serve the same purpose as Commission audits.²⁴⁷

102. Pursuant to long-standing delegated authority, we expect the Commission audit staff to cooperate with state commissions by coordinating compliance and enforcement activities and sharing information gathered in the course of audits under the national audit program.²⁴⁸ We expect, for example, to share with the requesting state the audit results arising out of any "for cause" audits requested by a state commission. We encourage states believing audits are required in certain circumstances to request "for cause" audits by making a written request to the Commission.²⁴⁹

3. Petitions for Reconsideration and Clarification

103. On March 12, 2001, BellSouth, Qwest, Sprint and USTA each filed a Petition for Reconsideration and/or Clarification requesting that the Commission reconsider certain aspects of its decision requiring audits. First, Qwest requests that the Commission reconsider its decision to require random audits as part of its national audit program and that it give carriers the opportunity to rebut a case for a "for cause" audit.²⁵⁰ Second, BellSouth requests that the Commission reconsider its decision that all carriers share the costs incurred to conduct "for

²⁴⁶ See, e.g., California Public Utilities Commission Telecommunications Division, Report on the 619 Area Code, March 13, 2001.

²⁴⁷ AT&T Comments at 14-15.

²⁴⁸ See 47 C.F.R. § 0.291(b). To improve operating and administrative efficiency, the Commission delegated authority to the Common Carrier Bureau to coordinate compliance and enforcement activities with state commissions when: (i) there is a shared policy interest, and (ii) the states have processes for protecting confidential information. Amendment of Parts 0, 1, and 64 of the Commission's Rules with Respect to Delegation of Authority to the Chief, Common Carrier Bureau, *Report and Order*, 5 FCC Rcd 4601 (1990); *Delegation of Authority to the Chief, Common Carrier Bureau*, Memorandum Opinion and Order, 50 Fed. Reg. 18487-03 (1985), on reconsideration, 104 F2d 733 (1986).

²⁴⁹ *Id.* at 345, para. 87.

²⁵⁰ Qwest Petition at 2.

cause” audits.²⁵¹ Similarly, USTA requests that audits should be paid for by carriers participating in the audits.²⁵² Finally, Sprint requests clarification regarding state’s independent authority under state law to conduct number utilization audits.²⁵³

104. *Random Audits.* In the *Second Report and Order*, the Commission concluded that because “for cause” audits are conducted only if there are specific allegations of non-compliant or inappropriate conduct on the part of a carrier, carrier compliance with our rules and orders and applicable industry guidelines should also be monitored through the use of random audits.²⁵⁴ The Commission found that random audits, in conjunction with the use of “for cause” audits, would provide the audit program with more flexibility to accomplish the stated goals, and would serve as a strong deterrent.²⁵⁵ Qwest argues that including random audits as part of our audit program is unsound regulatory policy.²⁵⁶ Qwest explains that promulgating rules and expecting compliance is the general regulatory model that has worked for decades,²⁵⁷ and contends that it is simply unnecessary to promulgate rules then create regulation to monitor their enforcement.²⁵⁸

105. We find Qwest’s arguments unpersuasive. The auditing program was established not only to monitor, but also to identify and correct violations of our rules and orders and applicable industry guidelines. As noted in the *Second Report and Order*, the program can serve to provide a level of confidence in the accuracy of data reported by carriers,²⁵⁹ ensure that carriers are complying with our rules by serving as a deterrent against non-compliance,²⁶⁰ and allow us to identify inefficiencies in the manner in which carriers use numbers, such as excessive use of certain categories of numbers such as administrative, aging, or intermediate numbers. We therefore deny Qwest’s petition, and retain random audits as part of our national audit program.

106. *Carrier Opportunity to Rebut.* The Commission concluded in the *Second Report and Order* that “for cause” audits may be initiated based on information drawn from a variety of sources.²⁶¹ Specifically, the NANPA, the Pooling Administrator, or a state commission may

²⁵¹ BellSouth Petition at 15-16.

²⁵² USTA Petition at 7.

²⁵³ Sprint Petition at 12-14. This request has been addressed in the previous section. See *supra* at para. 99-102.

²⁵⁴ *Second Report and Order*, 16 FCC Rcd at 346, para. 88.

²⁵⁵ *Id.*

²⁵⁶ Qwest Petition at 6.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 6-7.

²⁵⁹ *Second Report and Order*, 16 FCC Rcd at 344, para. 83.

²⁶⁰ *Id.*

²⁶¹ *Id.* at 345, para. 86.

make a written request to the Common Carrier Bureau to request a “for cause” audit.²⁶² The request should state the reason for which a “for cause” audit is being requested and include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines.²⁶³ The audit staff will determine from the application whether a “for cause” audit is warranted.²⁶⁴ Qwest accurately points out that the discussion did not address a carrier’s ability to rebut the *prima facie* case that would trigger an audit.²⁶⁵

107. We clarify that, although not stated explicitly, the audit program does, in fact, allow carriers to respond to the allegations before any enforcement action is taken as a result of audit findings. We also clarify that requests for a “for cause” should be submitted to the Common Carrier Bureau and the Enforcement Bureau. Once the Bureaus have received a request for a “for cause” audit, the carrier will be notified of that request and be given up to 30 days to respond to the allegation(s). This notification may involve a data request from the Commission staff and the carrier’s response may result in a decision not to proceed with the requested “for cause” audit. If the carrier’s response indicates that the alleged violation exists but will be corrected, then the Commission staff can allow the carrier up to 60 days to comply before performing the audit. We note that the Common Carrier Bureau will issue a Public Notice providing additional information on the audit plan shortly.

108. Consistent with standard auditing practices, we expect that the audit process will afford carriers ample opportunity to present their views during the audit, even beyond commenting on an initial allegation or request to conduct a ‘for cause’ audit. We direct state commissions conducting numbering related carrier audits, in accordance with the parameters set forth herein, to provide carriers the same opportunity to explain their views and/or rebut audit findings. Finally, we note that an audit report itself does not constitute a legal determination of compliance or noncompliance. That determination is reserved for the Commission, and we expect to consider the audited carrier’s views in making such judgments.

109. *Auditing Costs.* In the *Second Report and Order*, the Commission concluded that the costs associated with our comprehensive auditing program are numbering administration costs, and, as such, they should be borne by all telecommunications carriers on a competitively neutral basis, as required by section 251(e)(2) of the Act.²⁶⁶ In the case of “for cause” audits, BellSouth contends that since these audits will be conducted only if there is an alleged violation of the Commission’s rules, the arrangement for auditing costs is unfair to carriers not subject to the “for cause” audit.²⁶⁷ BellSouth encourages the Commission to adopt a policy whereby the costs for a “for cause” audit are borne by the carrier subject to that audit, while the costs for

²⁶² *Id.* at 345, para. 87.

²⁶³ *Id.* at 345-46, para. 87.

²⁶⁴ *Id.* at 346, para. 87.

²⁶⁵ Qwest Petition at 7.

²⁶⁶ *Second Report and Order*, 16 FCC Rcd at 349, para. 98.

²⁶⁷ BellSouth Petition at 15.

random audits are shared by all carriers.²⁶⁸

110. In its request that the Commission reconsider the allocation of auditing costs, USTA's stated concern is that the Commission's policy regarding these costs provides funding that is unchecked and could result in unnecessary audits.²⁶⁹ USTA encourages the Commission to maintain the policy whereby carriers that are subject to the audits, not the industry as a whole, pay for audits conducted under the Commission's auspices.²⁷⁰ To the extent it requires carriers subject to random audits to bear the costs of such audit, KMC Telecom, Inc. (KMC) opposes USTA's request.²⁷¹ PCIA also opposes USTA's request, stating that the use of the NBANC fund is the clear method of assuring competitive neutrality.²⁷² USTA's response to the objections indicate that the Commission's concern that costs are recovered on a competitively neutral basis is seemingly satisfied by recovering costs related to work performed by designated agents through the NBANC fund and thus including auditing costs for numbering in the Commission's fee schedule violates no statutory restriction.²⁷³

111. We are not persuaded that the costs for audits should not be borne by all telecommunications carriers on a competitively neutral basis as required by section 251(e)(2). Auditing has general deterrent effects which benefits all carriers by improving the efficiency with which numbering resources are used, and thus, increasing the availability of numbering resources. As such, all carriers should bear the costs of auditing, whether random or "for cause."²⁷⁴ Moreover, individual carriers subject to "for cause" audits bear additional individual costs to comply that are not attributed to all carriers. Therefore, we believe at this time that all auditing costs are properly borne by all carriers.

B. Reserved Numbers

1. Reconsideration of Reservation Period

112. In the *First Report and Order*, the Commission concluded that *reserved numbers*, defined as numbers held by service providers at the request of specific end use customers for their future use, may be held in reserve status for a maximum of 45 days.²⁷⁵ In petitions for

²⁶⁸ *Id.* at 15-16.

