

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

In the Matter of )
Numbering Resource Optimization ) CC Docket No. 99-200
Petition of the West Virginia Public Service )
Commission for Expedited Decision for Authority )
to Implement Additional Number Conservation )
Measures )
Petition of the Nebraska Public Service )
Commission for Expedited Decision for Authority )
to Implement Additional Number Conservation )
Measures )
Petition of the Oklahoma Corporation )
Commission for Expedited Decision for Authority )
to Implement Additional Number Conservation )
Measures )
Petition of the Michigan Public Service )
Commission for Additional Delegated Authority )
over Numbering Resource Conservation Measures )
Petition of the Missouri Public Service )
Commission for Additional Delegated Authority )
to Implement Number Conservation Measures )

ORDER AND FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: February 17, 2006

Released: February 24, 2006

Comment Date: 60 days after publication in the Federal Register
Reply Comment Date: 90 days after publication in the Federal Register

By the Commission:

I. INTRODUCTION

1. In this Order, we grant petitions for delegated authority to implement mandatory thousands-block number pooling<sup>1</sup> filed by the Public Service Commission of West Virginia, the Nebraska

<sup>1</sup> Thousands-block number pooling is a numbering resource optimization measure in which 10,000 numbers in an NXX are broken up into ten sequential blocks of 1,000 numbers and allocated to different service providers (or different switches) within a rate center. See Numbering Resource Optimization, Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, 18 FCC Rcd 12472, 12474, ¶ 5 (2003) (“Fourth Report and Order”).

Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. For the reasons discussed below, we find that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require thousands-block number pooling. In granting these petitions, we permit these states to optimize numbering resources and further extend the life of the numbering plan areas (“NPAs”) in question. Specifically, we grant the following:

- To the Public Service Commission of West Virginia, the authority to implement mandatory thousands-block number pooling in the 304 NPA.
- To the Nebraska Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 402 NPA.
- To the Oklahoma Corporation Commission, the authority to implement mandatory thousands-block number pooling in the 580 NPA.
- To the Michigan Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 989 NPA.
- To the Missouri Public Service Commission, the authority to implement mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs.

2. In the Fifth Further Notice of Proposed Rulemaking, we seek comment on whether we should delegate authority to all states to implement mandatory thousands-block number pooling consistent with the parameters set forth in this Order.

## II. BACKGROUND

### A. The 1996 Act and Commission Rules and Orders

3. In the *First Report and Order*, the Commission determined that implementation of thousands-block number pooling is essential to extending the life of the North American Numbering Plan (“NANP”) by making the assignment and use of NXX codes more efficient.<sup>2</sup> Therefore, the Commission adopted national thousands-block number pooling as a valuable mechanism to remedy the inefficient allocation and use of numbering resources<sup>3</sup> and determined to implement mandatory thousands-block pooling in the largest 100 MSAs within nine months of selection of a pooling administrator.<sup>4</sup> The Commission also allowed state commissions to continue to implement thousands-block pooling pursuant to delegated authority and agreed to continue to consider state petitions for delegated authority to implement pooling on a case-by-case basis.<sup>5</sup> The Commission delegated authority to the Common

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<sup>2</sup> *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7625, ¶ 122 (2000) (“*First Report and Order*”). The NANP was established over 50 years ago by AT&T to facilitate the expansion of long distance calling. The NANP, the basic numbering scheme for the United States, Canada, and most Caribbean countries, is based on a 10-digit dialing pattern, NPA-NXX-XXXX, where N represents any digit from 2 through 9 and X represents any digit from 0 through 9.

<sup>3</sup> *Id.*, 15 FCC Rcd at 7625, ¶ 122.

<sup>4</sup> *Id.*, 15 FCC Rcd at 7644-45, ¶¶ 157-58.

