www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On April 2, 2003, the Commission released a *Memorandum Opinion and Order (MO&O),* 68 FR 34547, June 10, 2003, in this proceeding. Pursuant to § 1.108 of the Commission's rules, on our own motion, we issue this limited reconsideration of the *MO&O* by (1) replacing paragraph 201 (which addresses applications for extension of time to construct) with the language set forth herein, and (2) clarifying our action with respect to § 21.930 of the Commission's rules, which sets forth the build-out requirements for Multipoint Distribution Service (MDS) Basic Trading Authorization (BTA) holders.

2. *Pending Applications for Extension of Time to Construct.* With respect to pending applications for extensions of time to construct, we take this action in light of information that has come to our attention since the adoption and release of the *MO&O.* Specifically, in connection with petitions for reconsideration of our decision to impose a freeze on the filing of applications for new MDS and Instructional Television Fixed Service (ITFS) stations, as well as major changes to such stations, entities have represented to us that they have developed plans in the near future to deploy high-speed wireless broadband systems under our existing rules. For example, WCA estimates that approximately thirty wireless broadband operators plan to deploy systems in approximately eighty markets in the next twelve months. In light of this information, we are concerned that our decision to seek comment on how to treat pending applications for extensions of time to construct MDS and ITFS stations may hinder the deployment of MDS and ITFS systems aimed at providing broadband services. As noted in the *NPRM/MO&O,* one of our primary goals in this proceeding is to ''present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance learning and telemedicine services.'' Under those circumstances, we believe that it would be in the public interest to be able to act on those pending applications for extension of time to construct prior to the completion of this proceeding. We believe that acting on such applications will facilitate continued deployment of broadband services and promote innovation and investment therein. As a result, we are no longer seeking comment in the *MO&O* on the treatment of pending applications for extensions of time to construct MDS and ITFS stations.

3. Accordingly, we delete paragraph 201 of the *MO&O* and replace it with the following language:

4. *Extension/Suspension of current performance requirements for site-based licensees.* Moreover, we also believe that it is in the public interest to suspend the construction deadline for ITFS and MDS site-based licensees and permittees that have unexpired licenses or permits that have not expired as of the release date of the *MO&O* and that have made a timely filed extension request. We emphasize that the suspension of this construction deadline for site-based licensees does not affect the requirement for such licensees to timely file a renewal application. We stress that all site-based licensees are required to timely file renewal applications or face cancellation of their licenses regardless of the pendency of this proceeding.

5. We note that we are not modifying our decision to hold in abeyance the construction build-out requirements for site-based incumbents that have licenses or permits that had not expired as of the release date of the *MO&O.* Furthermore, we continue to seek comment on whether we should change criteria for granting extension of time requests prospectively.

6. *MDS BTA Build-Out Rule.* In the *MO&O,* we ''suspended'' the August 16, 2003 construction deadline for MDS BTA authorization holders contained in § 21.930 of the Commission's Rules. Upon further reflection, we believe that our use of the term ''suspend'' did not accurately reflect our intent in this matter. Our intent was to relieve MDS BTA authorization holders of the obligation to meet the build out deadline contained in § 21.930 pending the release of a *Report and Order* in this proceeding. In order to more accurately reflect our intention, we are reinstating § 21.930 of the Commission's Rules, but stating that MDS BTA authorization holders do not have to meet the build out obligations contained in that rule pending the release of a *Report and Order* in this proceeding. We continue to seek comment on how much additional time MDS BTA authorization holders should receive to meet their build out obligations after a *Report and Order* is issued in this proceeding.

7. The actions contained herein have not changed our Initial Regulatory Flexibility Analysis (IRFA), which was set forth in the *MO&O.* Thus, no supplemental IRFA is necessary. In addition, the action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

8. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.108 of the Commission's Rules, 47 CFR 1.108, that the *Memorandum Opinion and Order,* FCC 03–56, is modified as set forth herein.

9. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), that § 21.930 of the Commission's Rules, 47 CFR 21.930, is reinstated.

10. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 21.930 of the Commission's Rules, 47 CFR 21.930, that MDS BTA authorization holders need not comply with the build out requirements contained in § 21.930 of the Commission's rules pending the publishing of a *Report and Order* in this proceeding.

