NEXTLINK

March 3, 2000

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

99-00784

Dear Mr. Waddell:

Efficient number utilization and conservation is critical for the continued development of local telecommunications competition in Tennessee and throughout the country. NEXTLINK has been an active participant on numbering and local number portability issues at the federal and state level as well as in several industry fora. NEXTLINK, for example, is currently the only mid-size CLEC member of the North American Numbering Council (NANC) and is the co-chair of the NANC's Local Number Portability Administration Working group. The attached comments filed by NEXTLINK at the FCC outline our core positions on several number conservation and optimization issues. As the attached pleading indicates, NEXTLINK has been a consistent advocate to the FCC in support of granting state commission's with additional delegated authority to address number conservation issues. Moreover, the filing also underscores NEXTLINK's strong support for rate center consolidation.

The requirement that new entrants mirror existing incumbent rate centers is a remnant of the historical incumbent monopoly-based network. As a result of that system, NEXTLINK and other CLECs must still today request separate NXX's for each rate center served, regardless of whether one hundred or ten thousand blocks of numbers are needed to serve end users in that particular rate center. No one can debate the fact that these artificial rate centers, in essence, create an unnecessary and inefficient systemic drain on numbering resources. NEXTLINK believes that the TRA currently has within its authority the ability to add significant numbering sources within the state by adopting rate center Consolidation. Rate center consolidation is an initiative that would free large blocks of numbers on a going forward basis, and would reduce the number of NXX assignments that need to be made for existing and new entrants. As our attached pleading indicates, several states have already implemented rate center consolidation and have created additional numbering resources within their states to the benefit of all telecom providers and consumers.

As you are aware, the Authority recently asked carriers to voluntarily return surplus NXX's in the 615 NPA. NEXTLINK took this request seriously, but was unable at that time to accommodate such request, because of expected demand for numbering resources to serve both existing and new customers/market expansion in the near term. Rate center consolidation, however, would have allowed NEXTLINK to return NXX's requested for new rate centers, or at least, would have eliminated the need, in some instances, for separate NXX assignments simply for the purpose of service a new central office serving area within the same local calling area.

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I would also like to take this opportunity to clarify a comment I made at the February 15, 2000 TRA Conference with regard to thousand block number pooling and Local Number Portability. Currently, BellSouth is not performing what is called "ten digit global title translation" for ported numbers. In short, when delivering calling name and number to a BellSouth customer for an inbound call, BellSouth doesn't look up the entire number in the appropriate database, but looks simply to the NXX to determine which database to "dip." The net effect is that BellSouth does not appropriately identify the carrier of an inbound call from a ported number, so calling name is either not delivered at all, or the wrong database is dipped and incorrect information sent. We have been working with staff to attempt to encourage BellSouth to resolve this problem, but, to date, have gotten no firm commitment from BellSouth, and most recently, received notification that BellSouth was no longer willing to work on this issue with us.

My comment, albeit a brief reference to Local Number Portability, was simply to point out that, for number conservation measures to be voluntarily implemented across the industry, we need to address certain operational issues, such as Local Number Portability, so that such measures can be implemented without adverse impact on new entrants and competition. The operational issues surrounding implementation of thousand block number pooling are complex, and delivery of calling name is but one issue, although it is an important issue that impacts end users. Specifically, if NXX's are to be assigned in thousand blocks to multiple carriers, it will be imperative that BellSouth perform the appropriate translations to ensure continued quality of service to end users, rather than continue to operate under the assumption that certain NXX's "belong" to BellSouth, regardless of whether certain number within that NXX are assigned, either through LNP or number pooling, to other carriers.

NEXTLINK looks forward to working with the Authority and the industry to address number utilization concerns, and hopes the attached filing will make clear NEXTLNK's position on certain number conservation measures.

Sincerely,

Dana Shaffer, Vice President
Regulatory Affairs

DS/jr
Enclosure

cc: Guy Hicks – BellSouth

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Washington, D.C. 20554

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COMMENTS OF NEXTLINK COMMUNICATIONS, INC.

NEXTLINK Communications, Inc. ("NEXTLINK"), pursuant to the above-captioned Notice of Proposed Rulemaking ("NPRM") released on June 2, 1999, hereby submits its comments.[1] NEXTLINK builds and operates high-capacity, fiber-optic and fixed wireless networks to provide local, long distance, data and enhanced telecommunications services.[2]

[1] Number Resource Optimization, Notice of Proposed Rulemaking, FCC 99-122, CC Docket No. 99-200 (rel. June 2, 1999) ("NPRM").

[2] NEXTLINK is developing a national fiber and fixed wireless network to offer end-to-end voice and broadband data communications over ATM or IP and frame-relay managed facilities.

NEXTLINK currently operates twenty-six (26) facilities-based networks in forty-one (41) markets located in fifteen (15) states.

NEXTLINK, as a member of the North American Numbering Council ("NANC"), and an active participant in the NANC's Number Resource Optimization ("NRO") Working Group has devoted extensive resources to work with the Commission and state commissions to advance pro-competitive numbering policies designed to help advance the development of the local exchange market as the industry transitions from a monopoly-based system to a more competitive environment.[3]

NEXTLINK believes that its on-the-ground experience in providing facilities-based competition on a national basis, its nationwide rapid deployment of local number portability, and its active participation in industry activities provides it with a unique perspective that should assist the Commission in its investigation of numbering optimization reform.