<sup>5</sup> *First Report and Order*, 15 FCC Rcd at 7651, ¶ 169. At the time the *First Report and Order* was adopted, several states already had delegated authority to implement thousands-block pooling and several more states had petitions pending with the Commission. *Id.* The Commission observed that the national pooling framework, when adopted,

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Carrier Bureau, now the Wireline Competition Bureau (“Bureau”), to rule on state petitions for delegated authority to implement number conservation measures, including thousands-block number pooling, where no new issues were raised.<sup>6</sup>

4. The Commission held that such state petitions for delegated authority must demonstrate that: (1) an NPA in its state is in jeopardy; (2) the NPA in question has a remaining life span of at least a year; and (3) the NPA is in one of the largest 100 MSAs, or alternatively, the majority of wireline carriers in the NPA are local number portability (“LNP”)-capable.<sup>7</sup> The Commission recognized that there may be “special circumstances” where pooling would be of benefit in NPAs that do not meet all three criteria, and may be authorized in such an NPA upon a satisfactory showing by the state commission of such circumstances.<sup>8</sup> These three criteria were adopted before implementation of nationwide thousands-block number pooling and before the Commission recognized that full LNP capability is not necessary for participation in pooling.<sup>9</sup>

5. National rollout of thousands-block number pooling commenced on March 15, 2002, in the 100 largest Metropolitan Statistical Areas (“MSAs”)<sup>10</sup> and area codes previously in pooling pursuant to state delegation orders.<sup>11</sup> All carriers operating within the 100 largest MSAs, except those specifically exempted by the order, were required to participate in thousands-block number pooling in accordance with the national rollout schedule.<sup>12</sup> The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of LNP from another carrier, as well as carriers that are the only service provider receiving numbering resources in a given rate center.<sup>13</sup> In exempting certain carriers from the pooling requirement, the Commission confirmed that “it is reasonable to require LNP only in areas where competition dictates its demand.”<sup>14</sup> The Commission directed the North American Numbering Plan

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would supersede the interim delegations of authority to state commissions. *Id.* Section 251(e)(1) of the Communications Act of 1934, as amended (“the Act”) allows the Commission to delegate to state commissions jurisdiction over numbering administration. 47 U.S.C. § 251(e)(1).

<sup>6</sup> *First Report and Order*, 15 FCC Rcd at 7651-52, ¶ 170.

<sup>7</sup> *First Report and Order*, 15 FCC Rcd at 7651-52, ¶ 170. *See also Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd 252, 262, ¶ 21 & note 47 (2001) (“*Third Report and Order*”). In the *Third Report and Order*, the Commission rejected a request to delegate authority to the states to determine on a case-by-case basis whether to extend pooling requirements. *Third Report and Order*, 17 FCC Rcd at 262, ¶ 21. The Commission explained that uniform national standards for pooling are necessary to minimize confusion and additional expense related to compliance with inconsistent regulatory requirements. *Id.*

<sup>8</sup> *First Report and Order*, 15 FCC Rcd at 7651-52, ¶ 170.

<sup>9</sup> *See Fourth Report and Order*, 18 FCC Rcd at 12476, ¶ 11 (recognizing that full LNP capability is not necessary for participation in pooling but the underlying architecture, Location Routing Number (LRN), must be deployed).

<sup>10</sup> MSAs, designated by the Bureau of Census, follow geographic borders and are defined using statistics that are widely recognized as indicative of metropolitan character. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Memorandum Opinion and Order, 12 FCC Rcd 8115, 8122, ¶ 17 and n.26 (1997).

<sup>11</sup> *Numbering Resource Optimization*, Order, 17 FCC Rcd 7347, 7348, ¶¶ 3-4 (Wireline Comp. Bur. 2002) (“*Pooling Rollout Order*”).

<sup>12</sup> *Fourth Report and Order*, 18 FCC Rcd at 12477, ¶ 14.

<sup>13</sup> *Id.* at 12473, ¶ 1.

<sup>14</sup> *Id.* at 12476, ¶ 1.

Administrator (“NANPA”) to cease assignment of NXX codes to carriers after they were required to participate in pooling.<sup>15</sup> Instead, carriers required to participate in pooling received numbering resources from the national thousands-block number Pooling Administrator responsible for administering numbers in thousands-blocks.<sup>16</sup>

6. In implementing nationwide pooling, the Commission had concluded that mandatory pooling should initially take place in the largest 100 MSAs.<sup>17</sup> In the *Pooling Rollout Order*, the Bureau explained that it would consider extending pooling outside of the top 100 MSAs after pooling was implemented in the top 100 MSAs.<sup>18</sup> The Bureau also encouraged voluntary pooling in areas adjoining qualifying MSAs.<sup>19</sup> The petitions addressed in this Order are the first requests the Commission has received to extend pooling outside the largest 100 MSAs since the national rollout of pooling.

