

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

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| In the Matter of |) | |
| |) | |
| Numbering Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| Petition for Forbearance From Further Increases in |) | |
| the Numbering Utilization Threshold |) | |

MEMORANDUM OPINION AND ORDER

Adopted: June 19, 2003

Released: June 26, 2003

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Order, we deny the petition for forbearance filed by the Cellular Telecommunications and Internet Association (CTIA) on June 28, 2002.¹ CTIA seeks forbearance from further scheduled increases to the numbering resources utilization threshold, which is currently at 65%.² CTIA argues that forbearance should be granted because the projected life of the North American Numbering Plan (NANP) has been extended, and increases to the current utilization threshold will raise the cost of providing service and increase the risk that numbering resources will not be available to carriers when needed. All commenters oppose CTIA's forbearance request.³ We deny CTIA's Petition and find that CTIA has not shown that forbearance in this instance is warranted.

A. Statutory Requirements

2. Section 10. Section 10 of the Communications Act of 1934, as amended (the Act), requires the Commission to forbear from applying any regulation or provision of the Act to telecommunications carriers or telecommunications services, if the Commission determines that the following three conditions set forth in section 10(a) are satisfied:

¹ See The Cellular Telecommunications and Internet Association's Petition for Forbearance from Further Increases in the Numbering Resource Utilization Threshold, CC Docket No. 99-100, filed June 28, 2002 (Petition).

² The numbering resources utilization threshold requires carriers to use a specified percentage of numbers in their existing inventory before they can receive additional numbering resources. 47 C.F.R. § 52.15(h).

³ Comments opposing CTIA's Petition were filed by the California Public Utilities Commission and the People of the State of California (California Commission), the Michigan Public Service Commission (Michigan Commission), the New York State Department of Public Service (New York Department) and the Pennsylvania Public Utility Commission (Pennsylvania Commission).

- 1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- 2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- 3) forbearance from applying such provision or regulation is consistent with the public interest.⁴

Section 10(b) specifies that, in making the public interest determination in its forbearance analysis, the Commission must consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.⁵ If the Commission determines that forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.⁶

3. Section 251(e)(1). Section 251(e)(1) of the Act requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.⁷ Section 251(e)(1) also grants the Commission exclusive jurisdiction over the North American Numbering Plan (NANP) within the United States.⁸

B. Numbering Resource Optimization Orders

4. Pursuant to its plenary authority over numbering administration in the United States, the Commission issued a series of numbering resource optimization orders implementing measures designed to increase the efficient use of numbers and to allow the Commission to more closely monitor the way numbering resources are used within the NANP.⁹ The Commission's goals in implementing these

⁴ See 47 U.S.C. § 160. The 1996 Act amended the Communications Act of 1934, 47 U.S.C. §§ 151-174.

⁵ 47 U.S.C. § 160(b).

⁶ *Id.*

⁷ Section 251(e)(1) states:

The Commission shall designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

47 U.S.C. § 251(e)(1).

⁸ *Id.*

⁹ See generally *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000) (*Numbering Resource Optimization First Report and Order*); (continued....)

measures included ensuring that the limited numbering resources of the NANP are used efficiently, protecting consumers from the expense and inconvenience resulting from frequent area code changes, and preventing what would be a costly premature expansion of the NANP.¹⁰ To help prevent “stockpiling” of numbering resources, which burdens individual area codes and the NANP, the Commission established criteria that carriers must meet to demonstrate their need for additional numbering resources.¹¹