I. INTRODUCTION

NEXTLINK supports the Commission's recent initiative to address—on a national basis—number utilization and conservation measures. The availability of numbering resources is critical to the development of the local telecommunications marketplace. Without access to numbers, facilities-based competitive local exchange carriers ("CLECs"), such as NEXTLINK, face an insurmountable barrier to entry. The inability to obtain readily available number resources in specific markets can result in delayed CLEC market entry and can negatively impact

[3] NEXTLINK also participates in the Local Number Portability Administration ("LNPA") Working Group.

a new entrant's business plans.[4] NEXTLINK, therefore, firmly supports the adoption of national solutions to the current crisis in number resources.[5]

The Commission is best positioned to take a pro-active role in guiding industry efforts to implement a more pro-competitive, efficient mechanism for managing numbers, a national public resource. Direct Commission involvement is necessary to spur the industry to take the most aggressive and efficient course of action and to counterbalance the interests of incumbent carriers that benefit disproportionately from the status quo. Threshold issues concerning the optimization of number resources and number administration reform must be resolved at the national level in order to avoid creating a multitude of conflicting and inconsistent approaches, a result that would impose unnecessary costs and delay on all carriers.

No debate exists regarding the Commission's unquestionable authority to initiate and implement these decisions on a nationwide basis. Section 251(e) of the Telecommunications Act of 1996 ("Act") provides the Commission with "exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States."[6] The Commission has previously stated that "a uniform, nationwide system of numbering, including allocation of NXX

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[4] For example, in New York, CLECs, including NEXTLINK, were temporarily unable to obtain any NXX codes for certain rate centers in the 212 and XXX NPAs because all available NPA-NXXs for those rate centers had already been assigned. See North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures, Comments of NEXTLINK Communications, Inc. and Cablevision Lightpath, Inc., NSD File No. L-98-134 (Dec. 21, 1998) ("NEXTLINK/Cablevision NRO Report Comments") at 2 and n.5.

[5] See NEXTLINK/Cablevision NRO Report Comments. The Commission also has previously concluded that attempts to conserve and promote efficient use of numbers "cannot be made on a piecemeal basis without jeopardizing telecommunications services throughout the country." Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009, 19023-24 (1998) ("Pennsylvania Order").

[6] 47 U.S.C. § 251(e).

codes, is essential to the efficient delivery of telecommunications services in the United States."[7] The Commission also has broad authority over the implementation of number portability, which is a vital element for some forms of number resource optimization, such as number pooling.[8] The Commission has correctly recognized in the NPRM that access to number resources is a national issue, and NEXTLINK urges the Commission to continue to address all numbering issues on a national basis. NEXTLINK can not overemphasize the necessity for strong leadership and swift decision making by the Commission on all number issues in order to move the industry forward to a more efficient and pro-competitive system of number administration.

II. NUMBER OPTIMIZATION SOLUTIONS

NEXTLINK strongly supports the number optimization goals contained in the NPRM. The negative impact of the current system of number administration on NEXTLINK and other facilities-based CLECs cannot be overstated. CLECs have frequently been forced to delay or simply been unable to implement market entry plans due to the lack of numbering resources in specific markets.

As NEXTLINK stated in its comments on the NRO Report, the genesis of the current numbering allocation regime is based upon the pre-existing incumbent local exchange carrier ("ILEC") monopoly customer footprint in the local market.[9] The current system requires carriers to obtain a 10,000 number block for every rate center within the specific market the carrier seeks to serve. This outdated system made sense in a monopoly environment where only one carrier

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[7] See Pennsylvania Order , 13 FCC Rcd at para. 21.

[8] 47 U.S.C. § 251(b)(2); see also In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd 8352 (1996).

[9] NEXTLINK/Cablevision NRO Report Comments at 5.

provided service to all customers; however, in a competitive market, the requirement that multiple carriers obtain such large blocks of numbers is untenable because new entrants typically do not possess sufficient market share to immediately use all of the numbers in a 10,000 block. The current system is structurally deficient because it perpetuates this inefficient allocation of number resources. This proceeding, therefore, presents the Commission with a unique opportunity to restructure our nation's number allocation regime and promote policies that improve number utilization and conservation and ensure the continued growth of competition in the telecommunications marketplace.

Efforts to improve number optimization should primarily focus on rate center consolidation and the allocation of telephone numbers in thousand block assignments, instead of the current 10,000 NXX code blocks. These two measures would dramatically increase number optimization by reducing: (1) the number of NXX blocks carriers must obtain to serve a specific market and (2) the amount of numbers within each block that the carrier has to obtain. For example, if all of the rate centers in a market such as Miami were consolidated into one or two rate centers, and thousand-block number pooling were implemented, NEXTLINK would need only one or two thousand-blocks in order to provision service throughout the city, in contrast to the larger number of 10,000 block NXXs currently needed. These changes alone would dramatically increase carriers' number utilization rates and lead to an increase in number optimization.

