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

In the Matter of	)	
	)	
Provision of Directory Listing Information Under the Communications Act of 1934, As Amended	)))	CC Docket No. 99-273
	)	
The Use of N11 Codes and Other Abbreviated Dialing Arrangements	))	CC Docket No. 92-105
	)	
Administration of the North American Numbering Plan	))	CC Docket No. 92-237

NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (*Notice*) we seek comment on proposed methods of promoting competition and choice in the retail directory assistance (DA) market, in accordance with the pro-competitive, de-regulatory national policy framework set forth in the Telecommunications Act of 1996,[1] and as the Commission announced in the *Local Competition Second Report and Order*.[2] In that order, the Commission anticipated that presubscription for particular services ultimately would be defined by technological, economic and marketing considerations, and noted its intent to monitor developments in this area and issue a Further Notice of Proposed Rulemaking to address these long range considerations so that end users would be able to preselect alternative providers for a multitude of services, including directory assistance.[3] In the five years since the release of the *Local Competition Second Report and Order*, DA has grown from a simple method of obtaining a telephone number to a sophisticated voice-based portal that potentially can offer the consumer a wide spectrum of high quality services at competitive prices. Accordingly, we initiate this rulemaking to solicit comments as to whether the market for the competitive provision of directory assistance has developed to the point that additional steps must now be taken to ensure that all competitors have the same opportunity for access to customers.[4] Conversely, we seek comment whether the directory assistance market is sufficiently open to competition that further regulatory action is unnecessary.

2. In prior proceedings the Commission has taken steps to ensure that a competitive DA market can develop.[5] We now believe that the technological capabilities of both the network and the DA industry

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act) (codified at 47 U.S.C. §§ 151 *et seq*.). Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code. The 1996 Act amended the Communications Act of 1934. We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act."

[2] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19416 (1996) (*Local Competition Second Report and Order*), *vacated in part, People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), *rev. AT&T Corp. v. Iowa Util. Bd*., 119 S.Ct. 721 (Jan. 25, 1999).

[3] *Id.*

[4] Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended, *First Report and Order*, CC Docket. 99-273, 16 FCC Rcd 2736 (2001) (*SLI/DA First Report and Order*).

[5] *See SLI/DA First Report and Order*. *See also,* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended, CC Docket (continued….)

have advanced to the extent that we can seek comment, as contemplated in the *Local Competition Second Report and Order*, on whether specific measures designed to increase consumer access to DA services may help to remove any existing barriers to full competition. Specifically, we seek comment on Telegate, Inc.'s (Telegate's) proposal to enhance competition in the DA market by requiring local exchange carriers (LECs) to implement presubscription to 411.[6] Central to Telegate's proposal is the argument that presubscription to the 411 code for access to DA services is necessary to ensure that full competition will develop in the retail DA market. We also seek comment on whether alternative dialing methods of providing access to DA services would provide a more level playing field for all DA providers to enter the retail DA market, and whether the elimination of the 411 dialing code is a necessary prerequisite for the success of such alternative dialing methods.

II. BACKGROUND

3. On September 9, 1999, the Commission released the *SLI/DA Order and Notice*.[7] In the *SLI/DA Order and Notice*, the Commission tentatively concluded that competition in the directory assistance market is in the public interest.[8] The Commission also tentatively concluded that competitive directory assistance providers are unable fully to compete without equal access to the local exchange carriers' (LECs) local directory assistance databases.[9] The Commission invited comment on whether certain competitive directory assistance providers are providers of telephone exchange service or telephone toll service and thus entitled to nondiscriminatory access to those databases pursuant to section 251(b)(3) of the Act.[10] The Commission also sought comment on whether competitive directory assistance providers that are not providers of telephone exchange service or telephone toll service also are entitled to nondiscriminatory access to directory assistance, including access to directory assistance databases.[11]

4. On October 13, 1999, Telegate filed comments in response to the *SLI/DA Order and Notice*. In its comments, Telegate argued that full competition in the DA market could not exist until LECs no longer have exclusive possession of the 411 code. Telegate proposed opening up 411 to competition by allowing customers to choose by presubscription their provider of directory assistance service, just as they

(Continued from previous page)
Nos. 96-115, 96-98, 99-273, *Third Report and Order*, *Second Order on Reconsideration*, and *Notice of Proposed Rulemaking*, 14 FCC Rcd 15550 (1999) (*SLI/DA Order and Notice*).

[6] Telegate *ex parte* at ii (filed Mar. 10, 2000) (Telegate Proposal). Telegate is the US subsidiary of Telegate AG, a German corporation founded in August 1996. The core business of Telegate AG is the provision of DA and other directory services such as call completion. As we discuss in paragraphs 7-11 *infra*, under the applicable sections of the Act, the duty to provide presubscription to 411 would apply to all LECs, not just incumbent LECs.

[7] *See SLI/DA Order and Notice*, 14 FCC Rcd 15550.

[8] *Id.* at 15645.

[9] *Id.* at 15648-49.

[10] 47 U.S.C. § 251(b)(3).

[11] *SLI/DA Order and Notice*, 14 FCC Rcd at 15646.

can presubscribe to their primary interexchange carrier (IXC) for long distance services. None of the reply comments substantively addressed this portion of Telegate's comments.[12]

5. On February 9, 2000, Telegate met with Common Carrier Bureau (Bureau) staff members to discuss further the 411 presubscription proposal. On March 10, 2000, at the Bureau's request, Telegate filed an *ex parte* memorandum illustrating Telegate's 411 presubscription proposal in further detail.[13] On April 27, 2000, the Bureau issued a public notice seeking comment on Telegate's proposal.[14] In the *Telegate Public Notice*, the Bureau solicited comments on Telegate's proposal to enhance competition in the directory assistance market by requiring LECs to implement presubscription for the 411 abbreviated dialing code,[15] specifically soliciting comments on the technical feasibility and economic viability of requiring LECs to implement presubscription to N11 abbreviated dialing codes in general. This included presubscription to 411 in the directory assistance proceeding, as well as presubscription to other N11 codes, particularly to 711 for access to Telecommunications Relay Service (TRS).[16]

6. On January 23, 2001, the Commission released the *SLI/DA First Report and Order* and concluded that LECs must provide competing DA providers that qualify under section 251(b)(3) of the Act with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates.[17] To the extent that such DA providers qualify under section 251(b)(3), the Commission found that a LEC's failure to provide such access might also violate section 201(b).[18] In the *SLI/DA First Report and Order* the Commission also explained that the competitive provision of directory assistance is a necessary element of a competitive local telecommunications market, and noted that Congress recognized it as such in section 251.[19] The Commission also concluded that LECs are not required to grant competing directory assistance providers nondiscriminatory access to non-local directory assistance databases.[20] Finally, in the *SLI/DA First Report and Order*, the Commission concluded that the language in section 222(e)[21] concerning directory publishing "in any

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[12] Several commenters opined that consideration of Telegate's proposal was inappropriate in that proceeding. *See, e.g.,* Bell Atlantic Comments at 2; BellSouth Comments at 3; BellSouth Reply Comments at 2; InfoNXX Comments at 1–6.

[13] Telegate Proposal.

[14] Common Carrier Bureau Seeks Further Comment on Telegate's Proposal for Presubscription to "411" Directory Assistance Services, *Public Notice*, CC Docket Nos. 99-273 and 98-67, DA 00-930 (CCB April 27, 2000) (*Telegate Public Notice*). The *Telegate Public Notice* also sought comment on the technical and economic feasibility of implementing presubscription to other N11 codes, such as 711 access for Telecommunications Relay Services. Several parties filed extensive comments on this proposal. We plan to address this proposal and the corresponding comments in a separate proceeding at a later date.