## B. The Petitions

7. Between October 20, 2004 and April 7, 2005, the Commission received five petitions from state utility commissions requesting permission to expand the scope of thousands-block pooling.<sup>20</sup> The petitions are similar in that each state asserts that thousands-block pooling is a proactive measure to forestall area code exhaust in the area codes listed. In four of the states, there was an optional pooling mechanism that was being underutilized by the carriers. Accordingly, those state petitioners argued that mandatory thousands-block number pooling will likely postpone the need for area code relief in their respective NPAs. The petitions differ only with regard to specific jeopardy projections, which start within the first quarter of 2006. Specifically, the 304 NPA in West Virginia is projected to exhaust in the first quarter of 2006;<sup>21</sup> the 402 NPA in Nebraska in the second quarter of 2006;<sup>22</sup> the 580 NPA in

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<sup>15</sup> *Id.*

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

<sup>17</sup> See *First Report and Order*, 15 FCC Rcd at 7645, ¶ 158.

<sup>18</sup> *Pooling Rollout Order*, 17 FCC Rcd at 7348, ¶ 3

<sup>19</sup> *Id.* at 7348, ¶ 4

<sup>20</sup> See Petition of Oklahoma Corporation Commission for Expedited Decision for Delegation of Authority to Implement Additional Number Conservation Measures, CC Docket No. 99-200 (filed Oct. 20, 2004) (“Oklahoma Petition”); Petition of the West Virginia Public Service Commission for Expedited Decision for Delegation of Authority to Implement Additional Number Conservation Measures, CC Docket No. 99-200 (filed Nov. 2, 2004) (“West Virginia Petition”); The Nebraska Public Service Commission’s Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (filed Nov. 23, 1004) (“Nebraska Petition”); Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (filed Mar. 23, 2005) (“Missouri Petition”); and Petition of the Michigan Public Service Commission for Additional Delegated Authority over Numbering Resource Conservation Measures, CC Docket No. 99-200 (filed Apr. 7, 2005) (“Michigan Petition”).

The Public Utilities Commission of Ohio, the State of New York Department of Public Service, and the Washington Utilities and Transportation Commission filed petitions for delegated authority to implement mandatory thousands-block number pooling. We are seeking comment on these petitions. See “*The Wireline Competition Bureau Seeks Comment on Petition of the New York State Department of Public Service for Mandatory Number Pooling*,” Public Notice, DA 05-3064 (rel. Nov. 28, 2005); “*The Wireline Competition Bureau Seeks Comment on Petition of the Public Utilities Commission of Ohio for Mandatory Number Pooling*,” Public Notice, DA 05-3254 (rel. Dec. 21, 2005); “*The Wireline Competition Bureau Seeks Comment on Petition for Mandatory Number Pooling Filed by the Washington Utilities and Transportation*,” Public Notice, DA 06-1 (rel. Jan. 3, 2006).

<sup>21</sup> West Virginia Petition at 4.

<sup>22</sup> Nebraska Petition at 6.

Oklahoma in the second quarter of 2007;<sup>23</sup> the 989 NPA in Michigan in the second quarter of 2008;<sup>24</sup> and the 417 and 573 NPAs in Missouri in the second and third quarters of 2008, respectively, with the Missouri 636 and 660 NPAs facing accelerated exhaust due to their close proximity to the St. Louis and Kansas City MSAs.<sup>25</sup>

8. On October 28, 2004, the Bureau released a public notice seeking comment on the Oklahoma Petition.<sup>26</sup> On November 30, 2004, the Bureau released a public notice seeking comment on the West Virginia and Nebraska Petitions.<sup>27</sup> On May 4, 2005, the Bureau released a public notice seeking comment on the Missouri and Michigan Petitions.<sup>28</sup> Several parties filed comments and reply comments.<sup>29</sup>

### III. ORDER GRANTING PETITIONS

9. In this Order, we grant petitions for delegated authority to implement mandatory thousands-block number pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. Although all three criteria are not consistently met in these petitions, we find that special circumstances justify delegation of authority to require pooling.