5. The *Numbering Resource Optimization First Report and Order* established, among other things, that carriers would be required to use a specified percentage of numbers in their existing inventory of numbers before they can receive additional numbering resources.¹² All carriers seeking additional numbers or “growth numbering resources” are required to report their utilization level for the rate center in which they are seeking such numbering resources.¹³ The Commission explained that it adopted this utilization threshold requirement to ensure that carriers obtain additional numbering resources only when and where they are needed to provide service.¹⁴ The Commission found that coupling the utilization threshold requirement with the existing requirement to file a months-to-exhaust (MTE) worksheet would provide more reliable and verifiable information to help the North American Numbering Plan Administrator (NANPA) improve efficient distribution of numbering resources and verify a carrier’s actual need for additional numbers.¹⁵ The Commission has also found that the utilization threshold requirement coupled with the MTE requirement deters carriers from stockpiling excessive numbering

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Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd 306 (2000) (*Numbering Resource Optimization Second Report and Order*); and, *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, 17 FCC Rcd 252 (2001) (*Numbering Resource Optimization Third Report and Order*), as corrected by Errata, CC Docket No. 99-200, 17 FCC Rcd 2196 (Com. Car. Bur. 2002).

¹⁰ See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7577. The Commission also determined that it must ensure that carriers have access to the numbering resources they need to compete in the telecommunications marketplace. *Id.* at 7577, 7579.

¹¹ *Id.* at 7578.

¹² *Id.* at 7616-17. Initially, the utilization threshold was applied to non-pooling carriers, but was subsequently expanded to pooling carriers. See *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 319. “Pooling carriers” are those carriers that are required to participate in thousands-block number pooling or the process by which 10,000 numbers in a central office code (NXX) are separated into ten sequential blocks of 1,000 numbers each and allocated separately in a rate center. 47 C.F.R. § 52.20.

¹³ See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7617. See also *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 314-19.

¹⁴ See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7616.

¹⁵ The MTE worksheet requires carriers applying for growth numbering resources to identify “available” numbering resources by rate center, historical monthly utilization for the preceding six months, and projected monthly utilization for the next twelve months. *Id.* at 7616. The NANPA is required to verify carriers’ need for additional numbers using the MTE worksheet and utilization data filed by the carriers. *Id.*

inventories.¹⁶

6. In the *Numbering Resource Optimization Second Report and Order*, the Commission adopted 60% as the initial minimum utilization threshold with annual 5% increases, up to a 75% ceiling.¹⁷ The Commission explained that the initial threshold of 60% would encourage carriers to use as many numbers as possible from their existing inventory before obtaining additional numbers.¹⁸ Annual 5% increases to the threshold were adopted because the Commission was concerned that many carriers were not doing enough to groom their numbering inventories to minimize waste of the NANP's finite numbering resources.¹⁹ States that were using utilization thresholds higher than 60% were permitted to continue using those higher thresholds up to the 75% ceiling.²⁰ The Commission grandfathered these states so as not to impede their progress, because they were already achieving success with higher utilization thresholds.²¹ Carriers that could not meet the utilization threshold for a given rate center, but had a demonstrable need for numbers, were permitted to seek waivers from the Commission to obtain additional numbering resources until an alternative "safety valve" waiver process could be established.²²

7. In the *Numbering Resource Optimization Third Report and Order*, the Commission established a "safety valve" to enable carriers that do not meet the utilization threshold requirement in a given rate center to obtain additional numbering resources.²³ State commissions were given delegated authority to hear claims that a safety valve should be applied, as a "last resort" measure, when the NANPA denies a specific carrier request for numbering resources.²⁴ State commissions can apply the safety valve to address the general numbering resources needs of carriers experiencing rapid growth in a given market so that those carriers will be ready to meet customer demand.²⁵ The Commission also

¹⁶ See *Numbering Resource Optimization Third Report and Order*, 17 FCC Rcd at 276.

¹⁷ See *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 316-19. The *Numbering Resource Optimization Second Report and Order* also affirmed that carriers must meet both the MTE and utilization threshold requirements before receiving growth numbering resources. *Id.* at 320. The next scheduled increase of the utilization threshold, to 70%, will be effective on June 30, 2003.

¹⁸ *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 316-17.

¹⁹ *Id.* at 318.

²⁰ *Id.* at 317.