A. Rate Center Consolidation.

NEXTLINK agrees with the Commission that rate center consolidation is a "vitally important long-term measure to optimize the utilization of numbering resources" and that it

should be implemented to the greatest extent possible.[10] NEXTLINK supports any Commission effort that would encourage states to consider the use of rate center consolidation wherever practical.

Rate center consolidation is an effective means to increase the optimization of number utilization. There are numerous rate centers within a typical market and service providers entering such markets are required to obtain an entire block of NXX codes in order to establish an initial "footprint" necessary to provide service in that market.[11] This requirement, thus, creates a direct correlation between the pre-existing number of rate centers and the inefficient use of numbers in any given Number Planning Area ("NPA"), or area code. For example, Los Angeles has fifty-seven (57) rate centers in its Local and Access Transport Area ("LATA"), and thus, NEXTLINK had no choice but to obtain forty-three (43) NPX-NXXs to serve customers in this southern California market. If rate center consolidation had been implemented in California, there would be fewer rate centers in Los Angeles and NEXTLINK would not have to obtain the same number of NXX codes upon entering the market.[12] NEXTLINK urges the

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[10] NPRM at para. 116. The Commission also noted in its NPRM that rate center consolidation "enables carriers to maintain their existing call-routing and call-rating methods, is competitively neutral, does not require L[ocal] Routing N[umber] L[ocal]N[umber]P[ortability], and does not preclude the adoption of other numbering optimization methods." NPRM at para. 114.

[11] In order to provide service, CLECs must obtain number resources in each ILEC rating area in which they plan to provide service which is often referred to as obtaining a "footprint." One estimate is that ninety-two (92) percent of the NXX codes assigned to CLECs were initial codes necessary to establish a footprint. See North American Numbering Plan Exhaust Study, submitted by NANPA Lockheed Martin CIS, April 22, 1999 ("NANP Exhaust Study") at 3-13

[12] The California Commission ("CPUC") noted in its petition for delegated NXX authority from the Commission that California has approximately 800 rate centers, with more than 90 CLECs, 20 ILECs, and 56 wireless providers all possessing and seeking more NXX codes. See Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority Pertaining to Area Code Relief and to NXX Code Conservation Measures, DA 99-928, NSD File No. L-98-136 (released May 14, 1999) ("CPUC petition") at 13-14. This would mean that a carrier seeking to provide service in all 800

Commission to carefully examine previous rate center consolidation efforts that have already yielded successful results. As the Commission noted in the NPRM, in Texas, SBC, and other carriers successfully consolidated 108 rate centers to thirty-one (31) rate centers within four months.[13] In Colorado, the state commission has ordered the consolidation of forty-three (43) rate centers to sixteen (16) rate centers for the Denver metropolitan area.[14]

The Commission now can build on these prior successful state efforts by encouraging all states, on a timely basis, to study the use of rate center consolidation in their respective jurisdictions. The Commission also should establish national guidelines to assist the states in determining where and how to implement rate center consolidation. Guidelines will assist the states in coordinating the implementation of rate center consolidation with all affected parties: ILECs, CLECs, and the public.[15] Moreover, guidelines should set forth uniform "best practices" for the procedures and timing of implementing rate center consolidation. Once the Commission has adopted national guidelines, states should generally follow the federal requirements in these guidelines in order to provide for a consistent national approach to implementing rate center consolidation.

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rate centers in the state would need eight million numbers. As a result of its numbering crisis, California estimates that it will require approximately forty-one (41) area codes in the state by the end of 2002. CPUC petition at 2.

[13] Several states favor the implementation of rate center consolidation. See NPRM at para. 115, and n. 185 (citing NANC Report at §§1.1 and 1.3; Number Conservation Measures in Texas, Order No.1, Texas Commission Project No. 18438 (Jan. 20, 1998); Number Conservation Measures in Texas, Order No.5, Texas Commission Project 18438 (Jul. 10, 1998).)

[14] See Colorado Telephone Numbering Task Force Report, at 21 (Dec. 31, 1998).

[15] Because many CLECs, as part of the interconnection process, are required to or voluntarily conform their service areas to existing rate centers, all carriers and not just ILECs, should be included in the decision making process and implementation phase of rate center consolidation.

NEXTLINK is cognizant that the initial decision as to whether to implement rate center consolidation necessarily involves unique local issues and therefore, NEXTLINK recommends that state commissions continue to have the flexibility to make the ultimate decision as to whether to implement rate center consolidation. Once a state decides to proceed with rate center consolidation, however, the state commission and carriers involved should follow the Commission's national guidelines and "best practices" for implementation. This approach has the benefit of granting states decisional authority on whether to implement rate center consolidation in their region, while also providing carriers with some market certainty regarding nationwide uniform business practices in states that decide to implement rate center consolidation.