²⁶⁹ USTA Petition at 7.

²⁷⁰ *Id.*

²⁷¹ See KMC Opposition at 2 (concluding that such a requirement would be unfair because these carriers are not suspected of violating the Commission's rules regarding numbering).

²⁷² PCIA Opposition at 2.

²⁷³ USTA Reply at 1-2.

²⁷⁴ These additional costs should not be viewed as punitive in nature, however, since the initiation of an audit is not necessarily an indication that a carrier has done something wrong. The purpose of an audit is not to punish the carrier by imposing additional costs on the carriers that are audited.

²⁷⁵ *First Report and Order*, 15 FCC Rcd at 7587-88, paras. 22-23.

reconsideration²⁷⁶ of the *First Report and Order*, as well as numerous *ex partes*,²⁷⁷ several parties asserted that the 45-day reservation period is a major departure from current business practices and should be increased to enable them to meet specific customer needs.

113. In the *Second Report and Order*, the Commission concluded that the maximum period for reserving numbers should be increased to 180 days,²⁷⁸ and sought comment on the NANC's proposal to allow unlimited reservations on a month-to-month basis in exchange for a fee.²⁷⁹ The Commission also stated that if a reservation extension fee is mandated in the future, it will reconsider whether the 180-day period remains appropriate. The commenters in this proceeding are fairly evenly split on the issue of extending reservation periods. A number of carriers support extended or unlimited number reservations for a fee.²⁸⁰ Many of the state commissions and consumer associations, however, oppose extending reservations for a fee and do not believe the current 180-day policy should be altered.²⁸¹

114. We reaffirm that the 180-day reservation period is sufficient, for the same reasons we discussed in the *Second Report and Order*, and should remain in place. Although they have generally alleged that the 180-day period is insufficient, carriers have not demonstrated or persuasively argued that 180 days is insufficient to accommodate most customer requirements, or how a longer reservation period might be compatible with our number conservation efforts.

2. Fee for Reserved Numbers

115. In addition to the issue of whether the maximum reservation period should be extended and whether to allow extensions, in the *Second Further Notice*, the Commission sought further comment on the NANC's proposal to allow unlimited reservations of numbers on a month-to-month basis.²⁸² The Commission noted in the *Second Further Notice* the NANC's recommendation that a fee for extensions be established. Specifically, the NANC proposed that

²⁷⁶ See, e.g., AT&T Petition for Reconsideration of *First Report and Order*; SBC Petition for Reconsideration and Clarification of *First Report and Order*; Qwest Petition for Reconsideration of *First Report and Order*.

²⁷⁷ See, e.g., Letter from Don Melton, Director, State of Arkansas Department of Information Services, to FCC, dated July 21, 2000; Letter from Kathleen B. Levitz, BellSouth, to Magalie Roman Salas, FCC, dated August 25, 2000; Letter from Glen Whitmer, Assistant Director, Computing and Communicating Services Office, University of Illinois, Urbana-Champaign, to FCC, dated August 14, 2000.

²⁷⁸ *Second Report and Order*, 16 FCC Rcd at 355-56, para. 114.

²⁷⁹ *Id.* at 369, para. 152.

²⁸⁰ See BellSouth Comments at 20; Cox Comments at 20; Qwest Comments at 5-6; Verizon Comments at 3-4; Winstar Comments at 6; WorldCom Comments at 11.

²⁸¹ See Ad Hoc Comments at 24; NASUCA Comments at 25-31; New York State Department of Public Service Comments at 4-5; Ohio PUC Comments at 21-22; SBC Comments at 12; State Coordination Group Comments at 5-6; Verizon Wireless Comments at 33-34.

²⁸² See Letter from John Hoffman, Chairman, North American Numbering Council, to Dorothy Attwood, Chief, Common Carrier Bureau, dated September 20, 2000.

the fee be paid by end users, and the Commission sought comment on whether imposing a fee on end users would provide the appropriate incentives in this context. Alternatively, the Commission sought comment on whether charging a fee to carriers would provide more appropriate incentives for number use.²⁸³

116. Several commentaries believe that the current 180-day reservation period will be sufficient for most customers and that reservation fees are not appropriate at this time.²⁸⁴ Focal Communications states that a new requirement for fees would fall most heavily on new entrants that are already having a difficult time obtaining capital. Thus, a reservation fee system could harm new entrants' ability to compete in the market.²⁸⁵ Reservations fees also may promote the hoarding of numbers. NASUCA states that reservations fees may have the unintended effect of accelerating number depletion if carriers with greater financial resources buy up quantities of numbers for future use.²⁸⁶ New York also believes that a fee will not protect against hoarding and that some entities may be willing to lock up numbers although they have no intention of putting the numbers in service.²⁸⁷

117. Several commenters, however, support the proposal for charging a reservation fee for numbers.²⁸⁸ WinStar, for example, states that a number reservation fee would decrease the quantity of numbers held in reserve, while meeting the needs of users who have a legitimate reason to reserve numbers.²⁸⁹ WinStar also states that there is no incentive for carriers to abuse extensions.²⁹⁰ WorldCom also believes that reservation fees may deter needless or fraudulent reservations.²⁹¹

²⁸³ See *Second Report and Order*, 16 FCC Rcd at 369, para. 152.

²⁸⁴ See Ad Hoc Comments at 23; SBC Comments at 11-12; Connecticut Department of Public Utility Control Comments at 3; Verizon Wireless Comments at 33; Focal Communications Comments at 5; Ohio PUC Comments at 21. Although ALTS supports the use of reservation fees, it notes that the 180-day reservation period should be sufficient for most customers. See ALTS Comments at 12.

²⁸⁵ Focal Communications Comments at 5-6.

²⁸⁶ NASUCA Comments at 23.

²⁸⁷ New York State Department of Public Service Comments at 5.

²⁸⁸ See ALTS Comments at 12; BellSouth Comments at 20; Cox Comments at 10; Verizon Comments at 3-4; Winstar Comments at 6. Although Verizon has generally opposed charging fees for the use of reservation of telephone number, it also believes that some customers have legitimate needs to reserve numbers for more time that is permitted by the rules. Given the choice of no fees with 180-day reservation limits, or charging fees for longer reservation periods, Verizon would support the NANC proposal to allow carriers to maintain a fee for reservations. Verizon, however supports extending the reservation period to one year. Verizon Comments at 3; Winstar Comments at 6; WorldCom Comments at 11.

²⁸⁹ See Winstar Comments at 6.

²⁹⁰ *Id.*

²⁹¹ See WorldCom Comments at 11.

118. We conclude that a reservation fee would be too administratively burdensome to generate any significant benefit, especially in light of the fact that there is, most likely, no benefit from a numbering optimization perspective.²⁹² We agree with commenters that do not believe charging fees will help conserve numbers.²⁹³ Rather, such a fee may promote the hoarding of numbers by “well-heeled” carriers and would thus have the unintended effect of accelerating the depletion of numbers by carriers with greater financial resources.²⁹⁴ Therefore, we find that a reservation fee may undermine our conservation efforts. Accordingly, we decline to establish a fee structure to enable carriers to extend the 180-day reservation period.

3. Clarification of Numbers Used for Intermittent or Cyclical Purposes

119. Numbers used for intermittent purposes are numbers designated for use by a particular customer that may be “working” in the Public Switched Telephone Network (PSTN) periodically, but that remain designated for the customer’s use even if they are not “working.” These may include numbers contained in blocks assigned to Centrex or Private Branch Exchange (PBX) users, or to large corporations that require an inventory of spare numbers to accommodate internal usage on short notice. These customers typically use all or a portion of a block of numbers at any given time. Numbers used for cyclical purposes are numbers designated for use that are typically “working” for regular intervals of time. Customers with numbers used for cyclical purposes typically wish to retain the same number even when the numbers are not “working.” A customer’s summer home telephone number that is in service for six months out of the year, or a college student’s telephone number that is in service only for the school year, are examples of numbers used for cyclical purposes.

120. On our own motion, we now clarify that numbers used for intermittent or cyclical purposes should not be categorized as reserved numbers for NRUF reporting purposes. To the extent that these numbers are “working,” they would be categorized as *assigned numbers*.²⁹⁵ It is less clear how these numbers must be categorized when they are not “working.” In reviewing the record in the proceeding, certain commenters appear to presume that intermittent and cyclical should be categorized as “reserved.” The Association for Telecommunications Professionals in Higher Education (ACUTA), for example, believes that colleges and universities should not be subject to any limitation on reserving blocks of numbers due to the unique way in which they utilize numbers.²⁹⁶ Specifically, ACUTA explains that colleges and universities need to hold blocks of numbers beyond the 180-day maximum period for reserving numbers in order to

²⁹² For example, we would have to determine, among other things, whether carriers or end users would pay the fee; for what purposes the money collected would be used; what amount should be charged; whether and how to limit the extent of reservation, or whether they could be indefinite.