List of Subjects in 47 CFR Part 21

Communications common carriers, Communications equipment, Radio and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18429 Filed 7–18–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Dockets 99–200, 96–98 and 95–116; FCC 03–126]

Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are used. The Commission addresses issues on which we sought comment in *Numbering Resource Optimization Third Order on Reconsideration.* These actions will further promote our competition policies, promote the efficient and effective use of finite numbering resources and increase the

effectiveness of our numbering resource optimization measures.

DATES: Effective August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7705.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order in CC Docket No. 99–200 and CC Docket No. 95–116, released on June 18, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC, 20554.

I. Introduction

1. In this order, the Commission continues efforts to maximize the efficiency with which numbering resources in the NANP are used. The Commission addresses the issues on which it sought comment in *Numbering Resource Optimization Third Order on Reconsideration,* 67 FR 16347 (April 5, 2002). Specifically, the Commission reaffirms that carriers need only deploy LNP in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP. The Commission also delegates authority to the state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. The Commission also concludes that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including covered commercial mobile radio service (CMRS) providers that are not required to deploy LNP until November 24, 2003. The Commission specifically exempts rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP from the pooling requirement. The Commission also exempts from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Regarding MSAs, the Commission reaffirms its findings that the 100 largest MSAs include those MSAs identified in the 1990 U.S. Census reports as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs. Although the Commission declines to expand the list of the 100 largest MSAs to include areas in Consolidated Metropolitan Statistical Areas (CMSAs) that would not otherwise be included in the 100 largest MSAs, the Commission delegates to state commissions the authority to determine whether to require carriers to participate in pooling in such areas. The Commission also finds AT&T's petition for reconsideration of the Commission's decision to permit incumbent local exchange carriers (LECs) to recover the extraordinary costs of thousands-block number pooling through access charges to be untimely and without merit. These actions will further promote our competition policies, promote the efficient and effective use of finite numbering resources and increase the effectiveness of our numbering resource optimization measures.

II. Discussion

2. *Number Portability.* The Commission reaffirms the Commission's decision in the *Number Portability First Order on Reconsideration,* 62 FR 18280 (April 15, 1997), that all local exchange carriers and covered CMRS carriers in the 100 largest MSAs are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier.

3. The Commission reemphasizes its view that LNP is still an important tool for enhancing competition, promoting numbering resource optimization, and giving consumers greater choices. The Commission believes, however, that the current requirements are sufficient to meet these important statutory goals. The Commission finds these requirements to be reasonable and efficient because they allow carriers to target their resources where the greatest need for number portability exists. They also limit expenditures in areas where there are relatively few competing service providers. The Commission finds that maintaining the current LNP requirement appropriately balances the policies and rationale supporting LNP without requiring expenditure of significant resources to deploy LNP in areas where competitors have not requested portability. Furthermore, maintaining the current requirement will not impose new burdens on small carriers operating in the 100 largest MSAs.

4. If it is true, as WorldCom's comments anticipate, that there will be new demand for LNP created by the implementation of LNP by covered CMRS providers, even where wireline competitive LECs have not yet entered the market, potential competitors can make the appropriate requests for LNP in areas they intend to serve. Carriers, including covered CMRS providers by November 24, 2003, are required to make number portability available within specified time-frames after a specific request by another telecommunication carriers in the areas in which the requesting carrier is operating or plans to operate. Requesting telecommunications carriers must specifically request portability, identify the discrete geographic area covered by the request, and provide a tentative date by which the carrier expects to utilize number portability to port prospective customers.

5. The implementation of pooling was one of the primary considerations for extending LNP to all carriers operating in the 100 largest MSAs. Initially, the Commission linked the pooling requirement to LNP because it was widely accepted that carriers without LNP capability could not participate in pooling. The Commission has since found, and the industry has confirmed, that full LNP capability is not necessary for participation in pooling. Rather, the underlying architecture, Location Routing Number (LRN), is necessary for such participation. Upon reexamination, the Commission remains convinced that it is reasonable to require LNP only in areas where competition dictates its demand, especially since the Commission now knows that pooling can be implemented without full LNP capability. Thus, the Commission finds that requiring LNP capability for all carriers in the 100 largest MSAs only when there has been a specific request will not have any significant negative effects on pooling.