The Commission also seeks comment on the relationship between rate center consolidation and other number optimization methods, such as number pooling.[16] Rate center consolidation and thousand-block number pooling are both important and effective number optimization measures, and NEXTLINK strongly supports federal and state policies that would require consideration and implementation of either measure wherever it is practical to do so. NEXTLINK, however, would not support limiting the use of number pooling until rate center consolidation has been implemented because that will most likely lead to delays in the availability of number pooling, without significantly increasing the speed with which rate center consolidation is implemented. If, however, both rate center consolidation and number pooling are concurrently feasible, implementation of rate center consolidation first would be more cost-effective because there would be fewer underlying rate centers, thus obviating the potential need

[16] NPRM at para. 120.

for number pooling.[17] The Commission, therefore, as part of its national guidelines, should encourage state commissions to review the feasibility of rate center consolidation prior to implementation of number pooling.

B. Mandatory Thousand Block Number Pooling.

The Commission tentatively concludes that, "implementing thousands-block pooling in major markets is an important numbering resource optimization strategy that is essential to extending the life of the NANP."[18] NEXTLINK fully supports the Commission's tentative conclusion. Thousand-block number pooling is a critical tool to slowing the current rate of exhaust of the NANP and should be implemented promptly on a national level. [19] As noted in the NPRM, a significant part of the reason for why states experience area code exhaust is because numbers are currently allocated to each provider in full central office code (NXX) blocks of 10,000.[20] Implementation of thousand-block number pooling allows several carriers to utilize the 10,000 numbers within a specific NXX code. Thousand-block number pooling immediately promotes efficient number utilization because it ends the need for carriers to obtain the full 10,000 block of numbers.[21]

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[17] This is especially true in NPAs that have not yet reached jeopardy status. In NPAs that are approaching or that are already in jeopardy, however, thousand block number pooling is an ideal compliment to rate center consolidation because it will free up thousand blocks which could be reassigned to other carriers and thus potentially delay the exhaust of that NPA.

[18] NPRM at para. 138.

[19] NPRM at para. 130 and 136 (number pooling allows participating carriers to share resources from NXX codes rather than receiving the full 10,000 numbers in an NXX code at one time).

[20] Id. at para. 130.

[21] Number pooling, however, does not alleviate a carrier's need to obtain at least one NXX block per market in order to establish a Location Routing Number ("LRN") necessary for number pooling. Even with this full NXX block allocation, however, the NANP would still

NEXTLINK supports the adoption of a national, mandatory deployment schedule for thousand-block number pooling in markets where permanent local number portability ("LNP") has been deployed.[22] The Commission, therefore, should require all LNP-capable carriers to participate in number pooling, in all areas where permanent LNP has been successfully deployed.[23] Adopting a mandatory schedule requiring participation from all eligible carriers will provide national uniformity for all number pooling initiatives and will maximize the benefits to number optimization. Only a mandatory national roll-out of number pooling performed pursuant to federal guidelines will ensure the maximum utilization and conservation benefits to the NANP.

In order to ensure the successful national implementation of number pooling, the Commission should refrain from delegating authority to individual state commissions that would permit states to arbitrarily "opt-out" of adopting number pooling. It would be horribly inefficient, time consuming, and costly for national carriers, such as NEXTLINK, to have to face fifty or more different administrative processes/procedures and business rules that could potentially arise if the Commission grants states the authority to adopt number pooling on an ad hoc basis. Instead, the Commission should provide a mechanism for state commissions to

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experience a dramatic reduction in the number of NXX blocks a carrier requires in contrast to the demand for numbers under the current system.

[22] Number pooling can only be implemented where Location Routing Number ("LRN") methods supporting LNP has been deployed. See NPRM at para. 133. The Commission required LRN-LNP to be deployed by wireline carriers in the largest 100 MSAs by December 31, 1998, in switches where another carrier has requested LNP be made available. See NPRM at para. 143, and 47 C.F.R. § 52.23(b)(1).

[23] This would include the top one hundred MSA areas and those areas where permanent LNP is implemented in response to a bona fide request or other state order. For example, the entire state of Maryland has implemented permanent LNP.

petition the Commission for a waiver of these federal requirements in limited circumstances.[24] This balancing between national and local interests will provide state commissions with an opportunity to obtain necessary divergence from a national schedule to roll-out number pooling, while still protecting the Commission's overall national policy mandating number pooling.

C. Individual Telephone Number Pooling.

NEXTLINK supports the Commission's conclusion not to pursue Individual Telephone Number ("ITN") pooling at the present time.[25] ITN pooling is an inefficient and costly method of number conservation and allocation.[26] Thousand-block pooling will provide similar or greater number optimization benefits, but with relatively minimal administrative costs compared to ITN.

D. Unassigned Number Porting.

NEXTLINK does not oppose permitting carriers to enter into voluntary bilateral agreements that would govern Unassigned Number Porting ("UNP") arrangements as a consensual mechanism that would provide additional national numbering resources. Transfers of unassigned numbers between consenting carriers, however, should be limited to short-term relief in those NPAs where number resources are near exhaustion. It would be administratively burdensome and expensive to develop and maintain control mechanisms to manage an unassigned number pooling system on a permanent basis. Moreover, absent effective

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[24] A waiver might be applicable when there are a limited number of potential pooling carriers in a specific MSA.

[25] NPRM at para. 141.