²⁹³ See, et al, Connecticut Department of Public Utility Control Comments at 3; NASUCA Comments at 29; New Hampshire PUC Comments at 1-2; New York State Department of Public Service Comments at 5; State Coordination Group Comments at 5.

²⁹⁴ See *supra* at para. 110.

²⁹⁵ *First Report and Order*, 15 FCC Rcd at 7585, para. 16.

²⁹⁶ ACUTA Comments at 4.

provide students with the same number throughout their stay at the college or university.²⁹⁷ In addition, ACUTA explains that the 180-day reservation period fails to address the needs of higher education institutions to retain all numbers within NXX codes in order to achieve public safety²⁹⁸ and educational objectives.²⁹⁹ Thus, ACUTA believes that if colleges and universities are forced to return inactive numbers within an NXX code after 180 days, these important needs will be compromised.³⁰⁰

121. Our purpose in establishing reserved numbers and limiting the reservation period is to allow carriers the ability to set aside numbers for specific customers' use in the near term. We did not intend, however, to limit carriers' ability to maintain the same telephone number or block of numbers for customers that activate service to particular lines on an intermittent or cyclical basis. Accordingly, we clarify that numbers assigned to specific end user customers for intermittent or cyclical use should not be categorized as reserved numbers.

122. Although we believe that customers with numbers used for intermittent or cyclical purposes should not be subject to losing these numbers when they are turned off for short periods of time, we are concerned that some of these numbers that remain unused indefinitely could be used to provide service to other customers. We therefore clarify that numbers contained in blocks assigned for use in Centrex or PBX systems may be categorized as assigned numbers by reporting carriers, to the extent that fifty percent (50%) or more of such numbers are "working" at all times.³⁰¹ With this requirement, we seek to limit the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis. Thus, in order to categorize such blocks of numbers as assigned numbers, carriers may have to decrease the amount numbers set aside for a particular customer. We also clarify that numbers "working" periodically for regular intervals of time, such as numbers assigned to summer homes or student residences, may be categorized as assigned numbers, to the extent that they are "working" for a minimum of 90 days during each calendar year in which they are assigned to a particular customer. Any numbers used for intermittent or cyclical purposes that do not meet these requirements may not be categorized as assigned numbers, and must be made available for

²⁹⁷ *Id.* at 6.

²⁹⁸ On many campuses, the association between numbers and dormitory rooms allows for calling locations to be identified in order to facilitate implementation of E911 systems. This speeds access to emergency services, including fire, police, and medical staff. *See* ACUTA Comments at 6-7.

²⁹⁹ *Id.* at 6. According to ACUTA, colleges and universities use reserved numbers to: hold numbers for students or rooms while the student is absent, or rooms are empty during summer breaks or semesters abroad; retain abbreviated dialing patterns between staff, students, and faculty offices and rooms for safety administrative purposes; assign specific features and capabilities only to blocks of numbers; assist campus telecommunications professionals in administering billing of telecommunications services to specific user groups; and, preserve a sense of community and identity through the unique NXX code that becomes associated with a campus or university system.

³⁰⁰ *Id.*

³⁰¹ For example, if 50 numbers out of a block of 100 are being used, all 100 numbers may be categorized as "assigned."

use by other customers. We believe these limitations on the definitions of *assigned numbers* strike an appropriate balance between carriers' legitimate need to provide numbers for intermittent or cyclical use to their customers, and our responsibility to ensure that scarce numbering resources do not lie fallow.

C. Clarification of Top 100 MSAs

123. The 1996 Act requires LECs to offer, "to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC."³⁰² The Commission required wireline carriers in the largest 100 MSAs to offer LNP pursuant to a phased implementation schedule spread over five quarters, which ended on December 31, 1998.³⁰³ Beginning January 1, 1999, telecommunications carriers outside of the largest 100 MSAs were permitted to file requests for number portability with LNP-capable carriers, which are required to provide LNP no later than six months after a request is received.³⁰⁴ The Commission established a separate LNP implementation schedule for CMRS providers, which are scheduled to become LNP capable by November 24, 2002.³⁰⁵ In addition, the Commission mandated that carriers required to be LNP capable also be capable of participating in pooling in the top 100 MSAs by that date.³⁰⁶

124. Some states have advised that not all wireline carriers in the top 100 MSAs are LNP capable.³⁰⁷ Apparently, some carriers have interpreted our rules to require LNP capability only when a request is received from a competing carrier, even in the top 100 MSAs. This issue was brought to light when state pooling trials were implemented and certain carriers had not acquired the necessary capability to participate in thousands-block number pooling. We therefore clarify, on our own motion, that the LNP and pooling requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a specific request to provide LNP from another carrier. We also clarify that the "top 100 MSAs" include those MSAs listed in the *LNP First Report and Order*, Appendix D used to determine the scope of LNP

³⁰² 47 U.S.C. § 252(e).

³⁰³ Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7283, 7625-27, 7346-47 (1997) modifying *LNP First Report and Order*, 11 FCC Rcd at 8355, 9393-96, 8482-85 (*LNP First Reconsideration Order*). In a series of orders, the Common Carrier Bureau granted a number of petitions for extension of the LNP deployment schedule due to the change of the NPAC in the Southeast, Western, and West Coast regions and certain technical problems.

³⁰⁴ *Id.*

³⁰⁵ CMRS carriers were originally required to have the capability of delivering calls from their networks to ported numbers anywhere in the country by December 31, 1998. See *LNP First Report and Order*, 11 FCC Rcd at 8355, 8439-40. In addition, CMRS carriers in the top 100 MSAs were required to offer LNP, including the ability to support roaming, throughout their networks by June 30, 1999. On February 9, 1999, the Commission granted a CTIA forbearance petition extending the deadline for CMRS providers to support service provider LNP until November 24, 2002. *CMRS LNP Forebearance Order*, 14 FCC Rcd at 3092.

³⁰⁶ *Second Report and Order*, 16 FCC Rcd at 329-30, paras. 49-51.

³⁰⁷ See California Comments at 17.

deployment in 1996, as well as all areas included on any subsequent top 100 MSA list.³⁰⁸

125. *Covered Carriers.* As explained in the Commission's News Release announcing the adoption of rules on telephone number portability, the Commission intended to require all wireline carriers to become LNP capable in the largest 100 MSAs, and to make number portability available in areas outside of the largest 100 MSAs within six months of a request from another carrier.³⁰⁹ The requirement applies to carriers operating in and entering into these markets. The limitation that carriers need to become LNP-capable only when they receive a request from a competing carrier only applies outside of the largest 100 MSAs. To clarify any uncertainty in our rules, we modify them herein.³¹⁰ To the extent that wireline carriers in the top 100 MSAs may have misinterpreted these rules as requiring LNP capability only when they receive a request from a competing carrier, we give non-compliant carriers six months from the effective date of this order to become LNP capable in the top 100 MSAs. Carriers that enter markets in the largest 100 MSAs are required to be LNP capable upon entry. We also retain the requirement that carriers outside of the top 100 MSAs become LNP capable within six months of receiving a request from a competing carrier.

126. *Scope of the Top 100 MSAs.* Upon initially determining the scope of required LNP deployment, the Commission used the 1990 U.S. Census data, updated with 1994 information, which was the most current at that time.³¹¹ We note that, with the 2000 U.S. Census, the 100 largest MSAs have changed in several respects from those identified in the 1990 U.S. Census. For example, several MSAs that were on the 1990 list of the 100 largest MSAs are now combined in Consolidated Metropolitan Statistical Areas (CMSAs). In addition, several new areas and MSAs are included on the current list of the 100 largest MSAs,³¹²

³⁰⁸ The top 100 MSAs list in the *LNP First Report and Order* is based on 1990 U.S. Census data updated with 1994 information.

³⁰⁹ Commission Adopts Rules on Telephone Number Portability, *News Release*, Report No. DC 96-60 (June 27, 1996).

³¹⁰ See Appendix D for a list of the applicable MSAs.

³¹¹ LNP First Report and Order, Appendix D.