6. The Commission also delegates authority to the state commissions to require carriers to provide LNP under certain circumstances and on a case-by-case basis. Thus, states may require carriers operating within the largest 100 MSAs to provide LNP, even if such carriers have not received a specific request for LNP from another carrier, if doing so would be in the public interest because there is evidence of meaningful consumer demand for LNP. Although the Commission finds that it is not necessary to expand the LNP requirement to all carriers in the 100 largest MSAs regardless of whether they have received a request for LNP, the Commission agrees with the California Commission that state commissions should have the discretion, under certain circumstances, to extend the LNP requirements to carriers in the 100 largest MSAs that would not otherwise be required to implement LNP. This delegation will allow the state commissions the flexibility to accommodate specific demand for LNP

by consumers in a manner that promotes our numbering resource optimization goals, competition, and the public interest.

7. State commissions exercising this delegated authority must find that LNP would serve the public interest because there is actual, meaningful consumer demand, as evidenced by consumer requests, for LNP in specified areas within the largest 100 MSAs. State commissions also must find that consumer demand and numbering resource optimization considerations justify the cost of providing LNP in the specified areas, including impacts on small and rural telephone companies. Because there is little incentive for states to require LNP in areas where there is little or no consumer demand, and requiring LNP in such cases would be costly for the carriers and, in turn, costly, for the consumers, the Commission is confident that the state commissions will carefully consider the consumer demand for LNP when utilizing this delegated authority.

8. *Thousands-Block Number Pooling.* The Commission adopts its tentative conclusion that all carriers, including covered CMRS providers, should be required to participate in thousands-block number pooling, regardless of whether they are required to provide number portability, in accordance with the national rollout schedule. Because carriers can participate in pooling once they deploy the LRN architecture, thousands-block number pooling need not be linked to a carrier's ability to provide number portability. The Commission, therefore, required all carriers operating within the 100 largest MSAs, except those specifically exempted, to participate in pooling in areas where pooling has been or will be implemented in accordance with the national rollout schedule. In addition, the Commission directs the NANPA to cease assignment of NXX codes to carriers after they are required to participate in pooling. Carriers required to participate in pooling must request and receive numbering resources from the national Pooling Administrator (PA).

9. Pooling is essential to extending the life of the NANP by making the assignment and use of central office codes more efficient. As previously found, delaying the implementation of national pooling until all carriers are required to be LNP capable would needlessly prolong the inefficiencies resulting from the NXX number allocation system. The Commission continues to believe that thousands-block number pooling will provide the greatest benefits when participation is maximized. In addition, the Commission continues to believe that the industry and consumers are best served by national numbering resource optimization standards implemented consistently and in a competitively neutral manner across the nation. Expanding pooling to all carriers in the 100 largest MSAs furthers the Commission's numbering resource optimization goals by allowing telephone numbers to be assigned to carriers in smaller blocks in areas where the demand for numbering resources have proven to be the greatest.

10. Generally, the Commission believes that the inclusion of rural and other small carriers operating within the largest 100 MSAs in the pooling requirement is very important to furthering its goals of slowing the pace of area code and NANP exhaust. Because most, if not all, of these carriers have a small customer base, thousands-block number pooling allows these carriers to obtain numbering resources in quantities that better reflect their actual needs; *i.e.*, 1,000 blocks rather than 10,000 blocks. This results in fewer stranded numbers and thus better utilization rates. Nevertheless, the Commission recognizes that the costs associated with implementing thousands-block number pooling without having first implemented LNP can be particularly burdensome to rural and small carriers. Several commenters therefore suggest it is necessary to create an exemption from pooling for these carriers.

11. Several commenters state that many rural carriers do not operate in competitive markets. The Commission knows that pooling is most effective in areas where competition exists, because it allows multiple service providers to more effectively share limited resources. Where there is less competition, and therefore fewer carriers requiring numbering resources, pooling has less impact on numbering resource exhaust. Because many rural and other small carriers operate in areas where they are the only or one of a few service providers, they are less likely to require multiple NXX codes or blocks of numbers in a manner that will drive premature area code exhaust. The Commission therefore finds that a limited exemption for these carriers is warranted.