²¹ *Id.* Currently, California, Connecticut, Illinois, Maine, New Hampshire, and New York each have a utilization level of 75% in all or part of their numbering plans areas (NPA). See *Effects of the FCC's NRO Order on Code Administration*, <http://www.nanpa.com/pdf/nro_062102.pdf>, June 21, 2002.

²² *Id.* at 322, 380. See also *Numbering Resource Optimization Third Report and Order*, 17 FCC Rcd at 280-282.

²³ *Id.*

²⁴ *Id.* at 280.

²⁵ States may apply this safety valve if a carrier demonstrates the following: 1) the carrier will exhaust its numbering resources in a market or rate area within three months (in lieu of the six months-to-exhaust requirement); and 2) projected growth is based on the carrier's actual growth in the market or rate area, or on the (continued....)

permitted state commissions to grant safety valve relief to any carrier that receives a specific customer request for numbering resources in a given rate center that the carrier cannot meet with its current inventory of numbers.²⁶ Finally, the Commission granted the states flexibility to direct the NANPA to assign additional numbering resources to carriers that demonstrate a verifiable need for additional numbers in situations that differ from the two aforementioned instances.²⁷

C. CTIA's Petition for Forbearance

8. CTIA seeks forbearance from scheduled increases to the numbering resources utilization threshold.²⁸ Specifically, the Petition supports the current utilization threshold requirements but requests that the Commission freeze the utilization level at its current level of 65%.²⁹ In addressing the first forbearance criteria, CTIA states that the scheduled increases are not necessary to ensure just and reasonable charges and practices because the scheduled increases are not positively correlated with carriers' charges and practices.³⁰ CTIA asserts that the Commission should instead use its authority pursuant to sections 201 and 202 of the Act to address matters regarding carriers' access to growth numbering resources.³¹ In addressing the second forbearance criteria, CTIA claims that retaining the scheduled threshold increases is unnecessary to protect consumers because the national numbering crisis has ended, and NANP exhaust is not foreseeable for at least 20 years.³² Additionally, CTIA asserts that consumers will benefit from forbearance because further scheduled increases to the utilization threshold will impose significant costs on all carriers and consumers.³³ It further argues that the scheduled

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carrier's actual growth in a reasonably comparable market, but only if that projected growth varies no more than 15 percent from historical growth in the relevant market. *Id.* at 281.

²⁶ *Id.* Carriers may demonstrate their need for relief by providing the state with documentation of the customer request and current proof of utilization in the rate center. *Id.*

²⁷ *Id.* at 280-282.

²⁸ CTIA's proposal would permit the six "grandfathered" states that impose a 75% utilization threshold to retain that threshold. *See* Reply Comments of the Cellular Telecommunications and Internet Association at 7, filed Mar. 24, 2003 (CTIA Reply Comments).

²⁹ In a recent *ex parte* filing, however, CTIA indicates that it finds a utilization threshold of 70% to be appropriate. *See* Letter from Diane Cornell, CTIA, to Marlene Dortch, FCC, dated April 11, 2003 (April 11th *ex parte*) (stating that "requiring carriers to manage numbering resources beyond a 70% utilization threshold is unnecessarily burdensome . . .").

³⁰ Petition at 10.

³¹ *Id.*

³² *Id.* at 1-9, 11. CTIA argues that any benefits to NANP exhaust are outweighed by the cost and risks that further increases to the threshold will impose on carriers. *Id.* at 8. *See also* CTIA Reply Comments at 4, 10-11.