³¹² The 100 largest MSAs have changed in the following respects: the Bergen, NJ, Jersey City, NJ, Middlesex, NJ, Monmouth, NJ, Nassau, NY, Newark, NJ, and New Haven, CT MSAs are now part of the New York-Northern New Jersey-Long Island, NY-NJ-CT-PA CMSA; the Orange County, CA and Riverside, CA MSAs are now part of the Los Angeles-Riverside-Orange County, CA CMSA; the Gary, IN MSA is now part of the Chicago-Gary-Kenosha, IL-IN-WI CMSA; the Baltimore, MD MSA is now part of the Washington-Baltimore, DC-MD-VA-WV CMSA; the Oakland, CA, San Jose, CA, and Vallejo, CA MSAs are now part of the San Francisco-Oakland-San Jose, CA CMSA; the Wilmington, DE MSA is now part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD CMSA; the Ann Arbor, MI MSA is now part of the Detroit-Ann Arbor-Flint, MI CMSA; the Fort Worth TX MSA is now part of the Dallas-Fort Worth, TX (CMSA); the Fort Lauderdale, FL MSA is now part of the Miami-Fort Lauderdale, FL CMSA; the Tacoma, WA MSA is now part of the Seattle-Tacoma-Bremerton, WA CMSA; and the Akron, OH MSA is now part of the Cleveland, OH CMSA. The Census Bureau's Metropolitan Areas Ranked by Population: 2000 table is available at <<http://www.census.gov/population/www/cen2000>>.

(continued...)

127. We believe that widespread LNP and pooling deployment will further our competition and numbering resource optimization goals. Rather than limit deployment to a list that is not reflective of the current and ever-changing population and competitive landscape, we conclude that new entrants on the top 100 MSA list should be included. We decline, however, to delete any areas that may subsequently fall off the list; we believe that those areas will, in most instances, continue to be heavily populated and competitive and, thus, should continue to be targeted for LNP and pooling. We also find that it would be discriminatory to allow new entrants into markets in which all carriers are LNP capable to enter these markets as competitors without being subject to the same requirements. We therefore clarify that LNP is required in the top 100 MSAs identified in the 1990 U.S. Census reports and all subsequent updates; areas on the original list but no longer on the current list are still subject to LNP requirements. As new areas are added to the list of the top 100 MSAs, carriers will be given a six month period after release of the updated list to comply with LNP and pooling capability requirements.

D. Liability of Related Carriers and Withholding of Numbering Resources

128. In the *Second Report and Order*, the Commission tentatively concluded that carriers should, in certain instances, have numbering resources withheld when related carriers are subject to withholding for failure to comply with our mandatory reporting requirements.³¹³ The Commission sought comment on how to identify the relationships among reporting carriers, and what geographic limitations should be placed on those relationships in determining liability among related carriers. The Commission also stated its belief that parent companies should play an active role in number conservation efforts, even if the parent companies themselves are not reporting carriers.³¹⁴ Particularly, by monitoring and offering incentives from the top down, parent companies can contribute to the success of our number optimization goals. In addition, the Commission asked commenters to discuss alternative methods of providing incentives for parent companies to encourage compliance from all their related carriers and to ensure that our numbering resource optimization goals are not undermined by the complexities of corporate structures.

129. We decline at this time to hold related carriers accountable for reporting violations. In addition to the difficulty of determining which carriers should be deemed "related" for enforcement purposes,³¹⁵ we are not convinced that related carrier liability is necessary or

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The following are now part of the 100 largest MSAs: the San Juan-Caguas-Arecibo, PR CMSA, McAllen-Edinburg-Mission, TX MSA, Colorado Springs, CO MSA, Daytona Beach, FL MSA, Lakeland-Winter Haven, FL MSA, Johnson City-Kingsport-Bristol, TN-VA MSA, Lexington, KY MSA, Augusta-Aiken, GA-SC MSA, Melbourne-Titusville-Palm Bay, FL MSA, Lancaster, PA MSA, Chattanooga, TN-GA MSA, Des Moines, IA MSA, Kalamazoo-Battle Creek, MI MSA, Lansing-East Lansing, MI MSA, Modesto, CA MSA, Fort Myers-Cape Coral, FL MSA, Jackson, MS MSA, Boise City, ID MSA, Madison, WI MSA, Spokane, WA MSA, and the Pensacola, FL MSA.

³¹³ See *Second Report and Order*, 16 FCC Rcd at 369, para. 151.

³¹⁴ The term "parent company," as used herein, refers to the highest related legal entity located within the state for which the reporting carrier is reporting data. See also 47 C.F.R. §52.15(f)(3)(ii).

³¹⁵ Some commenters attribute this difficulty to the current climate of mergers and divestments in the telecommunications industry. See Cingular Comments at 13; PCIA Comments at 23; Verizon Wireless Comments at (continued....)

that it would be an effective deterrent to carriers seeking to circumvent our numbering reporting requirements. We continue to believe that parent companies should play an active role in ensuring that their related companies comply with the reporting requirements. We also believe that states will continue to play an important role in helping us to achieve our numbering resource optimization goals, and we encourage states to use their ability to request "for cause" audits in furtherance of these goals. Rather than focusing our enforcement efforts on related carriers, however, we find that dealing directly with the violating carrier is the better approach.

130. We nevertheless intend to use, as necessary, the full range of enforcement options available to us against carriers that fail to comply with the reporting requirements, including fines and forfeitures, especially for egregious and repeated violations. Fines and forfeitures, however, may be of limited value to motivate certain carriers to comply with reporting violations because some companies may consider them a minor additional cost of doing business. Relying on fines and forfeitures alone may also disproportionately affect smaller companies that do not have the resources of larger carriers. Withholding numbers is therefore a more equitable means of deterring reporting violations for carriers who refuse to observe number optimization requirements. We emphasize that we will take appropriate enforcement action upon discovering that a carrier is attempting to circumvent our reporting requirements, for example, by establishing a separate company for the sole purpose of receiving initial numbering resources.

131. When we determine by audit or are notified by the NANPA or a state commission that a reporting carrier is not in compliance with mandatory numbering reporting requirements, the reporting carrier will be notified in writing that it is subject to withholding of numbering resources. Some commenters raise concerns that carriers will not have sufficient opportunity to respond to or rebut findings that they should be subject to withholding of numbering resources before withholding occurs.³¹⁶ Reporting carriers that have failed to submit semi-annual NRUF data are given ample opportunity to respond to notifications of apparent violations. For example, NANPA currently notifies carriers who have failed to provide necessary reports, and allows carriers the opportunity to respond or rectify the reporting violation, as necessary.³¹⁷ Similarly, the Commission will give reporting carriers an opportunity to respond to and rebut findings. If the carrier fails to respond or remedy a reporting violation within a specified or reasonable period of time, the reporting carrier will be subject to withholding of numbering resources. We delegate authority to the Common Carrier Bureau and the Enforcement Bureau to determine when numbering resources should be withheld from carriers.

132. Accurate number utilization reporting and forecast data are essential for the NANPA, the Pooling Administrator, and the Commission to achieve our numbering resource optimization goals. We are persuaded by reports of inaccurate, incomplete, and missing reporting data³¹⁸ that additional incentive is needed to encourage carriers to comply with our
(Continued from previous page)

19; BellSouth Comments at 18. Verizon also argues that any determination of how carriers are "related" is problematic for wireless carriers because many wireless systems are owned by partnerships or joint ventures.

³¹⁶ ALTS Comments at 10; WorldCom Comments at 10.

³¹⁷ See *First Report and Order*, 15 FCC Rcd at 7609, para. 84.

³¹⁸ See Michigan PSC Comments at 5.

reporting requirements, and we believe that the possibility of having numbering resources withheld will provide such incentive.

E. State Commissions' Access to Data

133. In the *Second Report and Order*, the Commission clarified the scope of states access to carriers' utilization and forecast data submitted semi-annually to the NANPA. Specifically, the Commission stated that states shall have access to all such mandatorily reported data received by NANPA.³¹⁹ The Commission also noted that some states have asserted that they require full access to the database in which reported utilization and forecast data is stored, and tentatively concluded that states should have password-protected access to the database. The Commission further noted that NeuStar has proposed to provide the states with password-protected access to obtain forecast and utilization data from NANPA. The Commission sought comment on whether the type of access NeuStar proposes is necessary or sufficient, or whether the access already granted is sufficient to accommodate the states' request. The majority of commenters support the proposal,³²⁰ and several state commissions commented that it was important for them to have vital utilization and forecasting information in making decisions regarding area code relief.³²¹ Several industry commenters oppose password-protected access on the grounds that carrier-specific data will not be sufficiently protected from public disclosure.³²²

134. By this Order we hold that state commissions should have password-protected access to the NANPA database for data pertaining to NPAs located within their state. Each state commission may designate a person or persons to whom NeuStar will provide password-protected access, and the state commission must maintain the confidentiality of carrier-specific data as set forth in the *First Report and Order*.³²³

135. The advantages of providing states with password-protected access to forecast and utilization data include the ability to access data on a more timely basis, and access to the data in a format that allows manipulation of the data and the creation of customized reports. We conclude that such access will only enhance the ability of states to determine when and what area code relief is necessary. Further, we do not believe that allowing state commissions password-protected access to carrier-specific forecast and utilization data will pose any greater security risks than the current reporting system, in which NANPA distributes this data in semi annual reports. Moreover, we find that the value to state commissions of timely access to forecast and

³¹⁹ See *Second Further Notice*, 16 FCC Rcd at 369, para. 151.