12. The Commission is also mindful of the concerns raised by some commenters regarding the costs to rural and small carriers associated with the implementation of thousands-block number pooling. Although the specific costs of implementing pooling for rural carriers are unknown at this time, the Commission knows that these costs may ultimately result in increased customer costs. The Commission believes, therefore, that the added benefits to be gained by requiring certain carriers that have not received a request for LNP to participate in pooling do not outweigh the potential burden, specifically the cost associated with pooling, on such carriers. The Commission therefore exempts from the pooling requirement rural telephone companies, as defined in the Communications Act of 1934, as amended, that have not received a request to provide LNP. The Commission also exempts Tier III wireless carriers, as defined in the *E911 Stay Order,* that have not received a request to deploy LNP. Once an exempted rural telephone company or Tier III wireless carrier has received a request to provide LNP, however, that carrier must participate in pooling. State commissions may petition the Commission for authority to require these exempted carriers to implement pooling in areas within the largest 100 MSAs if they can demonstrate that participation in pooling will further its numbering resource optimization goals.

13. In addition, because the Commission finds that pooling has less impact on numbering resource exhaust where there is no competition, the Commission declines to impose pooling costs on carriers that are not required to provide LNP operating in areas where there are no competing service providers. The Commission therefore exempts carriers operating in rate centers within the largest 100 MSAs, where they are the only service provider receiving numbering resources, from the pooling requirement in those rate centers. Once such a carrier receives a request to provide LNP, however, the carrier must then also participate in pooling in areas where it is deployed.

14. *100 Largest MSAs.* The Commission reaffirms its finding that the 100 largest MSAs include those MSAs identified in the 1990 U.S. Census reports and all subsequent U.S. Census updates of the 100 largest MSAs. The Commission declines, however, to expand the list of the 100 largest MSAs to include areas in CMSAs that would not otherwise be included on the list of the 100 largest MSAs. Nevertheless, the Commission delegates to the state commissions the authority to determine whether pooling should be extended to areas included in CMSAs that otherwise would not be included as one of the 100 largest MSAs. In doing so, the Commission aims to focus pooling efforts on the nation's most densely populated areas so as to slow the further proliferation of area codes.

15. The Commission has focused on pooling efforts in the largest MSAs because those are the areas most likely to have competitive markets that would benefit from pooling. Conversely, the Commission has not required carriers to participate in pooling in less populous areas because the full benefits of pooling are less likely to be realized in areas without sufficient competition. Several commenters point out, however, that many nearby or adjoining areas within a CMSA have similar demographics to the original MSA and believe it appropriate to include CMSAs in the MSA list regardless of whether they would otherwise be included on the list of the 100 largest MSAs. The Commission finds insufficient evidence in the record to determine if these expanded areas have sufficient competition to justify extension of the MSA list, and therefore decline to determine which, if any, of these localities should be included on the MSA list. Rather, the Commission finds that the state commissions are better positioned to assess local conditions and determine whether to extend pooling to these areas. In making this determination, states should consider such factors as the number of competing service providers in the extended areas, whether the inclusion of such areas would further the Commission's competition and numbering resource optimization goals, population trends in the extended areas, and customer use patterns and volumes. Accordingly, the Commission delegates to state commissions the authority to determine whether to extend pooling to areas within CMSAs that otherwise would not be included on the list of the largest 100 MSAs. State commissions may not, however, require exempted carriers to participate in pooling in these extended areas.

16. *Untimely Petition for Reconsideration and Motions.* On May 6, 2002, AT&T filed a petition for reconsideration of the *Numbering Resource Optimization Third Order on Reconsideration,* requesting that the Commission reconsider its decision to permit incumbent LECs to recover the extraordinary costs of thousands-block number pooling through access charges. The Commission denies AT&T's petition as untimely filed. The Commissions nevertheless briefly discusses the merits of AT&T's petition on its own motion. Because the Commission finds that no new issues have been raised that were not addressed in the *Numbering Resource Optimization Third Report and Order,* the Commission declines to reconsider its prior findings regarding pooling cost recovery.

17. A petition for reconsideration in a rulemaking proceeding must be filed within 30 days after public notice of the Commission's action. The Commission's rules provide that public notice in a rulemaking proceeding occurs upon publication of the document, or a summary thereof, in the **Federal Register**. In the *Numbering Resource Optimization Third Report and Order,* the Commission established the appropriate cost recovery mechanism for thousands-block number pooling, and that issue was not reopened in the *Numbering Resource Optimization Third Order on Reconsideration. The Numbering Resource Optimization Third Report and Order* was published in the **Federal Register** on February 12, 2002, 67 FR 6431; and, therefore, petitions for reconsideration were due by March 14, 2002. As noted, AT&T did not file its petition until May 6, 2002. The Commission therefore finds that AT&T's petition for reconsideration was untimely filed, and dismisses it accordingly.

