



## UTILIZATION FILL THRESHOLD

XO commends the Commission for its expedient action regarding the numbering resource crisis. XO has been an active participant in the FCC efforts to develop national standards and guidelines to ensure that carriers obtain numbering resources when and where they are needed to provide service. Many parties, including XO, have emphasized on various occasions the importance of access to adequate numbering resources. Without the ability to obtain numbering resources in a timely and efficient manner, competitive local exchange carriers (“CLECs”) such as XO may be unable to offer service in a particular geographic area or establish a presence in certain telecommunication service markets.

The commission has ordered all pooling carriers seeking numbering resources in the 801 Number Plan Area (“NPA”) to utilize their existing numbering resources at a 90% fill rate before seeking additional number resources [Order at p. 3-4]. XO agrees wholeheartedly with the principle implicit in the Order that carriers meet a specific utilization threshold prior to seeking additional numbering resources, so long as there is recognition that utilization thresholds are rate center-based. Rules governing number utilization are necessary to insure fair access to numbering resources by all carriers and to minimize the incentives that carriers may have to carry excessively large inventories of numbers. However, carriers should not face market barriers caused by unnecessary numbering constraints. The policy decisions this Commission makes must achieve these goals while also considering the technical and market realities of number assignment and distribution.

New entrants such as XO can effectively compete only if numbers are readily available on a non-discriminatory and competitively neutral basis. XO recommends modification of the requirement set forth in the Order that carriers achieve a prescribed across-the-board 90% fill rate before being permitted to request additional numbering resources. XO believes that certain conditions may warrant carriers having an opportunity to seek additional number resources before the fill rate for number blocks in a given rate center reaches or exceeds 90% for reasons described below.

XO believes the ninety percent fill rate ordered by the Commission may deprive carriers of timely assignment of new numbers. Regardless of the base against which the 90% percent threshold is measured, be it per rate center, per NXX code, or per thousand-number block, the fill rate ordered by the Commission fails to consider technical limitations and market realities inherent in number assignment.<sup>1</sup> Current industry procedures require a minimum of twenty-one days, in a number pooling environment,<sup>2</sup> from the date a new thousand-number block(s) is requested to the time when the carrier may begin assigning its customers numbers from the new number block(s). Consequently, carriers with few number block(s) assignments in a given rate center, may exhaust their existing numbers before a new number block(s) can be assigned and utilized. For a carrier with only a single thousand-number block assigned in a rate center, the Commission requirement would prevent it from requesting a new number block until

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<sup>1</sup> Because number pooling has been ordered for the 801 NPA these comments assume that carriers will surrender any uncontaminated thousand-number blocks and that future numbers will be assigned in thousand-number blocks.

<sup>2</sup> Absent number pooling, this time period is approximately 66 days.

it had only 100 assignable numbers remaining.

One hundred numbers are not be sufficient to permit that carrier to continue to assign new customers numbers in that rate center while it waits for a new number block(s) to be activated. A single business customer, not even a large business customer, could easily require all one hundred numbers in a single assignment, leaving the carrier without any numbers in a given rate center for at least twenty-one days. Carriers with more number blocks in a single rate center would face similar problems, as the number of customers and need for numbers would grow proportionately. A 90% fill rate simply does not provide carriers with sufficient resources to avoid number exhaust while awaiting assignment of an additional number block(s).

XO underscores the FCC's tentative conclusion on this point to set a nationwide utilization threshold level at 50 percent to be increased by 10 percent until the utilization level reaches 80 percent.<sup>3</sup> XO believes that is a sound decision that would help propel the telecommunications industry forward to a more efficient and pro-competitive system of number administration.<sup>4</sup> The proposed utilization threshold level would permit new

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<sup>3</sup> In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, FCC 00-104, order released March 31, 2000, ("the *NRO*"). ("We tentatively conclude that a nationwide utilization threshold for growth numbering resources should be initially set at 50%. This threshold would increase by 10% annually until it reaches 80%.").

<sup>4</sup> In addition, several state decisions and proposals regarding utilization thresholds are being considered in code assignment and number conservation proceedings. The California Public Utilities Commission ("CPUC") has issued a decision establishing a minimum fill rate of 75 percent in the 310 NPA. Further, a present CPUC proposal seeks to establish a statewide fill rate of 75 percent. Similarly, a current proposal by the New York Public Service Commission ("NYPSC") would require a 75 percent fill rate before honoring growth code requests.

entrants the necessary opportunity to establish a presence in rate centers and build their businesses across NPAs.

Even if the Commission continued to believe that a 90% fill rate is necessary, the Commission should adopt conditions around the timing of its application and measurement. Specifically, a 90% fill rate would be an acceptable option if it were applied to a carrier's six-month inventory of numbers. In other words, a carrier should be able to request and obtain an additional thousand-number block (or blocks) in a rate center if it expects to attain a 90% fill rate in that rate center's existing number blocks within an ensuing six month period.