[26] See also NEXTLINK/Cablevision NRO Report Comments at 11 ("ITN pooling would put enormous strain on existing network infrastructure and require an inordinate investment of capital and human resources to successfully implement it at this time"). NEXTLINK is also concerned that ITN pooling would take at least four to six years to implement, as suggested in the NRO Report. See Id.

administrative oversight and sufficient control mechanisms, the system would be subject to abuse, such as carriers targeting and obtaining specific telephone numbers (e.g., vanity numbers) from the available pool of numbers.[27] The use of UNP, therefore, is clearly not a viable long-term solution to improving number optimization.

III. ADMINSTRATIVE MEASURES

In addition to seeking comment on number resource optimization methods, the NPRM seeks comment on several administrative matters. NEXTLINK believes that industry guidelines concerning administrative matters must be governed by Commission rules and applied uniformly to all carriers on a consistent national basis. National consistency of rules will provide certainty to business planning and increase efficiency for carriers providing service on a national or regional basis.

Although the Commission should adopt rules governing the implementation of number administration reforms, the Commission must be careful to do so at the right level of detail. Clearly, some Commission rules are needed to encourage carriers to move forward with number optimization measures that: (i) improve the efficiency of the current system; and (ii) provide the framework for enforcement mechanisms necessary to ensure full compliance with the Commission's national numbering policies. Overly detailed, administrative and technical requirements, however, should be developed by established industry fora, (e.g., NANC) at this early stage of the process, so that industry members can more readily adopt and modify rules

[27] Furthermore, carriers that developed the most robust internal UNP systems would have an unfair competitive advantage over carriers that did not have as robust systems because of their ability to "cherry pick" desirable numbers.

and/or standards as necessary than would be possible if all rules were codified by the Commission.[28]

NEXTLINK comments specifically on the following issues: (1) categories of number usage; (2) the type of showing an applicant must make in seeking initial codes; (3) recordkeeping and reporting; and (4) audits and enforcement measures. On each of these administrative issues, the Commission should retain its jurisdiction and provide national guidance to eliminate uncertainty for all carriers. Moreover, the Commission should adopt guidelines to ensure that each of these issues is resolved in the most pro-competitive, efficient way possible.

A. Definitions of Categories of Number Usage.

In the NPRM, the Commission tentatively concludes that "a uniform set of definitions for the status of numbers should be established for purposes of implementing the proposals set forth" in the NPRM.[29] NEXTLINK believes that the Commission should establish a uniform reporting mechanism to improve nationwide numbering utilization and forecasting, and in general, NEXTLINK supports the work of the Industry Numbering Committee ("INC") to achieve industry consensus on common number status definitions.[30]

The Commission also requests comment on whether to collect number information based on specific status categories, as opposed to less detailed information collected on a more aggregated basis. Specific status categories of numbers include "aging," "assigned," "dealer

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[28] NEXTLINK notes that NANC is developing recommendations for the Commission as to which of the current guidelines should be codified as Commission regulations.

[29] NPRM at para. 39.

[30] The INC has defined telephone number categories as: (1) administrative number; (2) aging number; (3) assigned number; (4) reserved number; and (5) wireless E 9-1-1 ESRD (Emergency Services Routing Digits) number. See Recommendation of the North American Numbering Council, Concerning the Replacement of the Central Office Code Utilization Survey (COCUS), Presented to the Federal Communications Commission (June 30, 1999) ("NANC COCUS Report") at n.9.

numbering pool," "reserved," and "ported-out;"[31] while numbers designated on a more general, aggregated basis would be labeled either as "unavailable for assignment," or "available." NEXTLINK believes that the Commission should require carriers to provide information using more specific category terms for numbers.[32] The use of specific terms, as opposed to more generalized terms, will be highly advantageous to federal and state regulatory efforts to monitor and conserve existing number resources. Requiring carriers to label numbers within their systems by specific categories is a pro-competitive measure that would improve the accuracy of data on number utilization and demand, and would further improve the ability to forecast number exhaust and enforcement of CO Code Guidelines. For example, although both types of numbers fall under the more general category of "unavailable," there are significant differences between an "aging" number (one which is unavailable for reassignment to another subscriber for a specified period of time) and a "reserved" number (a non-working number that has been set aside by a provider at the request of a specific end-user customer). Whereas an "aging" number can be expected to become available in a predictable period of time, a "reserved" number may remain unavailable for a significantly longer period. The reporting of number status in more specific categories will provide such additional crucial information, necessary for accurate number utilization and forecasting efforts, that would otherwise be obscured by more general categories.

The NANC Report on COCUS does not include a formal recommendation to require reporting of more disaggregated categories, but the report itself states that a majority of the membership in the NANC favored a recommendation that number utilization be reported in more

[31] NPRM at para. 41-53.

[32] Id. at para. 74.

disaggregated categories.[33] NEXTLINK urges the Commission to adopt a reporting requirement based on the more specific and disaggregated categories. In addition, the Commission should adopt adequate enforcement mechanisms necessary to ensure that all carriers adhere to these guidelines.