18. Acknowledging that its petition may be untimely, AT&T also argues that the effect of the *Numbering Resource Optimization Third Report and Order* was not readily apparent at the reconsideration deadline for that order and asks the Commission to reconsider its decision on its own motion. Notwithstanding its dismissal of AT&T's petition as untimely, the Commission briefly addresses the merits of AT&T's arguments and concludes that no change in pooling cost recovery should be made.

19. In the *Numbering Resource Optimization Third Report and Order,* the Commission determined that incumbent LECs subject to rate of return or price cap regulation may recover their extraordinary carrier-specific costs directly related to thousands-block number pooling implementation through existing cost recovery mechanisms. The Commission concluded that, because thousands-block number pooling had been mandated as a national numbering resource optimization strategy, permitting recovery of the extraordinary costs of number pooling in access charges is appropriate.

20. AT&T argues that carriers should bear their own carrier-specific pooling costs, and that allowing recovery of pooling costs through access charges inappropriately allows incumbent LECs to shift their costs to interexchange carriers (IXCs). In the *Numbering Resource Optimization Third Report and Order,* the Commission considered this argument and found that numbering administration is inherently access-related, explaining that without numbers, the provision of which is a basic telephone network function, IXCs would be unable to route subscriber calls. Pooling is an enhancement of ordinary numbering administration, and access charges are the means by which access customers share in the costs of operating and maintaining the telephone network. Accordingly, the Commission concluded that it is appropriate for IXCs and other access customers to share in the costs of thousands-block number pooling. AT&T also argues that permitting incumbent LECs to recover pooling costs in access charges is an impermissible subsidy in violation of section 254(e) of the Act. In the *Numbering Resource Optimization Third Report and Order,* the Commission addressed this claim by finding that, because access charges are intended to recover a portion of telephone network costs, permitting recovery of the extraordinary costs of number pooling in access charges is neither an implicit or explicit subsidy.

21. AT&T further argues that this pooling cost recovery mechanism is not competitively neutral, in violation of section 251(e) of the Act. To the contrary, the Commission concluded in the *Numbering Resource Optimization Third Report and Order* that pooling, as a numbering resource optimization strategy, is a part of numbering administration, and that access charges are intended to recover a portion of telephone network costs, which include number administration costs. Thus, permitting recovery of the extraordinary costs of thousands-block number pooling through access charges is consistent with the statutory mandate of competitive neutrality. AT&T also suggests that the Commission's decision to permit thousands-block number pooling cost recovery through access charges is inconsistent with the *Numbering Resource Optimization First Report and Order* and with the Commission's decision not to allow recovery of LNP costs through access charges. The Commission finds that the decision to allow recovery of thousands-block number pooling costs through access charges is fully consistent with the Commission's decisions in prior orders. In the *Numbering Resource Optimization First Report and Order,* the Commission adopted the same competitively neutral cost recovery framework for thousands-block number pooling that it adopted for LNP, but it also found that the determination of the appropriate cost recovery mechanism

(*i.e.*, recovery through access or, alternatively, end-user charge) would be decided in a future order after further comment. In the *Numbering Resource Optimization Third Report and Order,* the Commission followed the reasoning of the *LNP Third Report and Order* to conclude that unlike LNP, thousands-block number pooling is access related, and thus recovery of pooling costs through access charges is competitively neutral. AT&T otherwise raises no new evidence or arguments not already considered by the Commission. Accordingly, the Commission declines to reconsider its prior order.

22. Finally, the Commission grants the motion of the California PUC to accept its late filed comments. On its own motion, the Commission also accepts the late filed reply comments of the Texas PUC.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Order on Reconsideration in CC Docket No. 99–200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95–116 (Further Notice). The Commission sought written public comment on the proposals in the Further Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Fourth Report and Order

24. In the Further Notice, we sought public comment on whether we should again extend the local number portability (LNP) requirements to all carriers in the 100 largest Metropolitan Statistical Areas (MSAs), regardless of whether they receive a request to provide LNP. We also sought comment on whether all carriers in the 100 largest MSAs should be required to participate in thousands-block number pooling regardless of whether they are required to be LNP capable. Finally, we sought comment on whether all MSAs included in the consolidated metropolitan statistical areas (CMSAs) should be included on the Commission's list of the 100 largest MSAs.