³²⁰ Illinois Commerce Commission Comments at 11; Maine PUC Comments at 4-5; Ohio PUC Comments at 2-3; Pennsylvania PUC at 4-5; California PUC Comments at 9; NASUCA Comments at 18; State Coordination Group Comments at 5; WorldCom Comments at 10; SBC Comments at 10; Verizon Comments at 10.

³²¹ Illinois Commerce Commission Comments at 11; Maine PUC Comments at 4-5; Ohio PUC Comments at 2-3; Pennsylvania PUC Comments at 4-5.

³²² See Cingular Comments at 16; Winstar Comments at 5; Verizon Wireless Comments at 35.

³²³ See *First Report and Order*, 15 FCC Rcd at 7608, paras. 81-82; see also *Second Report and Order*, 16 FCC Rcd at 357, para. 119

utilization data outweighs the confidentiality concerns expressed by the carriers required to submit this data to the NANPA.

136. Despite this finding, we nevertheless reiterate that the confidentiality protections for forecast and utilization data adopted in the *First Report and Order* apply to state commissions when accessing carrier-specific data, whether in the form of semiannual reports or through the use of password-protected access. Specifically, state commissions must have appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure to any entity other than the NANPA or the Commission.³²⁴ Any state that cannot certify its ability to keep such data confidential shall not have access, password-protected or otherwise.

137. Additionally, we agree with commenters³²⁵ stating that state commissions' access to reported utilization and forecast data should be limited to data concerning rate centers and NPAs within the requesting state, just as data in the form of semi-annual reports from the NANPA is so limited. Limiting access to individual states provides a further measure of protection for such data by ensuring that access will be granted only to state commission staff that uses this data for area code relief purposes.

138. We have consulted with NeuStar, the entity that serves as the NANPA, regarding the availability of and cost of providing password-protected access to state commissions. NeuStar has indicated that it can provide password-protected access to its current database for mandatory reported data.³²⁶ However, NeuStar has not provided any information on whether such access will exceed the cost of its current NANPA contract. The Common Carrier Bureau will continue to work with NeuStar to develop the manner in which such access can be provided as quickly as possible.

VII. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

139. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.³²⁷ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a list of the subjects discussed. More than a one or

³²⁴ *Id.* at 7574, paras. 81– 82.

³²⁵ Cingular Comments at 16; AT&T Comments at 11-12; Focal Communications Comments at 5.

³²⁶ See *Second Report and Order*, 16 FCC Rcd at 369, para. 151. See also NeuStar Inc. Petition for Compensation Adjustment, Request for Approval of Implementation Schedule and Emergency request of Interim Relief, CC Docket No. 99-200 (June 30, 2001)

³²⁷ See Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, *Report and Order*, 12 FCC Rcd 7348, 7356-57 (1997) (citing 47 C.F.R. § 1.1204(b)(1)).

two sentence description of the views and arguments presented is generally required.³²⁸

B. Final Regulatory Flexibility Analysis

140. See Appendix B for the Final Regulatory Flexibility Analysis.

C. Final Paperwork Reduction Analysis

141. This *Third Report and Order* contains some new and/or modified information collections, which will be submitted to OMB for approval, as prescribed by the Paperwork Reduction Act.

D. Ordering Clauses

142. Accordingly, IT IS ORDERED that pursuant to Sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, and 251, this THIRD REPORT AND ORDER is hereby ADOPTED and Part 52 of the Commission's rules ARE AMENDED AND ADOPTED as set forth in the attached Appendix A.

143. IT IS FURTHER ORDERED that the policies, rules and requirements adopted herein are adopted and SHALL BE EFFECTIVE 30 days after publications in the Federal Register.

144. IT IS FURTHER ORDERED that incumbent local exchange carriers seeking to recover carrier-specific costs directly related to national thousands-block number pooling as described herein MAY FILE the necessary tariffs to take effect no earlier than April 2, 2002.

145. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas

Secretary

³²⁸ See 47 C.F.R. § 1.1206(b)(2).

Appendix A**Final Rules**

PART 52 – NUMBERING

Subpart B – Administration

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

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

2. Section 52.15 is revised to read as follows:

§ 52.15 Central office code administration.

(g) Applications for Numbering Resources.

(3) *Growth Numbering resources.*

(iv) (deleted)

(4) *Non-Compliance.* The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an Operating Company Number (OCN). The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm, or may overturn, the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.

(5) *State Access to Applications.* State regulatory commissions shall have access to service provider's applications for numbering resources. The state commissions

should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.

(k) *Numbering Audits.*

- (1) All telecommunications service providers shall be subject to “for cause” and random audits to verify compliance with Commission regulations and applicable industry guidelines relating to numbering administration.
- (2) The Enforcement Bureau will oversee the conduct and scope of all numbering audits conducted under the Commission’s jurisdiction, and determine the audit procedures necessary to perform the audit. Numbering audits performed by independent auditors pursuant to this section shall be conducted in accordance with generally accepted auditing standards and the American Institute of Certified Public Accountants’ standards for compliance attestation engagements, as supplemented by the guidance and direction of the Chief of the Enforcement Bureau.
- (3) Requests for “for cause” audits shall be forwarded to the Chief of the Enforcement Bureau, with a copy to the Chief of the Common Carrier Bureau. Requests must state the reason for which a “for cause” audit is being requested and include documentation of the alleged anomaly, inconsistency, or violation of the Commission rules or orders or applicable industry guidelines. The Chief of the Enforcement Bureau will provide carriers up to 30 days to provide a written response to a request for a “for cause” audit.

3. Section 52.19 is revised to read as follows:

(c)***

- (3) An all services area code overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s), subject to the following conditions:
 - (i) No all services area code overlay may be implemented unless all numbering resources in the new overlay area code are assigned to those entities requesting assignment on a first-come, first-serve basis, regardless of the identity of, technology used by, or type of service provided by that entity, except to the extent that a technology- or service-specific overlay is authorized by the Commission. No group of telecommunications carriers

shall be excluded from assignment of numbering resources in the existing area code, or be assigned such resources only from the all services overlay area code, based solely on that group's provision of a specific type of telecommunications service or use of a particular technology; and

(ii) ***

- (4) A technology-specific or service-specific overlay, which occurs when a new area code is introduced to serve the same geographic area as one or more existing area code(s) and numbering resources in the new area code overlay are assigned to a specific technology(ies) or service(s). State commissions may not implement a technology-specific or service-specific overlay without express authority from the Commission.

4. Section 52.21 is revised to read as follows:

- (r) The term *100 largest Metropolitan Statistical Areas (MSAs)* refers to the MSAs set forth in the appendix to this part and any subsequent MSAs identified by U.S. Census Bureau data to be in the largest 100 MSAs.

Appendix B

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act, as amended, (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking (Second Further Notice)*.² The Commission sought written public comment on the proposals in the *Second Further Notice*, including comment on the IRFA. No comments received addressed the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

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

2. In the *Second Further Notice*, we sought public comment on (a) the relative advantages of service-specific and technology-specific overlays as opposed to all-services overlays, and the conditions under which service-specific and technology-specific overlays, if adopted, should be implemented in order to promote competitive equity, maximize efficient use of numbering resources, and minimize customer inconvenience; (b) whether carriers should be held accountable when related carriers fail to comply with reporting requirements; (c) whether state commissions should be granted direct, password-protected access to the mandatory reporting data received by the North American Numbering Plan Administrator (NANPA); (d) whether we should allow extensions (for a fee or otherwise) on the 180-day reservation period for numbers; (e) what enforcement mechanisms should be applied when a carrier either fails to cooperate with an audit, or fails to resolve identified areas of noncompliance; (f) whether state commissions should be allowed to conduct audits; (g) the costs associated with thousands-block number pooling; (h) whether the Commission should require carriers to acquire Local Number Portability (LNP) capabilities for the purpose of participating in thousands-block number pooling; and (i) whether a "safety valve" should be established for carriers that need additional numbering resources, but fail to meet the utilization threshold in a given rate center.

3. In this *Third Report and Order and Second Order on Reconsideration (Third Report and Order)*, we continue efforts to utilize efficiently the numbering resources in the North American Numbering Plan (NANP). Our goal with this *Third Report and Order* is to build upon previous success working with the state commissions and the telecommunications industry to ensure that the limited numbering resources of the NANP do not exhaust prematurely, and to

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Numbering Resource Optimization, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking*, 16 FCC Rcd 306 (2000) (*Second Further Notice*).