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<sup>23</sup> Oklahoma Petition at 3.

<sup>24</sup> Michigan Petition at 3.

<sup>25</sup> Missouri Petition at 4-5.

<sup>26</sup> *Wireline Competition Bureau Seeks Comment on the Petition of the Oklahoma Corporation Commission for Expedited Decision for Delegation of Authority to Implement Additional Numbering Optimization Measures*, Public Notice, 19 FCC Rcd 21246 (2004).

<sup>27</sup> *Wireline Competition Bureau Seeks Comment on Petitions of West Virginia Public Service Commission and Nebraska Public Service Commission for Additional Delegated Authority to Implement Numbering Resource Optimization Measures*, Public Notice, DA 04-3796 (rel. Nov. 30, 2004).

<sup>28</sup> *Wireline Competition Bureau Seeks Comment on the Missouri Public Service Commission and Michigan Public Service Commission Petitions for Delegation of Authority to Implement Additional Numbering Optimization Measures*, Public Notice, DA 05-1291 (rel. May 4, 2005).

<sup>29</sup> The following parties filed comments: the Public Utilities Commission of Ohio (“Ohio Commission”); the Michigan Public Service Commission (“Michigan Commission”); Cingular Wireless LLC (“Cingular”); and Cox Communications, Inc. (“Cox”). The Ohio Commission Comments were filed on Nov. 29, 2004 in support of the Oklahoma Petition and refiled in support of the Nebraska and West Virginia Petitions. In the refiled version, the page numbers were changed to include the cover letter. Cites to the Ohio Commission Comments in this Order are to the Nov. 29, 2004 version.

The following parties filed reply comments: SBC Communications Inc. (“SBC”); the Michigan Commission; the National Association of Regulatory Utility Commissioners (“NARUC”); Sprint Corporation (“Sprint”); CTIA – The Wireless Association (“CTIA”); and Verizon Wireless (“Verizon”).

Commenters did not object to the petitions; however, Cingular, Sprint, CTIA, and Verizon asked the Commission to reaffirm that it will not permit states to implement non-standard pooling methods. *See* para. 15, *supra*.

10. With respect to the first criterion, the petitions before us present both jeopardy<sup>30</sup> and non-jeopardy situations. The 304 NPA is currently in jeopardy, whereas the 402, 417, 573, 580, and 989 NPAs are not in jeopardy as defined by industry standards, but are projected to exhaust within three years. Given that most of the NPAs in question are expected to exhaust within one to three years, it is most efficient and in the public interest to permit the state petitioners to implement mandatory thousands-block number pooling at this time. Moreover, if we deny these petitions pursuant to a strict application of the jeopardy requirement, the state commissions will have to refile the petitions in the near future when the NPAs at issue will be in jeopardy. This would be an inefficient use of resources and would further delay the state commissions' ability to optimize numbering resources. With regard to the second criterion, all petitions have demonstrated that the NPAs in question have a remaining life span of at least a year. Thus, this prong of the test is met.

11. The third criterion, that the NPA is in one of the largest 100 MSAs or the majority of wireline carriers in the NPA are LNP-capable, is not relevant here. These petitions seek authority to implement pooling outside of the largest 100 MSAs, and we have since determined that pooling can be implemented without full LNP capability.<sup>31</sup> Instead, we are guided by the principle, expressed in our pooling precedent, that it is reasonable to require LNP only in areas where competition dictates demand.<sup>32</sup> For this reason, we have exempted from pooling rural telephone companies and Tier III CMRS providers that have not yet received a specific request for the provision of LNP from another carrier and carriers that are the only service provider receiving numbering resources in a given rate center.<sup>33</sup> Although this exemption should ensure that LNP is only required in areas where competition dictates demand, it is important to also note that, for carriers who are required to participate in number pooling, full LNP capability is not required.<sup>34</sup> In this case, we require state commissions, in exercising the authority delegated herein to implement number pooling, to implement this delegation consistent with the exemption for the carriers described above. We therefore expect that rural carriers who are not LNP capable will not be required to implement full LNP capability solely as a result of the delegation of authority set forth herein.