25. With this Fourth Report and Order in CC Docket No. 99–200 and Fourth Report and Order in CC Docket No. 95–116, we continue efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are used. We also attempt to continue the implementation of telephone number portability and thousands-block number pooling with the minimum regulatory and administrative burden on telecommunications carriers. In particular, we reaffirm that carriers need only deploy LNP in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP. We also delegate authority to the state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. We also conclude that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP including covered commercial mobile radio service (CMRS) providers that are not required to deploy LNP until November 24, 2003. We specifically exempt rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP from the pooling requirement. We also exempt from the pooling requirement carriers that are the only service provider receiving numbering resources in the rate center. We also find AT&T's petition for reconsideration of the Commission's decision to permit incumbent local exchange carriers (LECs) to recover the extraordinary costs of thousands-block number pooling through access charges to be untimely and without merit.

2. Summary of Significant Issues Raised by Public Comments in Response to the IFRA

26. No comments specifically addressed the IFRA. Commenters, however, responded to several issues addressed in the *Further Notice of Proposed Rulemaking* that concern small entities. Generally, commenters from the state commissions support extending the LNP requirement to all carriers in the 100 largest MSAs, regardless of whether there has been a request. Most commenters agree that all carriers in the 100 largest MSAs should be required to participate in thousands-block number pooling regardless of whether they are LNP capable. Several of these commenters suggest that thousands-block number pooling should be as expansive as possible in order to promote efficient and effective numbering resource optimization. Other commenters suggested that an exemption should be established for small carriers.

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

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

28. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes bi-annually in its Trends in Telephone Service Report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

29. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

30. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which

consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 wired telecommunications carriers that had 1,500 or fewer employees. Of this total, 2,201 firms had 999 or fewer employees, and 24 firms had employment of 1,000 employees or more. Thus, we estimate that no more than 2,225 wired telecommunication carriers are small businesses that may be affected by the regulations.

31. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition specifically for small LECs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 1,329 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 companies, an estimated 1,024 have 1,500 or fewer employees and an estimated 305 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 1,024 providers of local exchange service are small businesses that may be affected by the regulations.

32. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 229 carriers reported that they were engaged in the provision of interexchange services. Of these 229 companies, 181 have 1,500 or fewer employees and 48 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 181 small entity IXCs may be affected by the regulations.

33. Competitive Access Providers (CAPs). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carrier. According to the Trends in Telephone Service data, 532 CAPs and competitive LECs and 55 other LECs reported that they were engaged in the provision of competitive local exchange services. Of these 587 companies, 411 CAPs and competitive LECs and 53 other LECs have 1,500 or fewer employees and 121 CAPs and competitive LECs and 2 other LECs have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 411 small entity CAPs and 53 other LECs may be affected by the regulations.

34. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 576 toll resellers and 134 local resellers reported that they were engaged in the resale of telephone service. Of these 710 companies, 669 have 1,500 or fewer employees and 41 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 669 small entity resellers may be affected by the regulations.

35. Wireless Telephony including Cellular, Personal Communications Service (PCS) and Specialized Mobile Radio (SMR) Telephony Carriers. Wireless telephony includes cellular, PCS or SMR service providers. The SBA has developed a definition of small entities applicable to cellular licensees that consists of all such companies having 1,500 or fewer employees. According to the Trends in Telephone Service data, 858 carriers reported that they were engaged in the provision of wireless telephony. Of these 858 companies, 291 wireless telephony providers have 1,500 or fewer employees and 567 wireless telephony providers have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 291 small carriers providing wireless telephony services may be affected by the regulations.

36. Paging Service. The SBA has developed a definition of small entities applicable to providers of paging services that consists of all such companies having 1,500 or fewer employees. According to the Trends in Telephone Service data, 576 companies reported that they were engaged in the provision of paging service. Of these 1,434 companies, 557 paging companies have 1,500 or fewer employees and 19 paging companies have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 291 small carriers providing paging services may be affected by the regulations.