B. Verification of Need for Initial Codes.

The NPRM seeks comment on the threshold showing an applicant should be required to make to obtain an initial code.[34] The NPRM specifically seeks comment on whether applicants should be required to provide additional information, such as the equipment/facilities that they intend to deploy and use to provide service, the readiness of their network or switches, and their progress in meeting their business plan objectives, prior to obtaining the initial codes.[35] NEXTLINK opposes the adoption of any additional requirements for carriers seeking initial codes, because these requirements would be unduly burdensome and would disproportionately impact new entrants.

The current Central Office ("CO") Code Guidelines ("CO Guidelines") require an applicant for an initial code to certify that it is licensed or certified to operate in the area for which the code is requested[36] and that the code is used within given timeframes.[37] Applicants, therefore, already consider such factors as network and switch readiness, and market plans prior

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[33] NANC COCUS Report at n.1. In the short period of time available prior to submitting the NANC COCUS Report, the membership was simply not able to achieve consensus to include the views of the majority as a formal recommendation.

[34] See NPRM at para. 58. An initial code is the first NXX code assigned to a carrier at a rate center or point of interconnection.

[35] Id.

[36] CO Guidelines, INC 95-0407-008 (rev. Apr. 26, 1999) ("CO Guidelines") at § 4.1.4.

[37] See CO Guidelines at §§ 4.1 and 6.3.3.

to requesting an initial code. Further, a CLEC may have every intention of providing telephone service according to a certain business plan, but may not be able to follow through with market plans because of various factors outside of the entrant's control.

Moreover, NEXTLINK believes that such requirements would be discriminatory to CLECs. New entrants are the primary applicants for initial codes and need initial codes in order to establish a "footprint." This proposal would almost exclusively target CLECs and potentially interfere with their ability to enter markets. Because CLECs are more likely to need "initial codes" than an ILEC would, these requirements would not be competitively neutral, and therefore are contrary to the Act. In comparison, established ILECs are more likely to seek "growth codes,"[38] and the proposed rules do not similarly require "growth code" applicants to make such showings. Such disparity in the requirements between applicants seeking initial and growth codes is inequitable and would lead to anti-competitive results.

In fact, current guidelines already require certification from carriers regarding their need for an initial code for specified reasons, and any carrier that is found to have falsely certified to certain statements may be disciplined in various ways. The CO Guidelines direct the NANPA to ensure that a code applicant place a code in service within a specified time frame, and to reclaim the unused code, if not used within that timeframe.[39] Moreover, NANPA may also order the return of codes that are used in violation of the CO Guidelines.[40]

Placing a disproportionate impact on initial code applicants will not solve the structural problems with the current numbering system that require new entrants to obtain a large number

[38] A growth code is any additional NXX code that a carrier seeks within a rate center in which the carrier already has obtained at least an initial code. See NPRM at para. 56.

[39] CO Guidelines at § 5.4.3.

[40] Id. at § 8.0 et. seq.

of initial codes. It is not the abuse of initial code applicants, but the system itself that is at the root of the numbering shortage problem. As discussed above, rate center consolidation and number pooling measures are the answers to this underlying problem. Once the current inefficient system is reformed, CLECs will no longer be forced to obtain large numbers of codes to establish a footprint. CLECs should not be penalized by additional burdensome requirements such as those proposed for initial codes merely because they have been forced to use a system that is inherently inefficient.

Accordingly, because it would be anti-competitive and unnecessary to impose such burdensome rules, NEXTLINK recommends that the Commission decline to adopt these additional requirements for carriers seeking to obtain initial codes.

C. Recordkeeping and Reporting.

The NPRM tentatively concludes that in order to develop a cogent national numbering resource policy, it must establish an extensive, detailed, and uniform reporting mechanism that will improve the ability to forecast and monitor numbering utilization data.[41] The Commission further concludes that it "should mandate that all users of numbering resources supply forecast and utilization data to NANPA."[42] NEXTLINK supports the NPRM's tentative conclusion that all users of numbering resources provide more detailed forecast and utilization data to the NANPA. NEXTLINK specifically recommends that such data be provided on a twice-yearly basis, with quarterly reports for NPAs that are in jeopardy.

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[41] NPRM at para. 73.

[42] Id.

In general, NEXTLINK supports the NANC recommendation that the Hybrid Model be adopted as a replacement for the current COCUS report.[43] NEXTLINK has been significantly involved in industry efforts to develop the Hybrid model as a means to provide more comprehensive number utilization information on an efficient basis. The Hybrid approach contains elements of the AT&T proposed "minimalist" model; the U S WEST "Top Down/Bottom Up" approach;[44] and the Line Number Utilization Survey ("LINUS").[45] Where pooling has not yet been implemented, or is not being planned, service provider NPA level utilization and forecasting data would be required on at least an annual basis for all NPAs. For those NPAs that are projected to exhaust within the next five years, semi-annual reporting should be required at standard intervals.