[15] *Id*. at 1.

[16] *Id.*

[17] *SLI/DA First Report and Order*, 16 FCC Rcd 2376.

[18] *See* 47 U.S.C. §§ 201(b), 251(b)(3).

[19] *SLI/DA First Report and Order*, 16 FCC Rcd at 2738; *see also* 47 U.S.C. § 251(b)(3).

[20] *SLI/DA First Report and Order*, 16 FCC Rcd at 2738-39.

[21] 47 U.S.C. § 222(e).

format" applies to telephone directories on the Internet, but that section 222(e) does not apply to orally provided directory listing information.[22] Telegate's proposal was not addressed in that order.[23]

III. DISCUSSION

A. Statutory Authority

7. We believe that many of the proposals upon which we seek comment are fully consistent with the authority provided by Congress in section 251(b)(3) of the Act.[24] As the Commission has previously found, section 251(b)(3) first creates a duty for LECs to provide dialing parity (*i.e.*, the ability for a consumer to access a particular telecommunications service without having to dial extra codes) to competing providers of telephone exchange service and telephone toll service with respect to all telecommunications services that require dialing to route a call.[25] As the Commission noted in the *Local Competition Second Report and Order*, nothing in the statutory language of section 251(b)(3) limits the scope of the dialing parity obligation to exchange and toll services or distinguishes among the various types of telecommunications services in imposing the dialing parity obligations.[26] This conclusion is also supported by the statutory definition of dialing parity insofar as it refers to the provision of "telecommunications services" generally without distinction among various types of telecommunications services available.[27] Further, as Commission precedent has concluded, DA has consistently been recognized as a service which facilitates the use of the basic network, and thus has been regulated, like other telecommunications services, under Title II of the Communications Act.[28] In light of this precedent, we seek comment as to whether the dialing parity obligation of section 251(b)(3) imposes upon LECs a duty to provide access to the 411 code to all competing providers of telephone exchange and telephone toll service. In providing comment on this issue, parties should note that the Commission, in the *Local Competition Second Report and Order*, included DA as a telecommunications service to which consumers ultimately would be able to presubscribe.[29]

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[22] *SLI/DA First Report and Order*, 16 FCC Rcd at 2739.

[23] *Id.* at 2741 at n. 28. Several commenters opined that consideration of Telegate's proposal was inappropriate in that proceeding. *See, e.g.,* Bell Atlantic Comments at 2; BellSouth Comments at 3; BellSouth Reply Comments at 2; InfoNXX Comments at 1–6.

[24] 47 U.S.C. § 251(b)(3).

[25] *Local Competition Second Report and Order,* 11 FCC Rcd at 19409.

[26] *Id.* at 19410.

[27] *Id.*

[28] *See* Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US West Communications, Inc. for Forbearance, CC Docket No. 97-172, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, *Memorandum Opinion and Order*, 14 FCC Rcd 16252, 16284-86 (1999) (*US West NDA Forbearance Order*); *also citing* to The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, *First Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5572, 5600-01 (1997) (*N11 First Report and Order*).

[29] *Local Competition Second Report and Order,* 11 FCC Rcd at 19416.

8. Section 251(b)(3) of the Act also requires LECs to provide competing providers of telephone exchange service and telephone toll service with nondiscriminatory access to directory assistance.[30] The Commission has previously taken several steps to promote competition in the DA market pursuant to the nondiscrimination requirements of section 251(b)(3). For example, in the *Local Competition Second Report and Order*, the Commission concluded that the requirement of nondiscriminatory access to DA under section 251(b)(3) required that LECs provide such competing providers with access to DA equal to that which the LECs provide to themselves and that LECs treat all such competitors equally.[31] The Commission found that this requirement could be satisfied if LECs allowed competing providers to obtain access to the LECs' local DA databases, and complied with competing providers' reasonable and technically feasible requests to either rebrand DA services in the competing providers' names or remove the providing LEC's brand name.[32] Subsequently, in the *SLI/DA Order and Notice*, the Commission affirmed that LECs must provide nondiscriminatory access to their local DA databases,[33] and sought comment on whether DA providers that provide neither telephone exchange service nor telephone toll service are entitled to nondiscriminatory access to DA under section 251(b)(3).[34] The Commission later concluded in the *SLI/DA First Report and Order* that DA providers that are certified as LECs, are agents of CLECs, or that offer call completion services are also entitled to nondiscriminatory access to DA including LEC local DA databases under section 251(b)(3).[35]

9. We seek comment on the extent to which the Act provides us with statutory authority, consistent with the Commission's prior actions, to require 411 presubscription, assign alternative dialing methods for DA, or eliminate entirely the use of the 411 code for DA, pursuant to section 251(b)(3).[36] The Commission has determined that nondiscriminatory access to DA under section 251(b)(3) requires LECs to provide access to elements of DA service that are necessary to the competitive provision of DA, such as branding and DA databases.[37] We seek comment on whether the 411 access code, currently under LEC control, qualifies as one such element.

10. In the *SLI/DA First Report and Order*, the Commission concluded that, because section 251(b)(3) only requires LECs to provide nondiscriminatory DA access to competing providers of telephone exchange or telephone toll service, only competing DA providers that are LECs, agents of LECs, or provide call completion qualify for the benefits of section 251(b)(3).[38] We seek comment as to whether section 251(b)(3) similarly circumscribes the field of competing DA providers to which 411 presubscription must be offered. We also seek comment as to whether there would be any competing DA

[30] 47 U.S.C. § 251(b)(3).

[31] *Local Competition Second Report and Order*, 11 FCC Rcd at 19402, 19444.

[32] *Id.* at 19461-63.

[33] *SLI/DA Order and Notice*, 14 FCC Rcd at 15618.

[34] *Id.* at 15646.

[35] *SLI/DA First Report and Order*, 16 FCC Rcd at 2744-50.

[36] *See e.g., AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 378 (1999) (holding that the Commission has rulemaking authority to carry out the provisions of the Act including section 251).

[37] *Local Competition Second Report and Order*, 11 FCC Rcd at 19461-63.

[38] *SLI/DA First Report and Order*, 16 FCC Rcd at 2743-49.

providers that do not offer services that would qualify either as telephone exchange or telephone toll services, but would nonetheless benefit from 411 presubscription. If so, we seek comment on whether we should rely on alternative statutory bases, such as sections 201(b) and 202(a),[39] for requiring LECs to allow competing DA providers to presubscribe their customers to directory assistance via the 411 code.

11. We also seek comment on the extent to which the Commission is authorized to promote competition in the retail DA market through 411 presubscription, the assignment of alternative dialing codes to DA providers, or 411 elimination, pursuant to our plenary authority over numbering administration under section 251(e)(1) of the Act.[40] The Commission's authority over numbering administration extends to the assignment of all N11 numbering codes including 411.[41] Thus, if the Commission, under section 251(e)(1), has the authority to assign 411 for the provision of DA, does this authority also allow the Commission to require presubscription as part of that assignment, or eliminate it as a code for that use?[42] Further, as the Commission concluded in the *Local Competition Second Report and Order*, the Commission's authority over numbering administration extends to all portions of the North American Numbering Plan (NANP) that pertain to the United States,[43] including the assignment of numbering codes such as carrier identification codes (CICs) and national 555 numbers. Thus, this authority allows the Commission to reserve those CICs and national 555 numbers that contain the 411 code (e.g., 101X411, 101411X, 555-X411, and 555-411X) and assign them to various competing DA providers. Accordingly we seek comment as to whether we can exercise this authority as an alternative and additional basis for requiring presubscription to 411.