12. As several commenters observe, allowing states to mandate pooling outside of the top 100 MSAs will delay the need for area code relief by using numbering resources more efficiently.<sup>35</sup> Demand for numbering resources in these states is increasing in rural rate centers, where number pooling is not mandatory, due to additional wireless and competitive carriers entering those areas.<sup>36</sup> The petitioners have demonstrated that many carriers are not participating in optional pooling and instead continue to request full NXX codes in these NPAs.<sup>37</sup> The petitioners observe, and we agree, that

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<sup>30</sup> The NPA Code Relief Planning and Notification Guidelines (ATIS-0300061) define a jeopardy NPA as existing "when the forecasted and/or actual demand for CO Code resources will exceed the known supply during the planning/implementation interval for relief. Accordingly, pending exhaust of CO Code resources within an NPA does not represent a jeopardy condition if NPA relief has been or can be planned and the additional CO Codes associated with the NPA will be implemented in time to satisfy the need for new CO codes."

<sup>31</sup> See *supra* note 9.

<sup>32</sup> *Fourth Report and Order*, 18 FCC Rcd at 12476, ¶ 11.

<sup>33</sup> *Id.* at 12473, ¶ 1.

<sup>34</sup> *Id.* at 12476, ¶ 11.

<sup>35</sup> See Ohio Commission Comments at 2; Michigan Commission Comments at 5; Cox Comments at 4; Cingular Comments at 2; NARUC Reply Comments at 3; Sprint Reply Comments at 7.

<sup>36</sup> Oklahoma Petition at 4; Michigan Petition at 2-3; Nebraska Petition at 5.

<sup>37</sup> See Oklahoma Petition at 4-5; Nebraska Petition at 5; West Virginia Petition at 4-5; Missouri Petition at 6 (observing that one carrier recently requested 16 blocks of 10,000 numbers from NANPA). Commenters agree with

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mandatory thousands-block number pooling would extend the life of these NPAs by using the resources that otherwise would be stranded.<sup>38</sup> Denying the petitions would allow carriers to continue to request 10,000 blocks of numbers when fewer numbers may be needed to serve their customers, which would further hasten the exhaust of these NPAs. We find that this is a special circumstance that permits us to delegate authority to these states to implement mandatory thousands-block number pooling.

13. Therefore, for all the reasons stated above, we determine that the petitioners have demonstrated the special circumstances necessary to justify delegation of authority to require pooling, and we grant: the Public Service Commission of West Virginia authority to implement mandatory thousands-block number pooling in the 304 NPA; the Nebraska Public Service Commission authority to implement mandatory thousands-block number pooling in the 402 NPA; the Oklahoma Corporation Commission authority to implement mandatory thousands-block number pooling in the 580 NPA; the Michigan Public Service Commission the authority to implement mandatory thousands-block number pooling in the 989 NPA; and the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling in the 417, 573, 636, and 660 NPAs.

14. The Ohio Commission and NARUC request that in addition to granting the Oklahoma Petition for mandatory thousands-block number pooling, we extend such delegated authority to all states.<sup>39</sup> SBC opposes this request and observes that in order to adopt such a rule change, we must provide opportunity for notice and comment.<sup>40</sup> We agree and do so below, in our Fifth Further Notice of Proposed Rulemaking.

15. Finally, we observe that several commenters asked the Commission to reaffirm that it will not permit states to implement pooling methods that are inconsistent with the national pooling framework set forth in the Commission's rules and industry pooling guidelines.<sup>41</sup> We note that the petitions specifically seek authority to order mandatory thousands-block number pooling in rate centers located outside the top 100 MSAs, but in accordance with the national pooling framework. Thus, these state commissions are not seeking to implement pooling methods that are inconsistent with the national pooling framework.