Currently, COCUS does not impose a regulatory obligation on carriers to provide information because it was established solely through industry efforts.[46] Number utilization data, however, is critical for NANPA to predict accurately number resource demand. Accordingly, NEXTLINK supports a national requirement that carriers report number utilization data twice a year, and quarterly for NPAs that are in jeopardy. Requiring reports for all NPAs on a quarterly basis would impose a significant administrative burden on carriers, particularly on CLECs facing

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[43] NANC COCUS Report at 4-5. The NANC noted that the "Hybrid approach appears to provide the optimum balance of keeping the data collection and reporting burden on service providers at a manageable level, while providing NANPA with the additional resources needed to provide more accurate exhaust projections." Id.

[44] See Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Replacement of Central Office Code Utilization Survey, DA 99-1315, CC Docket 99-200 (Rel. July 1, 1999). The NANC concluded that the Hybrid approach is the preferred method of data collection. It would include increased and varying levels of frequency, granularity, and types of reporting categories depending on type of numbering area (pooling, non-pooling but within exhaust window, and non-pooling outside of exhaust window).

[45] In contrast to the Hybrid model, the LINUS model is too costly and administratively burdensome.

several other substantial barriers to entry. The Commission should thus require carriers to provide quarterly reports only for those NPA codes that are in jeopardy. Such a rule would strike the correct balance between minimizing the administrative burdens and costs of recordkeeping and reporting, and enabling the NANPA to monitor carrier abuses of the number administration system and to predict when area codes may go into jeopardy.[47]

As discussed above, NEXTLINK supports the reporting of number status in disaggregated categories. Although a majority of the NANC membership supports NEXTLINK's position, the NANC did not reach consensus on the issue. The recommendation that utilization reporting be on an aggregate basis of unavailable telephone numbers will not provide NANPA, regulators or industry with sufficient detail to fully understand number use and the potential for number exhaust. NEXTLINK, therefore, urges the Commission to adopt the proposed Hybrid Model in conjunction with a requirement that carriers provide information on number utilization in more disaggregated categories.

D. Audits and Enforcement.

The Commission seeks comment on whether audits should be used to verify carriers' compliance with the numbering resource guidelines or rules,[48] and whether NANPA should be the enforcement body empowered to sanction carriers for violations of the CO Guidelines.[49] NEXTLINK supports the Commission's development of national guidelines for an audit program to ensure that audits are conducted in a uniform manner throughout the industry.

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[46] See NPRM at paras. 69-73.

[47] Id. at para. 69.

[48] Id. at para. 83.

[49] Id. at para. 92.

The NPRM identifies three types of potential audits: (1) for cause; (2) regularly scheduled; and (3) random.[50] NEXTLINK believes that such audits should be conducted on a "for cause" basis, but not on a regularly scheduled or random basis. The threat and use of "for cause" audits is an effective means to ensure carrier cooperation and compliance. The Commission should adopt "for cause" audits to monitor compliance with federal rules and industry numbering guidelines, because regularly scheduled and random audits would create unnecessary expense and administrative burdens. These costs would affect all carriers but would be particularly burdensome for CLECs. Moreover, random audits should not be used to target "new carriers that appear to be seeking a large quantity of numbers."[51] It is unfair and unproductive to target new entrants in the audit process. Such "random" audits would be clearly discriminatory and unfair, and would put CLECs at a disadvantage as compared to other carriers.

NEXTLINK believes that the most efficient and effective means of implementing "for cause" audits is for the Commission to establish national guidelines. The Commission should delegate to NANPA the actual function of performing audits of carriers' compliance but in doing so, the Commission should not relinquish its authority to take action based on the outcomes of an audit. Moreover, the Commission should make the ultimate determination of whether an entity has violated number allocation rules or guidelines because it has the ultimate authority under Section 251(e)(1) of the Telecommunications Act of 1996 to oversee issues relating to the NANP. The Commission therefore should establish uniform guidelines, including due process and procedural rules, to delegate authority to NANPA regarding when a "for cause" audit is warranted, in addition to guidelines for imposing sanctions on a carrier for violations of the rules.

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[50] Id. at paras. 84-87.

[51] Id. at para. 87.

Any audit findings or sanctions recommended by NANPA must be reviewed by the Commission and subject to timely due process procedures.

In sum, the Commission should develop national guidelines for an audit program to ensure that "for cause" audits and enforcement actions are conducted in a uniform manner throughout the industry. Uniform guidelines that are competitively neutral and cost-efficient will encourage the development of competition and at the same time will ensure that carriers comply with federal numbering resource rules and industry guidelines.

IV. ESTABLISHING FEES FOR TELEPHONE NUMBER USE IS INCONSISTENT WITH THEIR STATUS AS A PUBLIC RESOURCE.

The NPRM seeks comment on whether the Commission should establish a pricing mechanism to allocate numbering resources.[52] NEXTLINK believes that the Commission does not have the authority to do so, based on the lack of explicit statutory authority and the Commission's own clear precedent that numbers are a public resource. Moreover, NEXTLINK believes that even if the Commission concluded that it had sufficient authority, that the Commission should not take this approach because it would disproportionately burden new entrants to local telecommunications markets and it would be an administrative nightmare to implement. NEXTLINK, therefore, is opposed to using a pricing mechanism for allocation of number resources.