³³ *See* Petition at 8, 12. CTIA, however, also admits that it is unable to quantify these costs. CTIA Reply Comments at 8.

increases threaten carriers' ability to "age" numbers before they are reassigned.³⁴ Finally, in addressing the third forbearance criteria, CTIA submits that forbearance from further increases is in the public interest because it will reduce regulatory costs which will promote competitive market conditions.³⁵ Alternatively, CTIA claims that increases to the threshold above 65% increases the risk that carriers will not have enough numbering resources available to them to meet customer demand and that this could unnecessarily harm the competitive operation of those carriers.³⁶

9. All of the comments filed in this proceeding were filed by state commissions that oppose CTIA's forbearance petition. The state commissions all disagree with CTIA's view that an end to the numbering crisis would eliminate the need for further increases to the threshold.³⁷ Several commissions claim that a freeze of the current utilization threshold could accelerate NANP exhaust and burden customers with premature area code changes.³⁸ The New York Department and Michigan Commission believe that the telecommunications industry is rapidly evolving and the demand for numbers could surpass previous levels.³⁹ The California Commission states that forbearing from increasing the threshold could "impair the Commission's ability to continue to effectively manage the efficient use of numbering resources and as a result, jeopardize its sound public policy goals for numbering resource optimization."⁴⁰

II. DISCUSSION

10. We find that CTIA's forbearance petition does not satisfy the forbearance criteria set forth in section 10(a) of the Act.⁴¹ Specifically, we find that the numbering resources utilization threshold, and

³⁴ See Petition at 11-12. "Aging" is the process of making a disconnected number unavailable for re-assignment to another subscriber for a specified period of time. See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7590.

³⁵ See Petition at 13-14.

³⁶ *Id.* at 7, 14.

³⁷ See Comments of the California Public Utilities Commission and of the People of the State of California at 2, 8 filed Mar. 17, 2003 (California Commission Comments); Reply Comments of the Pennsylvania Public Utility Commission at 2-3, filed Mar. 24, 2003 (Pennsylvania Commission Reply Comments); Comments of the New York State Department of Public Service at 3, filed Mar. 17, 2003 (New York Department Comments); Comments of the Michigan Public Service Commission at 2, filed Mar. 14, 2003 (Michigan Commission Comments).

³⁸ See generally Pennsylvania Commission Reply Comments. See also California Commission Comments at 6; Michigan Commission Comments at 2. The Pennsylvania Commission urges the to Commission use all available number conservation measures, including higher utilization thresholds, so that the NANP is not exhausted prematurely. Pennsylvania Commission Reply Comments at 5-6.

³⁹ See New York Department Comments at 3; Michigan Commission Comments at 2.

⁴⁰ See California Commission Comments at 6.

⁴¹ See 47 U.S.C. 160(a). The D.C. Circuit recently found that the three prongs of this statute are conjunctive and stated that the Commission could properly deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied. See *Cellular Telecommunications & Internet Ass'n v. F.C.C.*, No. 02-1264, 2003 WL 21293569, at *8 (D.C. Cir. Jun. 6, 2003) (*CTIA v. FCC*). Notwithstanding, we address all three prongs of the section 10 forbearance standard in this order.

the scheduled increases up to the 75% cap, are necessary to ensure that carriers will obtain numbering resources in a just and reasonable manner, *i.e.*, only when and where they are needed to provide services. We further find that requiring carriers to manage their numbering inventories at increasing thresholds is a preventative measure that is necessary to protect consumers from premature area code changes and exhaust of the NANP. We also find that it is consistent with the public interest to increase the threshold because it will continue to require carriers to use numbering resources more efficiently, which will benefit carriers and consumers.

A. Charges, Practices, Classifications and Regulations

11. The scheduled increases to the threshold ensure that carriers will obtain additional numbering resources only when they are needed and utilize their numbering inventories on an increasingly efficient basis.⁴² Such efficiency is necessary to avoid the waste of finite numbering resources that are essential to providing telecommunications service. Conversely, freezing the threshold at its current level could accelerate NANP exhaust and burden customers with premature area code changes, contrary to the public interest.