³ See 5 U.S.C. § 604.

ensure that all carriers have the numbering resources they need to compete in the telecommunications marketplace. In particular, we address issues raised in the *Second Further Notice* and several petitions for reconsideration and/or clarification of the *First* or *Second Report and Order*. In addition, we also clarify, on our own motion, certain aspects of our numbering resources optimization rules and local number portability requirements.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. In a recent letter, the Small Business Administration (SBA) contends that in the Final Regulatory Flexibility Analysis of the *Second Report and Order (Second Report and Order FRFA)* the Commission failed to “. . . include a description of telecommunications service providers that are directly affected by the audit provisions. . .” and believes that the “. . . oversight may be due to the inconsistency in the text of the Order itself. Under the Commission’s numbering rules, carriers and service providers are two separate classes.”⁴ The SBA then notes that the terms “carrier” and “service provider” were used interchangeably within the audit provisions of the *Second Report and Order*.

5. Although the terms “carrier” and “service provider” were used interchangeably within the audit provisions, the rule on auditing procedures in section 52.15(k) of the Commission’s rules (in Appendix A of the *Second Report and Order*) clearly applies to telecommunications service providers.⁵ As discussed in section 52.5(i) of the Commission’s numbering rules, a service provider is an “. . . entity that receives numbering resources from the NANPA . . .”⁶ Thus, given that the rule is clear, we conclude that an adequate description of telecommunications service providers existed in this *Second Report and Order FRFA* and that no clarifications are needed in this FRFA.

6. In the *SBA Letter*, the SBA argues that, in the *Second Report and Order FRFA*, the Commission fails to “. . . adequately consider alternatives to the audit program that would minimize the impact on small businesses.”⁷ In the FRFA, the Commission is only required to discuss those significant alternatives that would affect the impact on small businesses. Thus, the Commission is not required to create significant alternatives for every proposal in a rulemaking order.⁸ In crafting the final rule for audits, we considered no other significant alternatives to the rule that would influence the impact on small businesses. Therefore, no significant alternatives

⁴ Letter to Susan Walthall, SBA, to Michael K. Powell, Chairman, FCC, dated March 30, 2001. (*SBA Letter*).

⁵ See 47 C.F.R. § 52.15(k).

⁶ 47 C.F.R. § 52.5(i).

⁷ SBA Letter at 5.

⁸ We addressed significant alternatives where applicable in the *Second Report and Order FRFA*. For example, we discussed a significant alternative that would prohibit state commissions from implementing geographic splits. Small businesses that incur the costs of geographic splits may have benefited from this proposal, but we found that states should continue to have the flexibility in implementing area code relief. See *Second Report and Order*, 16 FCC Red at 397, para. 28.

were available to be discussed in the *Second Report and Order FRFA*. We also note that, of the small businesses that commented on our audit proposal, small businesses were in favor of audits.⁹

7. Commenters responded to several issues addressed in the *Second Further Notice* that concern small entities. Their opinions are summarized below. In addition, the Commission has considered any potential significant economic impact of the rules on small entities.

8. *Thousands-Block Number Pooling for Non-LNP Capable Carriers*. Commenters generally agree that the costs to small and rural carriers to participate in thousands-block pooling would outweigh any benefits derived from the pooling requirements.¹⁰ The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) fears that the costs may be so prohibitive as to delay the implementation of advanced services to rural subscribers.¹¹ We agree with commenters that there is insufficient evidence in the record to conclude that requiring non-LNP capable carriers to participate in pooling would result in significant number resource savings. Data from the Local Exchange Routing Guide (LERG) shows that in the approximately 2,012 rate centers in the 180 Metropolitan Statistical Areas (MSAs) beyond the largest 100, approximately 1,320 are rate centers where there are no competing service providers and approximately 300 are rate centers where there is only 1 competing service provider. Because these carriers hold relatively few numbering resources, we agree that requiring them to participate in pooling would not result in significant number optimization benefits.

9. *Independent State Commissions' Authority to Conduct Audits*. One commenter expressed concern that allowing states individual authority to conduct audits may expose carriers to two different standards.¹² It predicts that this result would impose costs and burdens on small carriers that outweigh the benefits of the additional audits.¹³ We declined to give states the independent authority to conduct audits, concluding that most of the audits that states would be given authority to conduct would serve the same purpose as the Commission audits, thus posing the potential burden of overlapping audits that would outweigh the benefits of the additional audits. It is our expectation, however, that the Commission audit staff will cooperate with state commissions, including coordinating compliance and enforcement activities and sharing information gathered during the course of the audits. In addition, as we noted, this order does not modify a state commission's authority to conduct audits under state law.

⁹ See *id.* at 390, 397, paras. 7, 30, Appendix B.

¹⁰ NTCA Comments at 2-3; OPASTCO Comments at 7.

¹¹ OPASTCO Comments at 7.

¹² *Id.* at 4.

¹³ *Id.*

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

10. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹⁴ The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁵ The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities.¹⁶ Under the Small Business Act, a "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁷

11. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS).¹⁸ According to data in the most recent report, there are 5,679 interstate service providers.¹⁹ These providers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

12. We have included small incumbent local exchange carriers (LECs)²⁰ in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²¹ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in

¹⁴ 5 U.S.C. § 604(a)(3).

¹⁵ 5 U.S.C. § 601(6).

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

¹⁷ 15 U.S.C. § 632.

¹⁸ FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1-2 (November 2001) (*Provider Locator*). See also 47 C.F.R. § 64.601 *et seq.*

¹⁹ *Provider Locator* at Table 1.

²⁰ See 47 U.S.C. 251(h) (defining "incumbent local exchange carrier").

²¹ 15 U.S.C. § 632.

their field of operation because any such dominance is not "national" in scope.²² We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.²³ This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."²⁴ It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these rules.

14. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.²⁵ According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.²⁶ All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small ILECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these rules.

²² Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96-98, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996).

²³ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

²⁴ See generally 15 U.S.C. § 632(a)(1).

²⁵ 1992 Census at Firm Size 1-123.

²⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) codes 513310, 513330, and 513340.

15. *Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPS), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.²⁷ The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the TRS.²⁸ According to our most recent data, there are 1,329 LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers.²⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity LECs or small incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 resellers that may be affected by these rules.

16. *Wireless Telephony and Paging and Messaging.* Wireless telephony includes cellular, personal communications services (PCS) or specialized mobile radio (SMR) service providers. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees, or to providers of paging and messaging services. The closest applicable SBA definition is a telephone communications company other than radiotelephone (wireless) companies.³⁰ According to the most recent *Provider Locator* data, 858 carriers reported that they were engaged in the provision of wireless telephony and 576 companies reported that they were engaged in the provision of paging and messaging service.³¹ We do not have data specifying the number of these carriers that are not independently owned or operated, and thus are unable at this time to estimate with greater precision the number that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 858 small carriers providing wireless telephony services and fewer than 576 small companies providing paging and messaging services that may be affected by these rules.

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

17. The numbering resource optimization requirements discussed herein should not require additional reporting, recordkeeping or compliance requirements for service providers. In this *Report and Order*, we are not mandating new recordkeeping and compliance requirements.

²⁷ 13 C.F.R. § 121.201, NAICS codes 513310, 513330, and 513340.

²⁸ See 47 C.F.R. § 64.601 *et seq.*; *Provider Locator* at Table 1.

²⁹ *Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

³⁰ 13 C.F.R. § 121.201, NAICS codes 513321 and 513322.

³¹ *Provider Locator* at Table 1.

Rather, in most instances, we are affirming or clarifying these requirements.

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

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³²

19. *Thousands-Block Number Pooling for Non-LNP Capable Carriers.* In this *Third Report and Order*, we decline to extend pooling requirements to paging carriers and non-LNP capable carriers outside of the largest 100 MSAs that have not received a request to deploy LNP from a competing carrier. We believe the costs associated with the alternative of requiring all carriers, including small entities, to participate in pooling would greatly outweigh any number optimization benefits. In addition, these costs imposed on smaller and rural carriers may delay efforts in bringing advanced services to rural subscribers. Thus we reaffirm our current rules that certain carriers, *e.g.*, paging carriers and carriers outside of the largest 100 MSAs who have not received a request to deploy LNP from a competing carrier, are exempted from pooling requirements.

20. *Service-Specific and Technology-Specific Area Code Overlays.* In this order, we lift the prohibition on technology-specific overlays (SOs) and will consider proposals submitted by state commissions to implement SOs on a case-by-case basis. Such an approach allows state commissions to consider the surrounding local circumstances, including the needs of small, local businesses, in deciding whether or how to provide area code relief. In the alternative, we examined a requirement mandating that state commissions impose all-services area code overlays as the primary method for area code relief. However, the Commission believes that states should have the flexibility to determine the best form of area code relief. In addition, we considered a 50% utilization threshold as an alternative to a higher threshold, which would have been less burdensome to service providers, including small service providers. We determined, however, that a 60% utilization threshold would more successfully encourage service providers to use numbers from their current inventories and would still be a reasonable threshold level for service providers to satisfy before requesting additional numbering resources.