#### IV. FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING

16. The Order that accompanies this Fifth Further Notice of Proposed Rulemaking ("FNPRM") recognizes the invaluable role of the state commissions in number administration and optimization. In that Order, we granted the requesting state commissions authority to implement mandatory thousands-block number pooling in the certain NPAs. We took this action because in each case the remaining life in the NPAs at issue was within three years of exhaust. In this FNPRM, we seek comment now on whether we should extend mandatory pooling by, for example, giving the states delegated authority to implement mandatory thousands-block number pooling at their discretion. As

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the petitioners that carriers are often reluctant to participate in voluntary pooling. *See* Michigan Commission Comments at 4; Ohio Commission Comments at 4; NARUC Reply Comments at 4-5 & note 4; Michigan Commission Reply Comments at 4.

<sup>38</sup> Oklahoma Petition at 4; Nebraska Petition at 5-6; Missouri Petition at 7; Michigan Petition at 2; West Virginia Petition at 6.

<sup>39</sup> *See* Ohio Commission Comments at 6; NARUC Reply Comments at 5.

<sup>40</sup> SBC Reply Comments at 4.

<sup>41</sup> *See* Cingular Comments at 2-6; Sprint Reply Comments at 4-6; CTIA Reply Comments at 4-5; Verizon Reply Comments at 5-7.

many state commissions can attest, mandatory number pooling can extend the life of NPAs more effectively than optional pooling requirements. In addition, in the *Pooling Rollout Order*, the Bureau specifically stated that the Commission would “consider extending pooling to NPAs outside of the top 100 MSAs once pooling is implemented in the top MSAs.”<sup>42</sup>

17. Alternatively, we could continue to review requests from the states for authority to extend mandatory thousands-block number pooling to new NPAs on a case-by-case basis. If we were to adopt this approach, the Commission would continue to review state petitions on a case-by-case basis, as we did in the Order preceding this FNPRM. Also, we could extend pooling to all rate centers, using a phased implementation schedule. For example, we could initially expand pooling to NPAs that are within three years of exhaust and continue to expand pooling to other NPAs as they reach a certain state of exhaust. We seek comment on the costs and benefits to each approach. Commenters advocating a case-by-case review of state petitions should propose criteria for such a review. As we discussed in the preceding Order, the third prong in the three-prong test adopted in the *First Report and Order* is no longer relevant, and the first prong was not strictly met by all petitioners. Commenters should discuss whether we should use primarily the second prong of that test in determining whether to extend delegated authority to the states. In particular, we seek comment on whether we should grant authority for mandatory thousands-block number pooling based primarily on the remaining life of the NPA, as we did in the foregoing Order. Commenters should also address whether “special circumstances” would be a more appropriate criterion.

18. We are limiting this FNPRM to the issue of extending mandatory thousands-block number pooling to NPAs outside of the top 100 MSAs. Any such expansion of number pooling would be subject to our current numbering rules and number pooling guidelines. Commenters should discuss any related thousands-block numbering rule changes or new rules that we should adopt to facilitate this expansion.<sup>43</sup>

## V. PROCEDURAL MATTERS

### A. Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (“IRFA”) for this Fifth Further Notice of Proposed Rulemaking (“FNPRM”), of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. The IRFA is in the attached Appendix. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>44</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>45</sup>

### B. Paperwork Reduction Act Analysis

20. This FNPRM does not contain information collection requirements subject to the Paperwork Reduction Act of 1995 (“PRA”), Public Law 104-13. In addition, therefore, it does not

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<sup>42</sup> *Pooling Rollout Order*, 17 FCC Rcd at 7348, ¶ 3.

<sup>43</sup> We recognize that many of the number pooling procedures are in the pooling guidelines, not in the Commission’s rules.

<sup>44</sup> See 5 U.S.C. § 603(a).

<sup>45</sup> *Id.*

contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

### C. Ex Parte Presentations

21. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>46</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>47</sup> Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.<sup>48</sup>

### D. Comment Filing Procedures

22. Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>49</sup> interested parties may file comments on this FNPRM within 60 days after publication in the Federal Register and may file reply comments within 90 days after publication in the Federal Register. All filings shall refer to CC Docket No. 99-200. Comments may be filed using (1) the Commission's Electronic Comment Filing System (“ECFS”), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>50</sup>

23. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.<sup>51</sup> If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, “get form.” A sample form and directions will be sent in reply.

24. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must contain the docket or rulemaking number that appears in the caption of this proceeding.

25. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

26. The Commission's contractor will receive hand-delivered or messenger-delivered paper

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<sup>46</sup> 47 C.F.R. §§ 1.1200-1.1216.

<sup>47</sup> 47 C.F.R. § 1.1206(b)(2).

<sup>48</sup> 47 C.F.R. § 1.1206(b).

<sup>49</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>50</sup> *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

<sup>51</sup> Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, M.D. 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

27. People with disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

28. Parties must also send a courtesy copy of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 5-B540, Washington, D.C. 20554. Ms. Todd's email address is [Sheryl.Todd@fcc.gov](mailto:Sheryl.Todd@fcc.gov); her telephone number is (202) 418-7386.

29. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: [www.bcpweb.com](http://www.bcpweb.com), by e-mail at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

30. For further information regarding this proceeding, contact Mika Savir, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-0384, e-mail: [mika.savir@fcc.gov](mailto:mika.savir@fcc.gov).

31. In addition to filing comments with the Secretary, a copy of any Paperwork Reduction Act ("PRA") comments on the information collection(s) contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov), and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 via the Internet to [Kristy.L.LaLonde@omb.eop.gov](mailto:Kristy.L.LaLonde@omb.eop.gov) or by fax to (202) 395-5167.

## VI. ORDERING CLAUSES

32. ACCORDINGLY, pursuant to the authority contained in sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, and pursuant to section 52.9(b) of the Commission's rules, 47 C.F.R. § 52.9(b), IT IS ORDERED that the Petition of the Nebraska Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures IS GRANTED; the Petition of the West Virginia Public Service Commission for Expedited Decision for Authority to Implement Additional Number Conservation Measures IS GRANTED; and the Petition of the Oklahoma Corporation Commission for Expedited Decision for

Authority to Implement Additional Number Conservation Measures IS GRANTED; the Petition of the Missouri Public Service Commission for Additional Delegated Numbering Authority to Implement Number Conservation Measures IS GRANTED; and the Petition of the Michigan Public Service Commission for Additional Delegated Authority over Numbering Resource Conservation Measures IS GRANTED.

33. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403, this Order and Fifth Further Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order and Fifth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (“RFA”),<sup>52</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (“FNPRM”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of this FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>53</sup> In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>54</sup>

#### 1. Need for, and Objectives of, the Proposed Rules

2. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also seek comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review.

#### 2. Legal Basis

3. The legal basis for the FNPRM is contained in sections 1, 4(i), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403.

#### 3. Description and Estimate of the Number of Small Entities to Which Rules May Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>55</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>56</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>57</sup> A small business

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<sup>52</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>53</sup> See 5 U.S.C. § 603(a).

<sup>54</sup> See *id.*

<sup>55</sup> 5 U.S.C. § 603(b)(3).

<sup>56</sup> 5 U.S.C. § 601(6).

<sup>57</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>58</sup> A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>59</sup> Nationwide, there are approximately 1.6 small organizations.<sup>60</sup> The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>61</sup> As of 1997, there were about 87,453 governmental jurisdictions in the United States.<sup>62</sup> This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

**a. Telecommunications Service Providers**

5. We have included small incumbent local exchange carriers in this RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>63</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>64</sup> We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

6. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>65</sup> According to Commission data,<sup>66</sup> 1,303 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

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<sup>58</sup> Small Business Act, 15 U.S.C. § 632.

<sup>59</sup> 5 U.S.C. § 601(4).

<sup>60</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>61</sup> 5 U.S.C. § 601(5).

<sup>62</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2000*, Section 9, pages 299-300, Tables 490 and 492.

<sup>63</sup> 5 U.S.C. § 601(3).

<sup>64</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See U.S.C. § 632(a) (“Small Business Act”); 5 U.S.C. § 601(3) (“RFA”). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

<sup>65</sup> 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

<sup>66</sup> FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, Page 5-5 (June 2005). This source uses data that are current as of October 1, 2004 (Trends in Telephone Service).

7. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs) and “Other Local Exchange Carriers.”* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to “Other Local Exchange Carriers.” The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>67</sup> According to Commission data,<sup>68</sup> 769 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 companies, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees.<sup>69</sup> In addition, 39 carriers reported that they were “Other Local Service Providers.” Of the 39 “Other Local Service Providers,” an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.<sup>70</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and “Other Local Service Providers” are small entities that may be affected by the rules and policies adopted herein.

8. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>71</sup> According to the Commission data,<sup>72</sup> 316 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 316 companies, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>73</sup> Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the rules and policies adopted herein.

9. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless small businesses within the two separate categories of *Paging*<sup>74</sup> and *Cellular and Other Wireless Telecommunications*.<sup>75</sup> Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to the Commission data,<sup>76</sup> 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees.<sup>77</sup> Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rules and policies adopted herein.

10. *Private and Common Carrier Paging.* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes

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<sup>67</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>68</sup> Trends in Telephone Service at Table 5.3.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>72</sup> Trends in Telephone Service at Table 5.3.

<sup>73</sup> *Id.*

<sup>74</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517211.

<sup>75</sup> 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517212. This category includes Personal Communications Service (PCS) and SMR Telephony Carriers.

<sup>76</sup> Trends in Telephone Service at Table 5.3.

<sup>77</sup> *Id.*

of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>78</sup> A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.<sup>79</sup> Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of either paging or messaging services or other mobile services.<sup>80</sup> Of those, the Commission estimates that 370 are small, under the SBA-approved small business size standard.<sup>81</sup>

#### b. Internet Service Providers

11. *Internet Service Providers.*<sup>82</sup> The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”<sup>83</sup> Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.<sup>84</sup> According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.<sup>85</sup> Of these, 2,659 firms had annual receipts of under \$10 million, and an additional 67 firms had receipts of between \$10 million and \$24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of internet service providers increased approximately five percent from 1997 to 2002.<sup>86</sup>

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<sup>78</sup> *220 MHz Third Report and Order*, 12 FCC Rcd 10943, 11068-70 ¶¶ 291-295 (1997), 62 FR 16004 (Apr. 3, 1997), at ¶¶ 291-295.

<sup>79</sup> Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10085, ¶ 98 (1999).

<sup>80</sup> Trends in Telephone Service, Table 5.3.

<sup>81</sup> *Id.*

<sup>82</sup> We note that these entities would not be directly affected by our proposed rules, if adopted, and that the entities are therefore not formally included in this analysis. We have voluntarily included them here, however, in order to create a fuller record and encourage comment.

<sup>83</sup> U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers” (Feb. 2004) <[www.census.gov](http://www.census.gov)>.

<sup>84</sup> 13 C.F.R. § 121.201, NAICS code 518111 (changed from previous code 514191, “On-Line Information Services,” in Oct. 2002).

<sup>85</sup> U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 514191 (issued Oct. 2000).

<sup>86</sup> See U.S. Census Bureau, 2002 Economic Census, Industry Series: “Information,” Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 514191 (issued Nov. 2004). The preliminary data indicate that the total number of “establishments” increased from 4,165 to 4,394. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of “firms,” because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

#### **4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

12. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also see comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review. If we extend thousands-block number pooling, beyond the top 100 MSAs, carriers required by states to implement number pooling will be required to comply with the existing reporting and recordkeeping requirements for number pooling in Part 52, subpart C of the Commission's rules.<sup>87</sup>

#### **5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>88</sup>

14. In the FNPRM, we seek comment on whether we should extend mandatory thousands-block number pooling by giving states delegated authority to implement mandatory thousands-block number pooling at their discretion. We also see comment on whether we should, alternatively, continue to review requests from states for authority to extend mandatory thousands-block number pooling on a case-by-case basis. We also seek comment on what criteria we should use for such a review. If we adopt some form of additional number pooling, beyond the top 100 MSAs, more carriers may be required to comply with the filing requirements for number pooling. Expanding number pooling will, however, conserve numbering resources and will prevent or delay the adoption of other, possibly more burdensome, measures.

#### **6. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules**

None.

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<sup>87</sup> 47 C.F.R. Part 52, subpart C.

<sup>88</sup> See 5 U.S.C. § 603(c).