12. As the Commission first concluded in the *Numbering Resource Optimization First Report and Order*, the utilization threshold requirement, coupled with the MTE requirement, deters carriers from stockpiling excessive inventories and helps ensure that carriers optimize the use of existing numbering resources.⁴³ Due in part to these measures, the projected life of the NANP has been significantly extended.⁴⁴ Even CTIA lauds the success of these measures.⁴⁵ Furthermore, the Pennsylvania Commission submits that forbearance from increasing the utilization threshold could result in the unnecessary stranding of over 1.3 million individual telephone numbers in Pennsylvania's NPAs.⁴⁶ Thus, we find that the Commission's numbering resources utilization threshold and its scheduled increases are necessary to ensure that carrier practices with regard to numbering resources are not unjust or unreasonable.

13. We also disagree with CTIA's suggestion that scheduled increases are rendered unnecessary by the Commission's already existing authority under sections 201 and 202 of the Act to address unjust or unreasonable carrier practices.⁴⁷ While we agree that we have authority pursuant to these sections to

⁴² See *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 318.

⁴³ See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7615-17. See *Numbering Resource Optimization Third Report and Order*, 17 FCC Rcd at 276.

⁴⁴ The NANPA recently reported that regulatory conservation measures on number assignments have added six more years to the projected life of the NANP. See *Fifth Annual NANPA Report Provides In-Depth Analysis of North America Area Code Trends*, Neustar Press Release, dated Mar. 12, 2003. The NANPA's annual report revealed that in 2002, 2,700 central office codes were returned to the available numbering resources inventory. NANPA, 2002 Annual Report at iii (<<http://www.nanpa.com/>>) (NANPA Annual Report).

⁴⁵ See Petition at 7 (referring to the NANPA's 2002 NRUF and NPA Analysis and stating that this analysis of area codes confirms the success of the Commission's optimization measures).

⁴⁶ See Pennsylvania Commission Reply Comments at 2-4. Stranded telephone numbers cannot be used by other carriers.

⁴⁷ See Petition at 10.

address matters regarding carriers' access to numbering resources, the existence of such authority does not, by itself, negate the necessity of retaining scheduled increases to the utilization threshold.⁴⁸ Targeted rules, such as the utilization threshold and its scheduled increases, provide an additional measure to ensure that carriers optimize the use of existing numbering resources on an ongoing basis to prevent premature NANP exhaust.⁴⁹ As mentioned above, telephone numbers are a finite resource. Therefore, we must maintain proactive and predictable measures that preserve the NANP in addition to depending on our authority to initiate case-by-case enforcement investigations. We find that because of the concerns described above, we would not be justified in forbearing now, even if we were to "revisit the issue at a later date if necessary to preserve the NANP" as CTIA suggests.⁵⁰

B. Consumer Protection

14. We conclude that retaining the scheduled increases to the numbering resource utilization threshold is necessary for the protection of consumers, and we disagree with CTIA that forbearance in this instance would benefit consumers.⁵¹ One of the overarching goals of the Commission's numbering optimization orders is to protect consumers from the expense and inconvenience resulting from frequent area code changes, and to prevent what would be a costly premature expansion of the NANP.⁵² We agree with the Pennsylvania, California and Michigan commissions that freezing the utilization threshold could burden customers with premature area code changes as a result of earlier NANP exhaust.⁵³ We find that by increasing the threshold, we are minimizing the opportunity for carriers to stockpile unused numbers when other carriers are in need of such resources to serve their customers. Higher utilization levels will help to maximize the use of all available numbers which, in turn, will delay the exhaust of individual area codes.⁵⁴

15. Furthermore, we agree with the states that maintain that evolving technologies, as well as expanding services, could cause the demand for numbers to spike past the previous levels.⁵⁵ For example, as voice over Internet protocol (VoIP) providers continue to penetrate the telecommunications market, the

⁴⁸ In fact, the Commission maintains several rules that protect against unreasonable carrier practices even though it also has such authority under sections 201 and 202 of the Act. Several of those rules, for example, can be found in Part 64 of the Commission's rules.