³² 5 U.S.C. § 603(c).

21. **Report to Congress:** The Commission will send a copy of this *Third Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³³ In addition, the Commission will send a copy of this *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.³⁴

³³ See 5 U.S.C. § 801(a)(1)(A).

³⁴ See 5 U.S.C. § 604(b).

Appendix C**List of Parties****Numbering Resource Optimization Third Report and Order
and Second Order on Reconsideration****A. Parties Filing Comments in Response to Second Report and Order**

1. Association for Telecommunications Professionals in Higher Education (ACUTA)
2. Ad Hoc Telecommunications Users Committee (Ad Hoc)
3. Allegiance Telecom
4. Association for Local Telecommunications Services (ALTS)
5. Association of Communications Enterprises
6. AT&T
7. BellSouth
8. California PUC
9. Cingular Wireless (Cingular)
10. Connecticut Department of Public Utility Control
11. Cox Communications, Inc. (Cox)
12. Cellular Telecommunications Industry Association (CTIA)
13. Florida PSC
14. Focal Communications Corporation (Focal Communications)
15. Global NAPS, Inc.
16. Illinois Commerce Commission
17. Indiana Office of Utility Consumer Counselor
18. Iowa Utilities Board
19. Level 3 Communications, LLC (Level 3)
20. Maine PUC
21. Maryland PSC
22. Metrocall
23. Michigan PSC
24. National Association of State Utility Consumer Advocates (NASUCA)
25. National Exchange Carrier Association, Inc.(NECA)
26. NENA
27. New Hampshire PUC
28. New York State Department of Public Service
29. National Telephone Cooperative Association (NTCA)
30. Office of the Consumer Advocate
31. Ohio PUC
32. Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
33. Personal Communications Industry Association PCIA
34. Pennsylvania PUC
35. Qwest
36. Rural Cellular Association
37. State Coordination Group Comments

38. SBC Communications
39. Texas PUC
40. Time Warner Telecom
41. United States Telephone Association (USTA)
42. Verizon Communications (Verizon)
43. Verizon Wireless
44. VoiceStream Wireless (VoiceStream)
45. WinStar Communications (WinStar)
46. WorldCom, Inc. (WorldCom)

B. Parties Filing Reply Comments in Response to Second Report and Order

1. Ad Hoc
2. Allegiance Telecom, Inc.
3. ASCENT
4. AT&T
5. BellSouth
6. California PUC
7. CTIA
8. Cingular
9. Iowa Utilities Board
10. Global NAPS, Inc.
11. Metrocall
12. Michigan PSC
13. Minnesota PUC
14. NECA
15. National Emergency Number Association (NENA)
16. NASUCA
17. PCIA
18. Qwest
19. SBC
20. Sprint
21. Tennessee Regulatory Authority
22. USTA
23. Verizon Wireless
24. VoiceStream
25. WorldCom
26. Z-Tel

C. Parties Filing Comments in Response to First Report and Order

1. AT&T
2. CTIA
3. General Services Administration
4. Joint Consumer Comments
5. NECA
6. NTCA
7. SBC
8. Sprint
9. USTA
10. US West
11. Verizon Wireless
12. WorldCom

D. Parties Filing Reply Comments in Response to First Report and Order

1. AT&T
2. Bell Atlantic
3. California PUC
4. Maine PUC
5. VoiceStream

E. Parties Filing Petitions for Reconsideration and/or Clarification*

1. AT&T Wireless*
2. BellSouth
3. CTIA
4. Cingular*
5. Qwest
6. SBC
7. Sprint
8. USTA
9. Verizon
10. Verizon Wireless
11. WorldCom

F. Parties Filing Oppositions to and Support for Petitions

1. KMC Telecom, Inc. (KMC)
2. Maine PUC
3. PCIA

G. Parties Filing Replies to and Comments on Opposition to Petitions

1. SBC*
2. USTA

*indicates that the petition was not addressed in this proceeding

Appendix D

List of the Top 100 Metropolitan Statistical Areas (MSAs)

A. 100 Largest MSAs and Their Populations: Year 2000 Census

| | |
|--|------------|
| 1. New York--Northern New Jersey--Long Island, NY--NJ--CT--PA CMSA | 21,199,865 |
| 2. Los Angeles--Riverside--Orange County, CA CMSA | 16,373,645 |
| 3. Chicago--Gary--Kenosha, IL--IN--WI CMSA | 9,157,540 |
| 4. Washington--Baltimore, DC--MD--VA--WV CMSA | 7,608,070 |
| 5. San Francisco--Oakland--San Jose, CA CMSA | 7,039,362 |
| 6. Philadelphia--Wilmington--Atlantic City, PA--NJ--DE--MD CMSA | 6,188,463 |
| 7. Boston--Worcester--Lawrence, MA--NH--ME--CT CMSA | 5,819,100 |
| 8. Detroit--Ann Arbor--Flint, MI CMSA | 5,456,428 |
| 9. Dallas--Fort Worth, TX CMSA | 5,221,801 |
| 10. Houston--Galveston--Brazoria, TX CMSA | 4,669,571 |
| 11. Atlanta, GA MSA | 4,112,198 |
| 12. Miami--Fort Lauderdale, FL CMSA | 3,876,380 |
| 13. Seattle--Tacoma--Bremerton, WA CMSA | 3,554,760 |
| 14. Phoenix--Mesa, AZ MSA | 3,251,876 |
| 15. Minneapolis--St. Paul, MN--WI MSA | 2,968,806 |
| 16. Cleveland--Akron, OH CMSA | 2,945,831 |
| 17. San Diego, CA MSA | 2,813,833 |
| 18. St. Louis, MO--IL MSA | 2,603,607 |
| 19. Denver--Boulder--Greeley, CO CMSA | 2,581,506 |
| 20. San Juan--Caguas--Arecibo, PR CMSA | 2,450,292 |
| 21. Tampa--St. Petersburg--Clearwater, FL MSA | 2,395,997 |
| 22. Pittsburgh, PA MSA | 2,358,695 |
| 23. Portland--Salem, OR--WA CMSA | 2,265,223 |
| 24. Cincinnati--Hamilton, OH--KY--IN CMSA | 1,979,202 |
| 25. Sacramento--Yolo, CA CMSA | 1,796,857 |
| 26. Kansas City, MO--KS MSA | 1,776,062 |
| 27. Milwaukee--Racine, WI CMSA | 1,689,572 |
| 28. Orlando, FL MSA | 1,644,561 |
| 29. Indianapolis, IN MSA | 1,607,486 |
| 30. San Antonio, TX MSA | 1,592,383 |
| 31. Norfolk--Virginia Beach--Newport News, VA--NC MSA | 1,569,541 |
| 32. Las Vegas, NV--AZ MSA | 1,563,282 |
| 33. Columbus, OH MSA | 1,540,157 |
| 34. Charlotte--Gastonia--Rock Hill, NC--SC MSA | 1,499,293 |
| 35. New Orleans, LA MSA | 1,337,726 |
| 36. Salt Lake City--Ogden, UT MSA | 1,333,914 |
| 37. Greensboro--Winston-Salem--High Point, NC MSA | 1,251,509 |
| 38. Austin--San Marcos, TX MSA | 1,249,763 |
| 39. Nashville, TN MSA | 1,231,311 |
| 40. Providence--Fall River--Warwick, RI--MA MSA | 1,188,613 |
| 41. Raleigh--Durham--Chapel Hill, NC MSA | 1,187,941 |
| 42. Hartford, CT MSA | 1,183,110 |