B. Competition in the Retail DA Market

12. As a threshold matter, US West (now Qwest) argues that Commission efforts to promote retail DA competition are misplaced because Congress intended to promote competition between ILECs and CLECs in the local exchange market, not in adjacent markets such as DA.[44] There are, however, several counter arguments. First, the Commission has consistently concluded that DA service is "a necessary element of a competitive local telecommunications market,"[45] and that a goal of the

[39] 47 U.S.C. §§ 201(b), 202(a).

[40] 47 U.S.C. § 251(e)(1).

[41] *See e.g., N11 First Report and Order*, 12 FCC Rcd at 5579-80. The Commission's authority over N11 codes includes authority over "911" for emergency services, "711" for telephone relay services (TRS), and "311" for non-emergency police calls.

[42] We note that the 411 code, although popularly associated with DA, has never been permanently assigned by the Commission for that purpose.

[43] *Local Competition Second Report and Order*, 11 FCC Rcd at 19508. *See also N11 First Report and Order*, 12 FCC Rcd at 5579-80.

[44] US West Reply Comments at 4-5.

[45] *See SLI/DA First Report and Order*, 16 FCC Rcd at 2738. *See also Local Competition Second Report and Order*, 11 FCC Rcd at 19399, 19444-45, 19461; *SLI/DA Order and Notice*, 14 FCC Rcd at 15556, 15616; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696, 3890 (1999) (*UNE Remand Order*).

Commission's rules should be to make DA available to competitors on an equal basis.[46] Thus, we solicit comment as to whether Commission efforts to promote competition in the DA market translate into competition in the local exchange market as well. Second, the 1996 Act indicates that Congress recognized how competition for a variety of communications products and services including DA might also help promote competition among carriers in the local exchange market.[47] For example, under Section 271(c)(2)(B), a Bell Operating Company (BOC) must show, among other items, that it offers or provides other telecommunication carriers with "[n]ondiscriminatory access to directory assistance services to allow the other carrier's customers to obtain telephone numbers" in order to obtain authority to provide in-region interLATA services.[48] Further, Congress explicitly required LECs to provide telephone exchange and telephone toll providers with nondiscriminatory access to DA pursuant to section 251(b)(3), a requirement that does not pertain solely to competition in the local exchange market. One of the goals of the 1996 Act is to open all telecommunications markets to competition.[49] We seek comment as to whether Congress considered the DA market to be one of the telecommunications markets for which the Act requires the Commission to promote competition.

13. Some commenters also contend that the Commission's previous finding in the *UNE Remand Order* that there is competition in the DA market[50] precludes our consideration of whether we should take additional steps to further promote competition in the retail DA market.[51] We seek comment as to whether this is a valid argument in light of the following. First, the Commission's conclusion in the *UNE Remand Order*, that there was sufficient competition in the DA market that DA no longer had to be supplied as a UNE, was not a conclusion that further barriers to entry did not exist in the DA market, or that further Commission action would not be necessary. To the contrary, the Commission explicitly stated that, notwithstanding the elimination of DA as a UNE, statutory protection for competitive access to DA continued to exist pursuant to section 251(b)(3) of the Act.[52] Further, the Commission's finding in the *UNE Remand Order* that competition existed in the DA market was made in the context of whether sufficient competition existed in the wholesale DA market such that removal of DA as a UNE would not "materially diminish a requesting carrier's ability to offer telecommunications service."[53] We are engaging in a separate inquiry today, one that concerns the retail DA market, *i.e.*, that market where carriers offer DA services to the consumer, not to other carriers. Competition in one market neither

[46] *Local Competition Second Report and Order*, 11 FCC Rcd at 19399.

[47] *See, e.g.*, 47 U.S.C. §§ 251(b)(3) and 271.

[48] *See* 47 U.S.C. § 271(c)(2)(B).

[49] *Local Competition Second Report and Order*, 11 FCC Rcd at 19398.

[50] *UNE Remand Order*, 15 FCC Rcd at 3891, 3894 (the Commission found significant evidence of a wholesale market available to carriers for the provision of operator services and directory assistance, and therefore concluded that, where ILECs provide customized routing, ILECs should not be required under section 251(c)(3) to provide DA to requesting telecommunications providers as an unbundled network element).

[51] US West Comments at 4.

[52] *See UNE Remand Order*, 15 FCC Rcd at 3891-92; *see also SLI/DA First Report and Order*, 16 FCC Rcd at 2741.

[53] *UNE Remand Order*, 15 FCC Rcd at 389.

assures nor precludes competition in another.[54] We thus solicit comment to explore the distinction between the wholesale and retail DA markets so that we can consider whether a separate competitive analysis for the latter is justified.

14. Telegate's proposal specifically raises the issue of whether LEC monopoly over the 411 dialing code for DA is an unreasonable barrier to other competitors that wish to enter the market for the retail provision of DA services to consumers. We seek comment on the current extent of competition in this market. What are the barriers to entry for the provision of DA to consumers? Does the LEC monopoly over use of the 411 code constitute such a barrier? If such barriers are found to exist, what should the Commission's role in addressing this problem be? Do any of these barriers to entry violate the nondiscriminatory access requirements of section 251(b)(3) of the Act, or any other section of the Act? We also seek comment as to whether the current level of competition in the DA market indicates that LEC control over the 411 dialing code is not, in fact, a barrier to competition.

C. 411 Presubscription – Telegate Proposal

15. In its proposal, Telegate states that to bring the full benefits of DA competition to consumers, the Commission must go beyond merely requiring nondiscriminatory access to DA databases maintained by LECs.[55] Specifically, Telegate contends that LECs' exclusive control of the universally recognized abbreviated 411 dialing code sequence is a significant barrier to competitive entry in the DA market despite the protections provided by the Act for nondiscriminatory access to DA, including access to LEC local DA databases.[56] Telegate proposes that the Commission implement a system that would allow consumers to presubscribe to 411, thus extending the benefits of competition to the DA industry, and by extension to the telecommunications industry in general.[57] We seek comment on whether such a system should be imposed through regulation or whether market forces alone will be sufficient to promote competition. We seek comment on whether LEC control of 411 serves as a barrier to entry by independent DA providers to the retail DA market because 411 is easy to use and is well-established and recognized as the abbreviated dialing code[58] that customers have associated for years with DA service. We note in this respect that Telegate also argues that other dialing codes may be used to help counter the effects of 411 as a barrier to competitive entry, even if the Commission does not require 411 presubscription, and seek comment on this alternative.[59]

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[54] The Commission has taken many steps to promote competition in both the retail and wholesale DA markets. For example, in the *Local Competition Second Report and Order*, the Commission required the LECs to provide nondiscriminatory access to a wholesale DA item, access to databases, and a retail item, branding. *See Local Competition Second Report and Order*, 11 FCC Rcd at 19461, 19463.

[55] Telegate Proposal at 2.

[56] *Id*.

[57] *Id*. at 2-3.

[58] Abbreviated dialing codes provide consumers with easy access to important services from any location in the country. For example, in the *N11 Second Report and Order*, the Commission stated "[t]he sooner 711 access to TRS is implemented on a nationwide basis, the sooner all Americans will experience the enhanced efficiency and convenience that three-digit dialing has to offer." *See* The Use of N11 Codes and Other Abbreviated Dialing Arrangements, *Second Report and Order*, 15 FCC Rcd 15188, 15204 (2000).

[59] *See e.g.*, Telegate *ex parte* at 7, July 24, 2001.