⁴⁹ See generally *Numbering Resource Optimization First Report and Order*.

⁵⁰ See Petition at 12-13; CTIA Reply Comments at 10-11.

⁵¹ See 47 U.S.C. 160(a)(2). See Petition at 11.

⁵² See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7577.

⁵³ See generally Pennsylvania Commission Reply Comments. See also California Commission Comments at 6; Michigan Commission Comments at 2-3.

⁵⁴ *Id.*

⁵⁵ See Michigan Commission Comments at 2-3; New York Department Comments at 3 (noting that demand could increase as a result of the continued proliferation of cell phones, secondary lines and a potential economic upturn).

demand for numbers may increase.⁵⁶ Such demand could burden existing numbering resources. Therefore, we find that requiring carriers to manage their numbering inventories at higher thresholds is a preventative measure that is necessary to ensure that consumers will not have to bear the burden of premature area code changes and NANP expansion.⁵⁷

16. We disagree with CTIA's claim that we should forbear from further increases because they will lead to increased carrier and consumer costs.⁵⁸ CTIA has not presented any data or detailed cost-benefit analysis to support this assertion.⁵⁹ In fact, CTIA readily concedes that it is "impossible to quantify the administrative costs carriers will incur from managing numbers at higher utilization levels."⁶⁰ Moreover, the New York and California commissions have maintained utilization thresholds at 75% without any indication that there have been adverse effects on consumers.⁶¹ We are not convinced that increases to the utilization threshold would result in significantly more costs because the scheduled increases to the threshold are limited to 5% annually and are capped at 75%.⁶² The threshold is already at 65%. The New York Department correctly highlights in its comments that the 10% difference between a 65% and 75% utilization threshold is only 100 numbers per thousands-block.⁶³ We find it unlikely that managing an additional 100 numbers per thousands-block would be burdensome or cost prohibitive. We

⁵⁶ See New York Department Comments at 3-4. See, e.g., Daniel Greenberg, *As Promised, a Good Internet Phone*, Washington Post, March 2, 2003, at H7.

⁵⁷ See *CTIA v. FCC*, 2003 WL 21293569, at *11 (finding that it is reasonable for the Commission to construe "necessary," as found in the second prong of section 10(a) of the forbearance standard, as referring to the existence of a strong connection between what the agency does by way of regulation and what the agency permissibly seeks to achieve with that regulation).

⁵⁸ CTIA states that raising the utilization threshold from its current 65% level will increase carriers' numbering administrative costs and claims that those costs are ultimately imposed on consumers with little or no benefit to NANP exhaust. Petition at 12.

⁵⁹ See California Commission Comments at 7. While CTIA states that an increasing threshold creates the need for carriers to invest additional time and resources in managing their inventory of numbers, it does not quantify the need or the costs that are imposed. Petition at 12. For example, CTIA states that carrier telephone number administration systems which allocate numbers automatically become inadequate and, as a result, carriers' staff must focus on allocating a small amount of numbers on a daily basis. CTIA, however, does not provide the Commission with any data, anecdotal or otherwise, to support this claim. CTIA Reply Comments at 8.

⁶⁰ *Id.*

⁶¹ See California Commission Comments at 3; New York Department Comments at 3.

⁶² The Commission selected 5% increases over 10% increases in the *Numbering Resource Optimization Second Report and Order*, deciding that gradually increasing the utilization threshold would "give carriers sufficient time to increase the efficiency with which they use numbering resources." See *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 318. See also California Commission Comments at 7.

⁶³ New York Department Comments at 3 (stating that it is "difficult to believe that this incremental difference could not be handled by the carrier's computers.").

note that previously CTIA proposed and supported 5% annual increases to the utilization threshold.⁶⁴ Moreover, in a recent *ex parte* filing, CTIA appears to depart from its position that the Commission should freeze the threshold at 65% by indicating that a 70% threshold would be an acceptable utilization level.⁶⁵ Thus, it appears that CTIA now claims only that the difference between a 70% and 75% utilization threshold would be unnecessarily burdensome, in which case carriers would be required to use only 50 more numbers per thousands-block. We reject CTIA's claim that scheduled increases to the utilization threshold will raise costs while providing little benefit.