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| 43. Buffalo--Niagara Falls, NY MSA | 1,170,111 |
| 44. Memphis, TN--AR--MS MSA | 1,135,614 |
| 45. West Palm Beach--Boca Raton, FL MSA | 1,131,184 |
| 46. Jacksonville, FL MSA | 1,100,491 |
| 47. Rochester, NY MSA | 1,098,201 |
| 48. Grand Rapids--Muskegon--Holland, MI MSA | 1,088,514 |
| 49. Oklahoma City, OK MSA | 1,083,346 |
| 50. Louisville, KY--IN MSA | 1,025,598 |
| 51. Richmond--Petersburg, VA MSA | 996,512 |
| 52. Greenville--Spartanburg--Anderson, SC MSA | 962,441 |
| 53. Dayton--Springfield, OH MSA | 950,558 |
| 54. Fresno, CA MSA | 922,516 |
| 55. Birmingham, AL MSA | 921,106 |
| 56. Honolulu, HI MSA | 876,156 |
| 57. Albany--Schenectady--Troy, NY MSA | 875,583 |
| 58. Tucson, AZ MSA | 843,746 |
| 59. Tulsa, OK MSA | 803,235 |
| 60. Syracuse, NY MSA | 732,117 |
| 61. Omaha, NE--IA MSA | 716,998 |
| 62. Albuquerque, NM MSA | 712,738 |
| 63. Knoxville, TN MSA | 687,249 |
| 64. El Paso, TX MSA | 679,622 |
| 65. Bakersfield, CA MSA | 661,645 |
| 66. Allentown--Bethlehem--Easton, PA MSA | 637,958 |
| 67. Harrisburg--Lebanon--Carlisle, PA MSA | 629,401 |
| 68. Scranton--Wilkes-Barre--Hazleton, PA MSA | 624,776 |
| 69. Toledo, OH MSA | 618,203 |
| 70. Baton Rouge, LA MSA | 602,894 |
| 71. Youngstown--Warren, OH MSA | 594,746 |
| 72. Springfield, MA MSA | 591,932 |
| 73. Sarasota--Bradenton, FL MSA | 589,959 |
| 74. Little Rock--North Little Rock, AR MSA | 583,845 |
| 75. McAllen--Edinburg--Mission, TX MSA | 569,463 |
| 76. Stockton--Lodi, CA MSA | 563,598 |
| 77. Charleston--North Charleston, SC MSA | 549,033 |
| 78. Wichita, KS MSA | 545,220 |
| 79. Mobile, AL MSA | 540,258 |
| 80. Columbia, SC MSA | 536,691 |
| 81. Colorado Springs, CO MSA | 516,929 |
| 82. Fort Wayne, IN MSA | 502,141 |
| 83. Daytona Beach, FL MSA | 493,175 |
| 84. Lakeland--Winter Haven, FL MSA | 483,924 |
| 85. Johnson City--Kingsport--Bristol, TN--VA MSA | 480,091 |
| 86. Lexington, KY MSA | 479,198 |
| 87. Augusta--Aiken, GA--SC MSA | 477,441 |
| 88. Melbourne--Titusville--Palm Bay, FL MSA | 476,230 |
| 89. Lancaster, PA MSA | 470,658 |
| 90. Chattanooga, TN--GA MSA | 465,161 |
| 91. Des Moines, IA MSA | 456,022 |
| 92. Kalamazoo--Battle Creek, MI MSA | 452,851 |

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|------------------------------------|---------|
| 93. Lansing--East Lansing, MI MSA | 447,728 |
| 94. Modesto, CA MSA | 446,997 |
| 95. Fort Myers--Cape Coral, FL MSA | 440,888 |
| 96. Jackson, MS MSA | 440,801 |
| 97. Boise City, ID MSA | 432,345 |
| 98. Madison, WI MSA | 426,526 |
| 99. Spokane, WA MSA | 417,939 |
| 100. Pensacola, FL MSA | 412,153 |

B. 100 Largest Metropolitan Statistical Areas (MSAs) and Their Populations (from the LNP First Report and Order FCC 96-286)

| | |
|-------------------------|-----------|
| 1. Los Angeles, CA | 9,150,000 |
| 2. New York, NY | 4,474,000 |
| 3. Detroit, MI | 4,307,000 |
| 4. Houston, TX | 3,653,000 |
| 5. Atlanta, GA | 3,331,000 |
| 6. Boston, MA* | 3,211,000 |
| 7. Riverside, CA | 2,907,000 |
| 8. Dallas, TX | 2,898,000 |
| 9. Minneapolis, MN | 2,688,000 |
| 10. Nassau, NY | 2,651,000 |
| 11. San Diego, CA | 2,621,000 |
| 12. Orange Co., CA | 2,543,000 |
| 13. St. Louis, MO | 2,536,000 |
| 14. Phoenix, AZ | 2,473,000 |
| 15. Baltimore, MD | 2,458,000 |
| 16. Pittsburgh, PA | 2,402,000 |
| 17. Akron, OH | 2,222,000 |
| 18. Oakland, CA | 2,182,000 |
| 19. Seattle, WA | 2,180,000 |
| 20. Tampa, FL | 2,157,000 |
| 21. Miami, FL | 2,025,000 |
| 22. Newark, NJ | 1,934,000 |
| 23. Denver, CO | 1,796,000 |
| 24. Portland, OR | 1,676,000 |
| 25. Kansas City, KS | 1,647,000 |
| 26. San Francisco, CA | 1,646,000 |
| 27. Cincinnati, OH | 1,581,000 |
| 28. San Jose, CA | 1,557,000 |
| 29. Norfolk, VA | 1,529,000 |
| 30. Fort Worth, TX | 1,464,000 |
| 31. Indianapolis, IN | 1,462,000 |
| 32. Milwaukee, WI | 1,456,000 |
| 33. Sacramento, CA | 1,441,000 |
| 34. San Antonio, TX | 1,437,000 |
| 35. Columbus, OH | 1,423,000 |
| 36. Fort Lauderdale, FL | 1,383,000 |
| 37. Orlando, FL | 1,361,000 |

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| 38. New Orleans, LA | 1,309,000 |
| 39. Bergen, NJ | 1,304,000 |
| 40. Charlotte, NC | 1,260,000 |
| 41. Buffalo, NY | 1,189,000 |
| 42. Salt Lake City, UT | 1,178,000 |
| 43. Hartford, CT* | 1,156,000 |
| 44. Providence, RI* | 1,131,000 |
| 45. Greensboro, NC | 1,107,000 |
| 46. Rochester, NY | 1,090,000 |
| 47. Las Vegas, NV | 1,076,000 |
| 48. Nashville, TN | 1,070,000 |
| 49. Middlesex, NJ | 1,069,000 |
| 50. Memphis, TN | 1,056,000 |
| 51. Monmouth, NJ | 1,035,000 |
| 52. Oklahoma City, OK | 1,007,000 |
| 53. Grand Rapids, MI | 985,000 |
| 54. Louisville, KY | 981,000 |
| 55. Jacksonville, FL | 972,000 |
| 56. Raleigh, NC | 965,000 |
| 57. Austin, TX | 964,000 |
| 58. Dayton, OH | 956,000 |
| 59. West Palm Beach, FL | 955,000 |
| 60. Richmond, VA | 917,000 |
| 61. Albany, NY | 875,000 |
| 62. Honolulu, HI | 874,000 |
| 63. Birmingham, AL | 872,000 |
| 64. Greenville, SC | 837,000 |
| 65. Fresno, CA | 835,000 |
| 66. Syracuse, NY | 754,000 |
| 67. Tulsa, OK | 743,000 |
| 68. Tucson, AZ | 732,000 |
| 69. Ventura, CA | 703,000 |
| 70. Cleveland, OH | 677,000 |
| 71. El Paso, TX | 665,000 |
| 72. Omaha, NE | 663,000 |
| 73. Albuquerque, NM | 646,000 |
| 74. Tacoma, WA | 638,000 |
| 75. Scranton, PA | 637,000 |
| 76. Knoxville, TN | 631,000 |
| 77. Gary, IN | 620,000 |
| 78. Toledo, OH | 614,000 |
| 79. Allentown, PA | 612,000 |
| 80. Harrisburg, PA | 610,000 |
| 81. Bakersfield, CA | 609,000 |
| 82. Youngstown, OH | 604,000 |
| 83. Springfield, MA* | 584,000 |
| 84. Baton Rouge, LA | 558,000 |
| 85. Jersey City, NJ | 552,000 |
| 86. Wilmington, DE | 539,000 |
| 87. Little Rock, AR | 538,000 |

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| 88. New Haven, CT* | 527,000 |
| 89. Charleston, SC | 522,000 |
| 90. Sarasota, FL | 518,000 |
| 91. Stockton, CA | 518,000 |
| 92. Ann Arbor, MI | 515,000 |
| 93. Mobile, AL | 512,000 |
| 94. Wichita, KS | 507,000 |
| 95. Columbia, SC | 486,000 |
| 96. Vallejo, CA | 483,000 |
| 97. Fort Wayne, IN | 469,000 |

* Population figures for New England's city and town based MSAs are for 1992, while others are for 1994.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Numbering Resource Optimization, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200

I join in approving this Order because it is an important step in providing the States the additional flexibility they require to address numbering issues. As I have said before, State commissions often bear the brunt of consumer complaints. Particularly, with regard to numbering issues, it is the State commissions that hear all of the complaints. Therefore, I appreciate this Commission's actions in granting States additional numbering flexibility.

This Order grants the requests of several States to lift the prohibition on technology specific and service specific overlays. Allowing States such flexibility in how to address numbering issues is crucial, as the States are on the front lines of this battle. We must remember that it is the State Commissions, not this Commission, that feel the outcry from consumers when number conservation measures are adopted. I am thus hopeful that this Order will provide the States significant additional tools.

This item hardly ends our task, however. I expect this Commission to continue to work with the States to facilitate their number conservation plans in the future, providing expeditious decisions on applications for technology specific and service specific overlays and granting States additional flexibility as they need it.