16. Telegate argues that Germany's efforts to increase competition in the DA market have led to high quality, innovative service and other public benefits that the U.S. should consider.[60] Specifically, Telegate notes that consumers in Germany have benefited from the introduction of competition in the price, quality, and type of services offered.[61] According to Telegate, competition in Germany has contributed to economic growth, an increase in the number of human operators, a reduction in unanswered calls, and the introduction of innovative call completion and foreign language services.[62] Telegate states that Germany, Ireland, Britain and Spain have all successfully adopted plans for increasing competition by moving DA providers to new abbreviated dialing codes, and that Norway is also considering the use of uniform codes for DA.[63] Telegate argues that the Commission should also consider the success that other countries have experienced with uniform codes for DA in deciding how to promote retail DA competition in the U.S.[64] In this regard, Telegate filed *ex parte* submissions in this proceeding containing copies of the Oftel Consultation Document and statement by the Director General of Telecommunications on "Access Codes for Directory Enquiry Services."[65] Telegate states that in the September 19, 2001 statement, Oftel adopted a plan to introduce a new 118XY number range for DA services and eliminate the "192" dialing code, Britain's version of 411.[66] Telegate believes that the issues discussed in these Oftel documents are relevant to 411 presubscription and/or elimination. We seek comment on the relevance of the Oftel documents to this proceeding. In addition, we seek comment on Telegate's assertions regarding DA in the above-mentioned countries, and on the success and difficulties, as well as the costs and benefits observed with the introduction of DA competition in those nations. We also seek comment on any differences that may exist in the U.S. market for DA services that would serve to differentiate it from these other countries, or otherwise mitigate the benefits these other countries have perceived or experienced as a result of using new codes.

1. Necessity for Presubscription

17. Several commenters suggest that Telegate is trying to fix a problem that does not exist,[67] because there is insufficient consumer demand for directory assistance to justify presubscription.[68] We seek comment on the level of current demand for DA and whether 411 presubscription would likely interest consumers if it were presented to them. Specifically, we seek comment on how much demand for DA services can be attributed to residential and to business consumers. What is the average consumer demand for DA? What is the typical cost for DA on a residential subscriber's bill? We also seek comment on whether there are "high use" customers that typically use DA to a greater extent than the

[60] Telegate Proposal at 6-7.

[61] *See* Telegate *ex parte*, attachment at 3, September 26, 2001.

[62] *Id.* at 2-3.

[63] *Id.* at 2.

[64] *See e.g.*, Telegate *ex parte* at 10, July 24, 2001.

[65] *See* Telegate *ex parte*, January 23, 2001; Telegate *ex parte*, September 26, 2001.

[66] *See* Telegate *ex parte*, attachment at 5, September 26, 2001.

[67] Bell Atlantic Comments at 1; Bell Atlantic Reply Comments at 1; BellSouth Comments at 16; SBC Comments at 1; USTA Comments at 1; US West Comments at 4 .

[68] Bell Atlantic Comments at 7, GTE Comments at 8.

average customer. For instance, is there a difference in the demand for DA among high and low-income consumers? Furthermore, if the Commission does adopt Telegate's proposal or any of the alternatives discussed below, what effect, if any, will that have on the current demographics of demand?

18. Telegate contends that the DA market is growing and that consumers will be more likely to use DA because of the proliferation of area codes, which makes some previously dialed numbers invalid. We find merit in this argument, but note that in recent years ILECs have consistently reported the declining use of their wireline 411 DA service.[69] We seek comment on the ILECs' contention that their reduced call volume for wireline DA is indicative of increased competition in the DA market. We also seek comment on whether any such decline in wireline DA call volume could be due to other factors such as declining quality of service[70] or the growth of wireless or Internet-based services.[71]

19. Qwest submitted a study of the forecast for the local directory assistance market from 1996 though 2006, published by Frost & Sullivan, that indicates that rising prices for 411 and growing competition from print directories will keep the market from experiencing a rise in 411 usage.[72] The Frost & Sullivan Report also states that rising Internet and wireless penetration will further lead to reduced usage of wireline local DA services.[73] Thus, the report predicts that the revenue growth rate is likely to negatively spiral in 2004 as the steady decline in volume offsets the impact of increasing prices and consumers turn to alternative media of information.[74] The report also predicts that revenues from local DA will reach $2.22 billion in 2004 and drop to $2.09 billion in 2006.[75] We seek comment on this report and on the availability of other relevant studies that measure the growth or decline of services and competition in the DA market.

20. The Frost & Sullivan Report also examines the national directory assistance market.[76] The report predicts that national DA market revenues will grow at an average rate of 5.3% through the forecast period reaching $1.69 billion in 2006.[77] It is also estimated that national DA call volume will increase from 1.1 billion calls in 1999 to 1.5 billion calls in 2006 and the rate of growth will start to drop in 2002.[78] We seek comment on Frost and Sullivan Report's assumptions and conclusions regarding the predicted revenue and growth forecasts for the national DA market.

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[69] *See BellSouth, et al. ex parte* at 11, March 12, 2001, *citing Local Directory Assistance Services Market*, Frost & Sullivan (2000) (Frost & Sullivan Report).

[70] *See e.g.,* Telegate *ex parte* at 4 , July 24, 2001, (regarding low accuracy rates and poor service quality associated with LEC provision of DA service).

[71] *See, e.g.,* Qwest *ex parte,* May 24, 2001, *citing* Frost & Sullivan Report at 46 (2000).

[72] Qwest *ex parte*, May 24, 2001, *citing* Frost & Sullivan Report at 46 (2000).

[73] *Id*.

[74] *Id*.

[75] *Id*.

[76] *Id*. at 51.

[77] *Id*.

[78] *Id*. at 53.

21. The Frost & Sullivan Report also discusses the enhanced DA services market.[79] According to the report, the enhanced DA market is expected to grow from $10.2 million in 1997 to $20.0 million in 2006, with the revenue growth rate fluctuating throughout that time.[80] The wholesale volume for enhanced DA services is expected to experience significant growth through 2006. The volume of calls is expected to rise from 20.9 million in 1997 to 52.5 million in 2006 and the growth rate will fluctuate.[81] We seek comment on these conclusions.

2. Technical Feasibility

22. *Current DA Network Deployment*. One of the issues raised by commenting parties is whether it would be technically feasible to implement 411 presubscription because it would require a significant change from the manner in which 411 calls currently are routed.[82] Thus, information regarding how 411 calls currently are routed will enable the Commission to adequately assess the feasibility of changing the manner in which DA is deployed within the network. According to Telegate, end users normally access local DA service by dialing 411.[83] When an end user is served by an incumbent LEC (ILEC), these calls are then generally routed from the end user's premises to a local switch, and directed over a dedicated trunk to an Operator Switch supporting the DA call center that the ILEC maintains.[84] When an end user is served by a competitive LEC (CLEC), the CLEC may alternatively route the 411 calls to the ILEC call center, the CLEC's own DA call center, or a CLEC-designated outsourced DA service provider.[85] Directory assistance calls are then usually answered with a front-end interactive voice response (IVR) to obtain the desired name and city information.[86] If the information is not recognizable via IVR, a DA operator will come on the line and get the information directly from the caller.[87] The operator then keys the information into the ILEC's local listing database to retrieve a local phone number.[88] The number may be delivered to the caller automatically via IVR, or delivered orally if further assistance is needed.[89] We recognize that there may be alternative routing methods for directing a local 411 call to a DA call center and thus we seek comment on alternative methods currently used to route calls for local DA service.