17. We also disagree with CTIA's claim that forbearance is warranted as a consumer benefit because it will allow carriers more time to "age" telephone numbers.⁶⁶ We find that the numbering utilization threshold has little or no effect on the aging process. Because carriers have the flexibility to age numbers up to 90 days regardless of the utilization threshold, carriers will be able to replenish their inventories of unused numbers with numbers that have been aged on an ongoing basis.⁶⁷ Carriers, therefore, must make a business decision as to how long to age their numbering resources. In the *Numbering Resource Optimization First Report and Order*, the Commission stated that it believes that carriers can reuse numbers in significantly less than 90 days.⁶⁸ Certain states have maintained utilization thresholds higher than the current threshold without any indication that there have been adverse effects on the aging process or on consumers.⁶⁹ Therefore, we find that carriers' ability to age numbers within the Commission's prescribed limits will not be negatively affected by further increases in the numbering resources utilization threshold.

18. Moreover, we believe that CTIA's claim regarding the aging process is merely another attempt at arguing that increases to the utilization threshold are burdensome because they require carriers to use numbers more efficiently. Requiring carriers to use numbering resources more efficiently, however, is the goal that increases to the utilization threshold were designed to achieve. We find that freezing the utilization threshold at 65% would have a detrimental effect on numbering resource optimization and, in turn, on consumers because it would provide opportunity for carriers to stockpile unused numbers that could be assigned to other requesting customers.

C. Public Interest

19. We conclude that it is in the public interest to retain scheduled increases to the utilization threshold because it will continue to result in more efficient use of numbering resources, further extend the life of the NANP, and facilitate impartial numbering administration by encouraging all carriers to use

⁶⁴ See *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7620-21. CTIA proposed a 60% utilization threshold in jeopardy NPAs, to be increased annually by 5%, up to a cap of 70%. *Id.*

⁶⁵ See *supra* note 29 and April 11th *ex parte*.

⁶⁶ Petition at 11-12. See *supra* note 34.

⁶⁷ Numbers previously assigned to residential customers may be aged for no more than 90 days. 47 C.F.R. § 52.15(f)(1)(ii).

⁶⁸ See *Numbering Resources Optimization First Report and Order*, 15 FCC Rcd at 7590.

⁶⁹ See e.g., California Commission Comments at 3; New York Department Comments at 3.

numbers in their existing inventory before requesting new ones.⁷⁰ In the *Numbering Resource Optimization Second Report and Order*, the Commission adopted 60% only as an “initial” utilization threshold. The Commission chose this initial threshold because it was demonstrably achievable and it would give carriers the opportunity to transition to the 75% ceiling without compromising their ability to obtain numbering resources to serve customers.⁷¹ The Commission found, as we do here, that a utilization threshold ceiling of 75% was appropriate because it balanced the Commission’s goals of encouraging carriers to use numbers currently in their inventories before applying for additional resources with carriers’ need to retain flexibility in managing their inventories.⁷² The Commission was concerned that many carriers were not doing enough to groom their numbering inventories to minimize waste of the NANP’s finite numbering resources.⁷³ Today, many areas continue to face a heightened demand for numbering resources and, therefore, a utilization threshold of 75% remains in the public interest to ensure that carriers continue to use their numbering resources more efficiently.⁷⁴

20. We disagree with CTIA’s claim that we should forbear because doing so will bring about reduced regulatory costs that will promote competitive market conditions.⁷⁵ As stated above, any reductions in regulatory costs that would result from forbearance are speculative, and would relate to relatively few numbers in a carrier’s inventory. Thus any cost savings would only be minimal, at best. Even if we granted forbearance from further increases, carriers would still have to continue to bear the costs associated with complying with the current utilization level.⁷⁶ We have not been shown, nor are we convinced, that the marginal costs related to compliance with increases to the utilization threshold have any effect on competitive market conditions. In fact, we find that forbearance would result in lost efficiencies in numbering resource optimization. When such costly inefficiencies are balanced against the minimal regulatory costs that may be saved by carriers as a result of freezing the current utilization threshold, it is clear that forbearance is not consistent with the public interest.