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

37. The requirements discussed herein should not require additional reporting, recordkeeping or compliance requirements for service providers. In this *Report and Order,* we are not mandating new recordkeeping and compliance requirements. Rather, we are affirming, clarifying or reducing requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

39. In this *Fourth Report and Order,* we decline to extend local number portability requirements to carriers operating in the 100 largest MSAs that have not yet received a request to deploy local number portability from a competing carrier. By maintaining our current local number portability requirement, we will not impose new burdens on small carriers operating in the 100 largest MSAs. We believe that the costs associated with the alternative of requiring all carriers, including small entities, to deploy local number portability in the absence of a request would outweigh any number optimization benefit.

40. In addition, we exempt rural telephone companies and Tier III CMRS carriers from the pooling requirement until they are required to implement LNP. We also exempt from the pooling requirement carriers operating in rate centers where they are the only service provider receiving numbering resources. Once such a carrier receives a request to provide LNP, the carrier must then also participate in pooling in areas where it is deployed. If, however, a state believes that a carrier that qualifies for this exemption should participate in pooling to further our numbering resource optimization goals, the state commission may petition the Commission for authority to require such carriers to implement pooling.

41. Report to Congress: The Commission will send a copy of this *Fourth Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Fourth Report and*

Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Fourth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

42. Pursuant to the authority contained in sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this *Fourth Report and Order* is hereby adopted and part 52 of the Commission's rules are amended and adopted as set forth in Appendix A of the *Fourth Report and Order.*

43. Pursuant to the authority contained in sections 1, 2, 3, 4, 251(e), 254(e), and 405 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 153, 154, 251(e), 254(e), and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by AT&T on May 6, 2002 is denied.

44. Pursuant to the authority contained in Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this fourth further notice of proposed rulemaking is hereby adopted.

45. The amendments to §§ 52.20 through 52.31 of the Commission's rules as set forth in the rule changes are adopted, effective August 20, 2003. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

46. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Fourth Report and Order in CC Docket No. 99–200 and CC Docket No. 95–116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99–200, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

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

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

■ 2. Section 52.20 is amended by revising paragraph (b) to read as follows:

§ 52.20 Thousands-block number pooling.

* * * * *

(b) *General requirements.* Pursuant to the Commission's adoption of thousands-block number pooling as a mandatory nationwide numbering resource optimization strategy, all carriers, except those exempted by the Commission, must participate in thousands-block number pooling where it is implemented and in accordance with the national thousands-block number pooling framework and implementation schedule established by the Commission.

* * * * *

■ 3. Section 52.21 is amended by removing paragraph (r), redesignating paragraphs (a) through (q) as paragraphs (b) through (r), and by adding a new paragraph (a) to read as follows:

§ 52.21 Definitions.

* * * * *

(a) The term *100 largest MSAs* includes the 100 largest MSAs as identified in the 1990 U.S. Census reports, as set forth in the Appendix to this part, as well as those areas identified as one of the largest 100 MSAs on subsequent updates to the U.S. Census reports.

* * * * *

■ 4. Section 52.23 is amended by revising paragraph (b)(1) to read as follows:

§ 52.23 Deployment of long-term database methods for number portability by LECs.

* * * * *

(b)(1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs), as defined in § 52.21(k), in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.

* * * * *

■ 5. Section 52.31 is amended by revising paragraphs (a) introductory text, (a)(1)(ii), and (a)(1)(iv) introductory text to read as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.

(a) By November 24, 2003, all covered CMRS providers must provide a long-term database method for number portability, including the ability to support roaming, in the 100 largest MSAs, as defined in § 52.21(k), in compliance with the performance criteria set forth in section 52.23(a) of this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (a)(1) of this section. A licensee may have more than one CMRS system, but only the systems that satisfy the definition of covered CMRS are required to provide number portability.

(1) * * *

(ii) Carries requesting deployment in the 100 largest MSAs by November 24, 2003 must submit requests by February 24, 2003.

* * * * *

(iv) After November 24, 2003, a covered CMRS provider must deploy number portability in additional switches serving the 100 largest MSAs upon request within the following time frames:

* * * * *

[FR Doc. 03–18366 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–74]

Telephone Numbering Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 11, 1997, the Commission released a First Memorandum Opinion and Order on Reconsideration in CC Docket No. 95–116; FCC 97–74 (Order). In that Order the Commission concludes that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II. A summary of the Order was published in the **Federal Register.** In that summary, the Commission stated that the modified rules would become effective May 15, 1997. Information collections, however, which are subject to approval by the