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[79] Enhanced DA services are DA services that offer additional features such as multiple listing from a single call or concierge services. We discuss the provision of enhanced DA by LECs and competitive DA providers in para. 46, *infra*.

[80] Frost & Sullivan Report at 25-26.

[81] *Id*. at 26.

[82] *See* Metro One Comments at 2-5, SBC Comments at 2-5, USTA Comments at 6-8.

[83] Telegate Proposal, Attachment A, Affidavit of John M. Celentano, para. 4 (Celentano Affidavit). Mr. Celentano is the President of Skyline Marketing Group, Ltd.

[84] *Id*. at para. 4.

[85] *Id*.

[86] *Id*.

[87] *Id*.

[88] *Id*.

[89] *Id*.

23. Telegate notes that for non-local or nationwide DA service, an end user may dial a set of digits such as 1-NPA-555-1212, where the NPA (Numbering Plan Area) is the area code of the non-local region.[90] In general, the originating LEC, the IXC and the terminating LEC are all involved in handling such DA requests.[91] The ILEC serving the called area code may provide the DA information or the IXC may transport the call to its own DA platform.[92] Alternatively, some ILECs exclusively offer local and national DA service via 411.[93] In these instances the ILEC DA operator will access the ILEC's local or national database as required. Once the call is routed to the appropriate DA platform, the DA operator will then generally perform a search for the requested number in the same fashion as with local 411 service.[94] Telegate states that national listings compiled by a third party company may be drawn from local ILEC databases, or may be compiled from secondary sources, such as telephone directories or credit reports.[95] We seek comment on Telegate's description of the provision of nationwide DA service, and on alternative methods currently used to route these calls via 1-NPA-555-1212 and 411.

24. *Telegate's Proposal for Network Deployment of Presubscribed DA.* Telegate asserts that there are two options for implementing DA presubscription via 411: either through use of the Advanced Intelligent Network (AIN),[96] or by reprogramming each central office switch to establish a connection to a preselected DA provider when 411 is dialed on any given line.[97] Telegate recommends utilizing AIN, a

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[90] *Id*. at para. 6.

[91] *Id*.

[92] *Id*.

[93] *Id*.

[94] *Id*.

[95] *Id*. at para. 7. The Commission has concluded that under section 271(g)(4), a BOC is only authorized to provide customers with the capability to access that BOC's own centralized information storage facilities, but this requirement does not similarly limit IXC provision of non-local DA service. *See US West NDA Forbearance Order*, 14 FCC Rcd at 16254. In the *US West NDA Forbearance Order*, the Commission concluded that US West's provision of nonlocal DA service to its in-region subscribers constitutes the provision of in-region, interLATA service, as defined in section 271 of the Act. The Commission, however, found that the region wide component of US West's nonlocal DA service falls within the scope of the exception provided in section 271(g)(4) of the Act for incidental interLATA services. Thus, US West was permitted to provide this service without obtaining authorization from the Commission to provide in-region, interLATA service under section 271(d) of the Act.

[96] AIN is an advanced telephone network architecture that allows the routing of calls based on information stored in databases external to the network's central office switches. *See* Celentano Affidavit at paras. 16-19. Through the use of AIN, that part of a Class 5 digital switching system known as the signal switching point (SSP) is able to utilize SS7 signaling to communicate via packet data switches known as signal transfer points (STPs) with databases known as service control points (SCPs). *Id.* at paras. 20-21. These SCPs contain subscriber-specific information that may then be used to route calls for specific services. *Id*. at para. 20. AIN inserts trigger detection points between the multiple serial actions of call processing in a local switch. *Id*. at para. 19. When a trigger detection point is set, the SSP will suspend the call, and launch a query to the SCP to find out how the call should be routed. *Id*. at 21. Call processing resumes when the SCP responds with routing instructions. *Id*. at para. 21. This "query and response" activity typically takes place within about half a second after a caller dials the last digit of a telephone number. *Id.*

[97] Telegate Proposal, Attachment A at 8.

network capability that Telegate asserts is already widely deployed in local switches and operational for services such as caller ID with name, and toll-free calls.[98] Telegate believes that an AIN-based presubscription solution will give consumers a simple way to presubscribe to DA providers. Telegate also states that AIN technology would be the most efficient method of implementing 411 presubscription.[99] By using AIN, according to Telegate, neither the software nor the hardware of any central office switch will need to be modified. Telegate argues that the only necessary change to central office switches would be made by a command that can be initiated from a carrier's Network Operations Center directing central office switches to activate the N11 Trigger feature contained in AIN software.[100]

25. Telegate states that under the AIN approach, when a caller dials 411, the N11 trigger feature will cause the signal switching point (SSP) at the subscriber's local switch to suspend the call and launch a query to a service control point (SCP) database to determine how to route the call.[101] The destination of the routing depends on the caller's telephone number, which will contain information directing the Signaling System 7 (SS7) network to route 411 calls to the ILEC DA call center, or to an alternate or competing DA service provider that the subscriber has preselected.[102] In this way, Telegate explains, AIN software can be used to route a subscriber's DA calls to his or her preferred DA provider.[103] Low Tech Designs, Inc. (LTD) agrees with Telegate that 411 presubscription is technically feasible using the AIN feature already deployed by the LECs.[104] We seek comment on this proposed option and ask that commenters specifically discuss the technical feasibility of using the AIN to provide for 411 presubscription.

26. Telegate believes that AIN presents the best method for achieving DA presubscription because it uses software capabilities already deployed in the vast majority of central office switches in the United States.[105] To support its claim of technical feasibility, Telegate attaches the affidavit of John Celentano, President of Skyline Marketing Group, Ltd.[106] Telegate also believes that this plan would not require significant change to central office switches. It states that implementation may require modest investment in upgrading the SS7 infrastructure to maintain the database of customer 411 presubscriptions and to route 411 calls to multiple DA providers.[107] We seek comment on the extent to which AIN features and functionalities would have to be expanded or augmented to implement Telegate's proposal. Several commenters contend that AIN technology is not as widely deployed as Telegate suggests.[108] We seek

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[98] *See* Celentano Affidavit at para. 9.

[99] Telegate Reply Comments at 29.

[100] Telegate Proposal at 12-13.

[101] Celentano Affidavit at paras. 16-21, 28.

[102] *Id*. at para. 31; *see also* Telegate Proposal at 13.

[103] Celentano Affidavit at paras. 9, 16.

[104] LTD Comments at 5.

[105] Telegate Proposal at 12.

[106] *Id*.

[107] Telegate Proposal at 14.

[108] *See* BellSouth Comments at 16; GTE Comments at 11; USTA Comments at 7; US West Comments at 14.

comment on this contention. For example, is AIN technology widely deployed by small carriers? Furthermore, some commenters state that an AIN-based 411 presubscription model involves much more work and is far more complex than Telegate claims.[109] We therefore seek comment on Telegate's assertions regarding whether presubscription to 411 can be implemented in the manner proposed, and whether the AIN features necessary to implement Telegate's proposal are already sufficiently deployed nationwide. Alternatively, if they are not so deployed, should the Commission exempt those switches that lack the necessary AIN features from a more general presubscription requirement? In addition, we seek comment on whether currently deployed AIN switches are capable of supporting 411 presubscription. If not, what upgrades would be necessary and how much would they cost?