21. Finally, we find unsupportable CTIA’s alternative claim that increases to the utilization threshold will result in certain carriers not having enough numbers available to them to meet customer

⁷⁰ See 47 U.S.C. 160(a)(3).

⁷¹ See *Numbering Resource Optimization Second Report and Order*, 16 FCC Rcd at 317.

⁷² *Id.* at 318-19. The Commission noted that carriers had been successfully meeting 75% utilization thresholds established by some state commission and some carriers were able to reach utilization levels as high as 80% before needing additional numbering resources. *Id.* at 318.

⁷³ *Id.*

⁷⁴ Approximately 35 area codes are scheduled to exhaust in the year 2005 or sooner. See NANPA Annual Report at 35-50. Elimination of the scheduled increases may allow carriers to return to the prior practices of using numbering resources inefficiently and stockpiling numbers. See, e.g., New York Department Comments at 3; California Comments at 2, 8 (stating that modifying the Commission’s current threshold requirements poses a threat that the numbering crisis could return).

⁷⁵ Petition at 13-14.

⁷⁶ Forbearance would not reduce, or eliminate, such costs, but only eliminate any further minimal increases to such costs.

demand.⁷⁷ Once the utilization threshold reaches 75%, carriers will have 25% of their resources available to assign to new customers.⁷⁸ Moreover, sufficient mechanisms, such as the safety valve, are in place to ensure that carriers with a verifiable need for additional numbers can get them even if they do not meet the utilization threshold requirements.⁷⁹ For example, if, as CTIA suggests is the case for some carriers, a carrier has to use a large amount of numbers for E911 routing purposes, and as a result does not have a sufficient amount of telephone numbers to meet customer demand, that carrier can apply for relief via the safety valve.⁸⁰ In addition, the state commissions note that no carriers have complained that the utilization thresholds are technically or otherwise infeasible, and that no customers have complained about being unable to obtain service because a carrier did not have enough numbers.⁸¹ Therefore, we reject CTIA's contention that forbearance is in the public interest, or will promote or enhance competitive market conditions among providers of telecommunications services.

III. ORDERING CLAUSE

22. Accordingly, IT IS ORDERED, pursuant to sections 10 and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 160 and 251(e), that the Cellular Telecommunications and Internet Association's Petition for Forbearance From Further Increases in the Numbering Utilization Threshold, filed on June 28, 2002, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷⁷ Petition at 7, 13-14.

⁷⁸ See Pennsylvania Commission Reply Comments at 5 (stating that the 75% cap provides carriers holding full NXX codes with a buffer of approximately 2500 numbers in each NXX code while they request additional numbers).

⁷⁹ See California Commission Comments at 4-5; Michigan Commission Comments at 2; New York Department Comments at 3; and, Pennsylvania Commission Reply Comments at 5. The state commissions for California, New York and Pennsylvania all note that they have granted "safety valve" requests. See Section II.B, *supra*, for an explanation of the "safety valve" mechanism.

⁸⁰ CTIA Reply Comments at 9.

⁸¹ Both the New York Department and the California Commission retain utilization thresholds at 75%. The New York Department states that carriers in New York have not had difficulty maintaining a sufficient inventory of numbers under the 75% threshold. See New York Department Comments at 3. In California "no carriers have complained to the [California Commission] that a 75% utilization threshold is either technically or otherwise infeasible." See California Commission Comments at 3.