To minimize the potential that a carrier will exhaust all numbers assigned to it in a rate center before additional resources are available, XO suggests that the following two conditions result in waiver of the 90% utilization factor for a carrier seeking additional numbering resources:

1. A carrier may request and receive additional thousand-number block(s) for a rate center within twenty- one days of its expected attainment of a 50% fill rate in that rate center.<sup>5</sup>
2. A carrier also may have the option to request and receive additional thousand-number blocks for a rate center up to six months prior to achieving an expected 90% fill rate in that rate center.

In either instance, any Commission procedure for verifying a carrier's fill rate should not extend the time period for requesting and receiving new numbers in a number pooling environment. By adopting these modifications, the likelihood of a carrier exhausting its

numbers while waiting for new number block(s) to be assigned is greatly reduced.

Absent modification of the 90% fill rate or a loosening of restraints on a carriers ability to seek an additional thousand-block, carriers could be put in the position of having to stop marketing in an area until additional number blocks were obtained. In a number pooling environment, requiring a carrier to achieve a 90% fill rate will prevent carriers from providing services to new customers while the request and assignment process takes place.

In conclusion, for the reasons set forth above, XO urges the Commission to adopt either the FCC's tentative conclusion to set a utilization threshold level at 50 percent to be increased annually by 10 percent until the level reaches 80 percent; or, alternatively, the waiver conditions which if in place would allow a carrier to seek replenishment of its number inventory.

#### **UTILIZATION FACTOR APPLICATION - RATE CENTER OR NPA ?**

The Order did not make clear whether the Commission intended utilization thresholds to be applicable and measured at the rate center or the NPA level. XO strongly endorses the notion of setting utilization threshold levels on a rate center rather than an NPA basis. Focusing on a rate center-based utilization threshold is a vital, pro-competitive policy position that more accurately reflects how numbering resources are assigned and allows carriers to obtain numbering resources in response to specific customer demands. By clarifying that its utilization fill factor policy is based on rate centers rather than NPAs, the Commission preserves competitive neutrality in the number

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<sup>5</sup> For purposes of this proposal, the fill rate thresholds required to request an additional thousand number block are for each thousand number block held by a carrier in a rate center, not the average fill rate for all

distribution process. Measuring utilization threshold levels on an NPA basis, on the other hand, would disproportionately affect new entrants and competitive providers.

The Commission should clarify the Order to ensure that utilization thresholds are set at rate center levels. Allowing utilization thresholds to be determined at the NPA level would undermine any effort to develop competitive neutrality. In most instances, new entrants and competitive providers typically establish their initial market entry plans within a limited set of rate centers before expanding service throughout an NPA.<sup>6</sup> On the other hand, incumbent providers do not face the same difficulties; they typically provide service throughout an entire NPA, not just within a core group of rate centers within that NPA.

For example, a new entrant or competitive provider might provide service in an NPA that has a total of ten rate centers. Further, that provider might have coverage in only four of the NPA's ten rate centers, with concentrated service in three of those rate centers thus having low utilization in the fourth. In this example, if utilization thresholds were measured on an NPA basis, that provider would have to achieve 50 percent utilization in all four rate centers within that NPA in order to obtain additional numbering resources. The problem is clear. The provider could be near the point of exhausting its numbering resources with respect to the three core rate centers it serves, but additional numbering resources would not be provided until the provider reached a given utilization level in all of the rate centers it serves within the NPA.

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thousand-number blocks held in a rate center.

Rate center-based utilization thresholds provide more reliable information and are thus most appropriate for determining a carrier's needs and improving efficient distribution of numbering resources. The FCC has noted that rate center-based utilization is preferable to NPA-based utilization because NPAs can cover large service areas with widely differing characteristics (*e.g.*, urban, suburban, rural). The FCC notes further that carriers might have high utilization rates in rate centers located in densely populated areas of the NPA, and lower utilization rates in the more rural or suburban rate centers. As a result of the significant differences between rates centers and NPAs, a carrier may be unable to meet an NPA-wide utilization rate, even when it is running into numbering shortages in particular rate centers in more densely-populated areas.

The Commission's key role in ensuring that numbering resource allocation and optimization is implemented in a non-discriminatory and competitively neutral manner cannot be overemphasized. In fulfilling its role as an agent for development of uniform, non-discriminatory numbering guidelines, XO encourages the Commission to conclude that any proposed utilization threshold be set at the rate center level.

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<sup>6</sup> As the FCC notes in the NRO, “[c]arriers generally obtain initial codes to establish a commercial presence, or ‘footprint,’ in a particular rate center or geographic area.” Order, ¶ 86.