27. Telegate states that its AIN proposal can be implemented in a six to nine month time frame.[110] US West, however, claims that Telegate understates this time frame, given that it assumes an underlying LEC readiness to proceed immediately to AIN deployment.[111] Thus, we also seek comment on how long the implementation process for the AIN option would take and what obstacles providers may face during this period. In addition, we seek comment on what obstacles may prevent immediate LEC readiness. USTA notes that implementation of this method will also impose a significant number of technical burdens upon carriers.[112] These include service order processing, conduction of balloting or similar processes, verification of customer selection, and processing customer change requests.[113] In addition, SBC states that 411 presubscription will require telephone companies to make automatic message accounting (AMA) recordings at the end office when someone dials 411, so that the presubscribed 411 provider can account for calls to its service for billing purposes.[114] SBC also notes that Telegate failed to consider changes to Operations Support Systems (OSS), including billing and service order systems, and to the Line Information Database (LIDB).[115] We seek comment on these and any other potential technical burdens and their associated costs. In particular, we solicit comment as to how the estimated cost of deploying and maintaining presubscription compares to its potential benefits.

28. As an alternative option, Telegate notes that switch manufacturers could develop new software for their central office switching systems to allow for distinct routing to preselected DA providers.[116] According to Telegate, this approach would require each central office switch to be programmed to establish a connection to a preselected DA provider when 411 is dialed on any given line.[117] The connection would be facilitated by installing new call processing and translation software in each switch to recognize the unique routing requirements.[118] In his affidavit, however, Celentano

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[109] *See* SBC Comments at 3; USTA Comments at 7.

[110] Celentano Affidavit at para. 28.

[111] US West Comments at 19.

[112] USTA Comments at 7.

[113] *Id*.

[114] SBC Comments at 3.

[115] *Id*.

[116] *See* Telegate Proposal at 13, n.17; Celentano Affidavit at paras. 8-15.

[117] Celentano Affidavit at para. 11.

[118] *Id.*

explains that creating new call processing and translation software for each central office switch to facilitate a distinct routing for each DA provider would be costly and difficult to implement.[119] We seek comment on the technical feasibility of programming individual central office switches to create distinct routing for independent DA providers. We also seek comment on the relative advantages of using AIN versus modifying individual central office switches to facilitate 411 presubscription. According to Nortel Networks and Lucent Technologies, the call processing and translations capability of the present software of their switching systems cannot support 411 DA presubscription.[120] Telegate estimates that it would cost switching system manufacturers approximately $2 million alone to develop new software, and that this software would then most likely be made available to LECs as an update to their existing switching system software on a negotiated right-to-use fee basis.[121] Furthermore, all the manufacturers of switches currently used in the US would have to update their software to accommodate this implementation. As a result, the cost for this development process will be increased tremendously.[122] We thus seek comment on whether the cost involved would prevent distinct routing from being a viable option for 411 presubscription.

29. Illuminet, Inc. (Illuminet) submitted comments solely addressing the technical aspects of Telegate's proposal. Illuminet submits that if the Commission chooses to implement 411 presubscription, the existing LIDB platform, with minor modifications, should be relied upon to implement that directive.[123] The LIDB platform consists of databases developed by local telephone companies to provide operator-based services for billing validation. Regional LIDB systems currently contain valid telephone and calling card numbers to allow local telephone companies to validate personal identification numbers, collect calls, etc.[124] According to Illuminet, use of the existing LIDB platform may require capacity upgrades for additional query capacity and /or data storage capacity, but this solution avoids the need for creating entirely new databases solely for the purpose of providing 411 presubscription.[125] Some commenters, however, believe that this plan would involve major technological development and be very costly.[126] We seek comment on the technical and economic feasibility of Illuminet's proposal to use the LIDB platform. We also seek comment on who should maintain control over and administration of the LIDB platform in the event we decide to implement 411 presubscription. In addition, we seek comment on any technical alternatives to use of the LIDB platform for 411 presubscription.

3. Economic Feasibility

30. As mentioned above, Telegate believes that 411 presubscription can be achieved without imposing significant technical burdens on ILECs, other DA providers, or hardware and software

[119] *Id.* at para. 8.

[120] *Id*. at para. 12.

[121] *Id*. at para. 13-14.

[122] *Id*. at para. 15.

[123] Illuminet Comments at 2; Illuminet Reply Comments at 1-3.

[124] Non-listed numbers are not included in the LIDB databases, and apparently only a limited number of LIDB databases include address and ZIP Code information.

[125] Illuminet Reply Comments at 2.

[126] GTE Reply Comments at 6; SBC Reply Comments at 6.

vendors.[127] Telegate also believes that the implementation of 411 presubscription will not impose a substantial economic burden on the industry or consumers.[128] For example, Telegate estimates that the total investment to implement its proposed plan nationwide would be less than $23 million.[129] According to Telegate, the annual expenses associated with operating and maintaining the databases would be an estimated $7.1 million. Telegate finds these amounts to be "essentially trivial" in comparison to the current estimated size of the DA market, which it estimates at almost $3 billion.[130] To support its claim and Celentano's cost estimates, Telegate also provided the affidavit of Stephen E. Siwek.[131] Siwek states that the one-time capital investment in 411 presubscription is likely to cost, at most, approximately 11 cents per customer, particularly based on the assumptions made in his affidavit.[132] We seek comment on Telegate and Siwek's assertions. We note that the Frost and Sullivan Report submitted by Qwest and discussed above in paragraphs 19 through 21 includes estimates for DA revenues in the local, national and enhanced DA service markets. We seek comment on whether these figures are consistent with the economic information that Telegate has provided.

31. Several commenters believe that the costs of 411 presubscription would be far greater than Telegate's estimates and that many costs are not included in Telegate's analysis.[133] Bell Atlantic (now Verizon) states that Telegate's proposal may require major technical upgrades that cannot be forecasted yet.[134] BellSouth states that Telegate's cost estimates are materially understated even for carriers like BellSouth that have already invested in SS7 and AIN technology. BellSouth estimates its upfront costs would be $2.5 to $3.5 million dollars and that those costs would be substantially higher for carriers that have not already invested in SS7 and AIN as heavily as BellSouth.[135] US West states that for their region alone, the Telegate proposal would require an incremental investment of $20.8 million with an annual recurring network maintenance expense of $1.2 million.[136] USTA contends that the costs of providing presubscribed N11 services would be prohibitive and would create an unwarranted burden on carriers and customers.[137] GTE (now Verizon) estimates that the major costs would total over $310 million.[138] In

[127] Telegate Proposal at 14.

[128] *Id.* at 15. *See also* WorldCom Comments at 2.

[129] Telegate Proposal at 14.

[130] *Id*.

[131] Telegate Proposal, Attachment B, Affidavit of Affidavit of Stephen E. Siwek (Siwek Affidavit). Siwek is a Principal with the Washington, D.C. based consulting firm of Economists Incorporated.

[132] Telegate Proposal at 15, *citing* Siwek Affidavit at para. 25.

[133] Bell Atlantic Comments at 3; Bell Atlantic Reply Comments at 1; BellSouth Comments at 5, 15-17; GTE Comments at 10, 13-15; GTE Reply Comments at 2; Moultrie Comments at 2; SBC Comments at 5-7; SBC Comments at 5-7; Sprint Reply Comments at 2-3; USTA Comments at 8-9; US West Comments at 12, 15-19.

[134] Bell Atlantic Comments at 3.

[135] BellSouth Comments at 16.

[136] US West Comments at 15. US West also notes that they are the smallest of the ILECs.

[137] USTA Comments at 8.

[138] GTE Comments at 10.

addition, GTE believes that over $40 million would be necessary to deploy full AIN capabilities, and that Telegate failed to include the costs to activate the 411 trigger and maintaining the local switch translations.[139] We seek comment on these assertions.