Congress has not granted the Commission explicit authority to establish a pricing mechanism for numbers, whether through an administrative or market-oriented process. Establishing fees for access to number resources would be inconsistent with the status of

[52] Id. at para. 229.

telephone numbers as a public resource.[53] The Commission has previously concluded that carriers do not actually own codes or numbers but rather administer their distribution for "efficient operation of the public switched telephone network."[54]

Moreover, the Commission does not have authority under the Communications Act to "sell" numbers. In contrast to the Commission's explicit authority to auction spectrum,[55] the Commission has no clear authority to recover fees for the use of numbers. Without such explicit authority under the Act, it is questionable whether the Commission even has the authority to charge carriers for administering a public resource.

In any event, the Commission should not adopt this proposal because it would be contrary to the public interest. Auctioning or selling telephone numbers would be contrary to the provisions of the Act that require the equitable allocation of numbers.[56] Imposing fees for the use of numbers would put new entrants at a significant disadvantage to incumbent carriers who have already received sufficient number resources in their markets. In that regard, this situation is completely different than the Commission's auction of spectrum where multiple parties

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[53] The Commission has previously characterized telephone numbers as a public resource and concluded that neither carriers nor subscribers could "own" their telephone numbers. See Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237, 11 FCC Rcd 2588 (1995).

[54] See Toll Free Service Access Codes, Second Report & Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162 (1997) ("Second Toll Free Service Order") at para. 30 (citing The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. (P&F) 1275, 1284 (1986)).

[55] See 47 U.S.C. § 301 (maintaining federal control over "all channels of radio transmission," and providing "for the use of such channels, . . . under licenses granted by Federal authority.") and § 309(j) (providing that the Commission may establish a system of competitive bidding with regard to licenses for spectrum).

[56] 47 U.S.C. § 251(e); see also Second Toll Free Service Order, at para. 22.

essentially started from scratch and bid on a level playing field for the resource.[57] Here, ILECs would already "own" an overwhelming majority of the resource at issue, forcing CLECs to pay for a resource their already formidable competitors inherited for free. No matter what mechanism the Commission would use to establish the fees for number resources, CLECs would bear a disproportionate impact of the burden.

The impact on new entrants would be even more dramatic if the Commission adopted a market-based pricing scheme, because larger and more capitalized incumbent carriers would have a significant advantage over smaller, less capitalized new entrants. For example, as number resources in a specific market approached exhaustion, the rates for those numbers could be expected to increase due to the smaller supply. New entrants would be at a significant disadvantage compared to large ILECs, who would not only already have existing number resources, but also would have sufficient resources to strategically bid up the rates for numbers in order to further burden their competitors.[58]

Finally, there are no clear benefits to this proposal, and certainly none that would justify incurring the significant administrative costs required to set up any pricing mechanism for numbers. As NEXTLINK has discussed above, the current inefficiencies in number allocation result from the legacy of a monopoly-based number allocation system and are not an indication that carriers have not properly valued numbers. There is simply no evidence in the record that carriers are intentionally utilizing numbers in a wasteful or inefficient manner. Whereas there

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[57] In most of the Commission's auctions for spectrum the Commission auctioned off the entire spectrum in that band, including spectrum occupied by "incumbents." See e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Memorandum Opinion and Order, 9 FCC Rcd 7245, (1994).

[58] For that matter, small CLECs would be at a significant disadvantage to all large carriers, ILEC and CLEC alike.

are clear benefits to the structural reforms proposed by the Commission, such as rate center consolidation and number pooling, it is not as clear that there are similar benefits from this proposal.

NEXTLINK urges the Commission to reject this proposal. In the NPRM, the Commission has identified efficient and effective methods of optimizing number utilization, such as rate center consolidation and thousand-block number pooling, that should contribute significantly to alleviating the current crisis in number administration. The Commission should focus its and industry's energies on reducing those structural inefficiencies in the current number administration system before it even considers whether it should further evaluate a pricing mechanism for number administration.

V. CONCLUSION

In conclusion, NEXTLINK reiterates that the Commission must provide prompt and national resolution of number resources issues, and the administrative matters surrounding number resources. Local competition will only be able to develop and thrive in markets where there is certainty, and access to, among other things, number resources. A national focus on these issues, therefore, is essential.

Specifically, the Commission should issue national guidelines on the two most efficient and effective means for optimizing number resources: (1) number pooling; and (2) rate center consolidation. As stated, number resource optimization is critical for the development of competition and for new entrants seeking to provide service in markets where number codes are in jeopardy. Rate center consolidation should be encouraged nationally, as a cost-effective way to reform the currently inefficient structure of the numbering system. In promoting these

methods of number optimization, the Commission should also reject ITN and UNP as mandatory methods of number pooling, and sequential number assignment as creating more costs than benefits.

NEXTLINK also urges the Commission to provide national guidance on administrative matters pertaining to the NANP. The Commission should adopt consistent rules requiring carriers to report their number utilization based on specific status categories; requiring mandatory recordkeeping and reporting; and providing guidelines on audits and enforcement. Further, the Commission should decline to require carriers seeking initial codes to submit additional showings. Finally, NEXTLINK opposes the adoption of a pricing mechanism for the usage of number resources, as contrary to the law and the public interest.

Respectfully submitted,

/s/

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