32. Telegate defends its cost analysis in its reply comments by stating that its proposal clearly states that the $29.9 million estimate does not include the cost of balloting and allocation, nor the costs of equipping local switches with AIN 0.1 software functionality. This figure also does not include the cost of process changes in the ILEC Service Order Process (SOP) to acquire and transmit the presubscribed DA provider to the SMS/service center.[140] Thus, Telegate suggests that the Commission should break down the individual estimates to determine their validity.[141] Furthermore, Telegate contests some of the ILECs figures.[142] Telegate contends that the Commission should reject speculative OSS cost estimates.[143] In addition, Telegate states that 411 presubscription will not require the same level of investment as local number portability (LNP) and that the Commission should disregard the unrealistic costs estimates based on LNP.[144] Telegate also claims that ILEC cost projections for establishing AIN databases and developing N11 software for 411 presubscription are unsubstantiated and blown out of proportion.[145] Finally, Telegate contends that the cost of implementing 411 presubscription are minimal compared to the public benefits.[146]

33. Accordingly, we seek comment on the cost projections discussed above. We generally seek comment on what the costs of implementing 411 presubscription would be for all types of carriers. We also specifically seek comment on whether adoption of Telegate's AIN based 411 presubscription plan would place a significant economic burden on existing carriers given their currently deployed software or hardware systems. Would the costs of implementing 411 presubscription be prohibitive for smaller companies? How great a range would there be between the costs for large and small companies, and what is the cause of any difference in costs? In addition, we seek comment on possible low cost alternatives to an AIN-based 411 presubscription approach. Should the Commission consider such alternatives or an exemption for small carriers, and how could such alternatives be implemented? We also request comment on the rationale behind any difference between Telegate's estimated costs[147] and those of other parties.[148]

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[139] *Id*. at 14.

[140] Telegate Reply Comments at 17.

[141] *Id*. at 18.

[142] *Id*. at 18-20.

[143] *Id*. at 20-22.

[144] *Id*. at 22-25.

[145] *Id*. at 26-37.

[146] *Id*. at 27-28.

[147] Telegate Proposal at 14.

[148] For example, US West claims that the actual costs will be four times what Telegate proposes. *See*, *e.g.*, US West Comments at 12.

4. Other Considerations for 411 Presubscription

a. Consumer Protection Concerns

34. The proposals discussed in this Notice could result in a spectrum of new, reasonably priced services that would be of great benefit to the consumer. We therefore seek comment on the tentative conclusions we make today, including the costs and benefits of the various proposals. Some commenters are concerned that if proposals such as 411 presubscription are implemented, the need for customers to make an additional choice would cause substantial customer confusion, thus negating any benefit that might otherwise result.[149] We seek comment on this assertion. In the *Local Competition Second Report and Order*, the Commission adopted a mechanism for intraLATA toll presubscription that allowed customers who chose not to presubscribe to remain with the ILEC that had previously provided intraLATA service.[150] We seek comment on whether the adoption of this mechanism for DA would minimize customer confusion. We also seek comment on other ways that any customer confusion could be prevented. For example, should information be placed in consumers' phone bills? Should a toll-free number be established to answer questions? How long should these services be provided?

35. If 411 presubscription is implemented, several parties contend that one of their primary concerns is the potential for new slamming and cramming opportunities.[151] SBC believes that 411 presubscription, particularly in the case of entities that are not telecommunications carriers, will create additional opportunities for slamming and cramming, and it is unclear if the Commission would have the authority to address those concerns.[152] SBC also states that 411 presubscription could create additional responsibilities for the LECs to police the cramming of 411 users as a result of competition among providers.[153] Telegate states that these concerns are merely speculative and that slamming in the DA market is unlikely because DA providers generally identify themselves at the beginning of the call.[154] We seek comment on whether 411 presubscription would potentially create new slamming and cramming opportunities. Would the rules in place to address these problems be adequate to resolve such complaints? Would the current slamming rules have to be amended to address 411 prescription? We also seek comment on how slamming and cramming can be avoided. For example, should the Commission require identification of the DA provider at the beginning of a call? In general, we seek comment on the FCC's role and jurisdiction in handling these matters.

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[149] Bell Atlantic Comments at 4-5.

[150] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19418-20.

[151] Bell Atlantic Comments at 5; BellSouth Comments at 11; GTE Comments at 19. Slamming is changing a consumer's telephone provider. Cramming is the practice of adding additional or discretionary services to a customer's bill for services without the customer's authorization. Unlike slamming, cramming usually does not involve a change of the customer's service provider.

[152] SBC Comments at 8; GTE Reply Comments at 5. Section 258 of the Act addresses slamming by carriers, not by stand-alone DA providers.

[153] SBC Comments at 8.

[154] Telegate Reply Comments at 34-35.

b. Billing

36. InfoNXX raises several issues regarding billing and collection.[155] How should competing DA providers bill customers? How should billing be handled if an ILEC refuses to include DA service charges on a customer's bill? Should billing be done in the same manner as with long distance services? Should ILECs be required to provide billing and collection services to keep the costs of implementation reasonable? What will the costs of billing be? We seek comment on these issues.

37. BellSouth contends that 411 presubscription is inconsistent with Commission pay-per-call rules that require 900 numbers for information services such as the enhanced DA that independent DA providers might offer.[156] We seek comment on whether, if enhanced DA were to be available through 411 presubscription, this would be consistent with our rules regarding pay-per-call services and 900 numbers calls. We note that the Act states that pay-per-call services must be provided through the use of certain telephone number prefixes and area codes.[157] This requirement, however, does not pertain to DA services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.[158] Thus, we seek comment on whether it is permissible to implement a 411 presubscription scheme on a pay-per-call-basis. In addition, we seek comment on what alternative DA systems would be permissible under our rules.

c. Implementation of 411 Presubscription

38. Telegate initially proposed that 411 presubscription should be implemented through a balloting procedure.[159] Siwek's affidavit estimates the cost of conducting balloting and allocation for presubscription of DA to be a one-time cost of $1.13 per line.[160] Several commenters, however, oppose balloting[161] and others believe that Telegate's estimate is too low.[162] In the past, parties have claimed that balloting is confusing to the customers, costly, and forces consumers to make selections before they might otherwise choose to do so.[163] As balloting can be complicated and extremely costly, we seek comment on alternatives to balloting. For example, in the *Local Competition Second Report and Order*, the Commission

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[155] InfoNXX Comments at 9.

[156] BellSouth Comments at 14. 900 number calls are direct-dialed information access services. These calls are generally billed on a per call basis. A provider may elect to bill customers directly or use their carrier's billing services.

[157] 47 U.S.C. §§ 228(i)(1), 228(b)(5).

[158] 47 U.S.C. § 228(i)(2).

[159] Telegate Proposal at 16-18. *See also* WorldCom Comments at 5.

[160] Telegate Proposal at 17, *citing* Siwek Affidavit at para. 31.

[161] Bell Atlantic Comments at 8, USTA Comments at 10. An informal survey conducted by 10-10PhoneRates.com indicates that 60% of respondents would prefer to choose their 411 provider via balloting, 25% would not choose balloting, and 15% do not care. *See* 10-10PhoneRates.com Comments at 2

[162] Bell Atlantic Comments at 8, BellSouth Comments at 17.

[163] *See Local Competition Second Report and Order*, 11 FCC Rcd at 19434.

adopted rules to implement intraLATA toll presubscription.[164] Rather than impose a federally-based balloting system, the Commission adopted a basic presubscription method called 2-PIC, and left the specifics of presubscription administration to the states.[165] Under the 2-PIC system for intraLATA toll service, a LEC was required to offer the consumers a choice between the LEC's service and that offered by another service provider, a list of which would be provided to the consumer.[166] If the consumer did not make a choice, he or she would remain with the original provider of the service. Thus, those who wished to take advantage of presubscription could do so, and those who did not wish to presubscribe were not forced to migrate to another service provider. We seek comment on whether this system should be adopted for 411 presubscription.

39. Despite section 251(b)(3)'s applicability to all LECs, [167] InfoNXX suggests that only ILECs should be required to implement 411 presubscription.[168] InfoNXX explains that when a customer purchases wireline service from a CLEC, the customer purchases DA as a bundle of services that the CLEC offers. Thus, the customer purchases DA in a competitive environment, and the CLEC cannot be said to control the 411 dialing code because it does not control the primary market for wireline service. The ILECs, however, despite the presence of some CLEC competition, control the primary market for wireline service.[169] We seek comment on whether 411 presubscription should be mandatory for all LECs.

40. InfoNXX also suggests that 411 presubscription should only apply to wireline carriers because only wireline carriers can be said to control the 411 dialing code by virtue of their monopoly position and because the wireless industry is already fully competitive.[170] InfoNXX also states that although wireless carriers utilize the 411 dialing code, DA is simply part of a bundle of services that a wireless customer purchases from competing carriers. [171] In addition, InfoNXX asserts that it was on this basis that Congress declared in the Act that wireless carriers are not required to provide equal access to long distance companies because customers may choose between carriers providing various long distance options.[172] As a result, InfoNXX believes that no principle of communications regulation or safeguarding competition supports extending 411 presubscription to wireless carriers, should the Commission ever implement such a system.[173] We seek comment on this position.

[164] *Id*. at 19418-20.

[165] *Id*. at 19419-20.

[166] *Id*. at 19400-01, 19418-20.

[167] *See* 47 U.S.C. § 251(b)(3).

[168] InfoNXX Comments at 7.

[169] *Id*. at 8.

[170] *Id*. at 7. Currently, ILECs have exclusive control of 411 access for their customers.

[171] *Id*. at 7-8.

[172] *Id*. at 8, *citing* 47 U.S.C. § 332(c)(8).

[173] *Id* at 8.

d. Cost Allocation

41. We also seek comment on how the costs associated with 411 presubscription should be allocated. US West believes that not all telecommunications consumers should have to pay to implement 411 presubscription. Rather, US West believes that DA providers and their customers, rather than all end-users, should bear these costs.[174] In addition, Moultrie does not believe that ILECs should be required to pay for competitors' entry into the DA market.[175] However, the Commission and carriers also have experience implementing competitively neutral methods of cost allocation, as are used, for example, for local number portability.[176] We seek comment on whether the cost for implementing 411 presubscription should therefore be borne by all entities that provide DA service, on a competitively neutral basis. We specifically seek comment on whether the competitively neutral model for cost recovery that the Commission established for local number portability should be used to allocate the costs of 411 presubscription, if implemented.[177] We also seek comment on whether some other method is more appropriate in the context of this service.

e. Directory Assistance Administrator

42. In the *Telegate Public Notice*, the Bureau asked whether a directory assistance administrator would be necessary to maintain correct correlation between customers and their presubscribed DA providers, or to ensure that the telephone numbers are kept up to date if presubscription is implemented.[178] Bell Atlantic states that there is no need for such an administrator because Telegate's proposal is like long distance presubscription and local exchange carriers have kept their customers' presubscription selections up to date for years.[179] Metro One also believes that a database administrator is not necessary if competitive DA providers have nondiscriminatory access to the ILECs' DA listing databases.[180] Several parties, however, contend that a neutral third party administrator is necessary.[181] If an administrator is used, LTD suggests that consumers could select and change their DA providers by

[174] US West Comments at 12.

[175] Moultrie Comments at 4. (Moultrie states that the costs associated with implementation of competitive DA should be allocated to the interstate jurisdiction because, in a fully competitive DA service scenario, DA centers will likely be nationally or regionally centralized, and since a rational assumption can be made that facilities transporting DA queries to DA call centers likely contain interstate traffic in excess of ten percent. Moultrie also states that allocating to the interstate jurisdiction both the initial and ongoing costs and expenses associated with the implementation of DA competition should remove any argument any state public utility commission could make regarding state jurisdiction over the recovery of costs.)

[176] *See* 47 C.F.R. §§ 52.32-52.33.

[177] *See* Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701 (1998) (*Telephone Number Portability Third Report and Order*); *see also* Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 (2000) (*Numbering Resource Optimization Report and Order and FNPRM*).

[178] *Telegate Public Notice* at 3.

[179] Bell Atlantic Comments at 5, Bell Atlantic Reply Comments at 2.

[180] Metro One Comments at 7.

[181] LTD Comments at 5-6. *See also* Moultrie Comments at 3-4 (Moultrie also notes that a centralized database would ensure the privacy of nonpublished numbers); WorldCom Comments at 10-12.

calling a toll-free number.[182] We seek comment on whether a third party administrator is actually necessary. If so, how would this administrator be selected and what would its duties be?

f. Advanced Services

43. If 411 presubscription is implemented, LTD proposes that AIN technology could be used to bridge the digital divide for those consumers who own a telephone but do not have access to the Internet.[183] At present, the most sophisticated kinds of directories tend to be Internet-based, since this real-time, computer-connected medium permits a wide variety of searches and links to a wide variety of information, e.g., a street map containing the address of the contact desired. Pursuant to Section 706 of the Act, the Commission has been monitoring the deployment of advanced telecommunication services to all Americans.[184] Although the Commission has thus far found deployment to be "reasonable and timely" in general,[185] it has been noted that certain groups--including people from low-income, minority, and disability communities--may be lagging behind others in access to the Internet.[186] Accordingly, we seek comment on LTD's proposal. What additional services could be available and is there consumer demand for these services? How would customers be billed for these services? Could consumers use one provider for some services and another provider for other services? Would these services only be available through a consumer's presubscribed DA provider?

D. Other Solutions for Promoting Competitive DA Services

44. Metro One states that Telegate's proposal for DA presubscription is not an effective means of fostering competition in the DA market.[187] Metro One believes that presubscription would allow the DA market to continue to be dominated by a few well-known incumbent carriers because consumers are often unaware that their current service is actually being provided by an alternative DA provider or that competitive DA providers exist.[188] Thus, Metro One supports the use of alternative numbering mechanisms such as 555,[189] Carrier Access Codes (CACs),[190] or access numbers created by adding a two

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[182] LTD Comments at 6.

[183] LTD would also like to see a "human voice," with local knowledge, brought back to directory assistance. LTD believes this can be implemented through AIN and IP technology. LTD Comments at 3-5.

[184] *See* Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Second Report*, 15 FCC Rcd 20913 (2000) (*Second Broadband Report*). A third report from the Commission is now pending, for Congress has instructed the Commission to conduct regular inquiries concerning the availability of advanced telecommunications capability pursuant to section 706.

[185] *Second Broadband Report*, 15 FCC Rcd at 20918, 20991.

[186] *Id*. at 20918, 20994-21003.

[187] Metro One Comments at 2-3.

[188] *Id*. at 3-5.

[189] 555-XXXX numbers were originally intended for the support of DA service and are now used to provide a variety of information and telecommunications services. These numbers may be used for local or national services. *See* paras. 47-49, *infra*.

or three digit suffix to 411, which would enable multiple DA providers to have an easily recognizable number containing 411[191] for the provision of DA service. Metro One also believes that these are lower cost alternatives.[192] We explore these options in greater detail below. We seek comment on whether any of these options, or a combination of them, would an effective method of promoting competition among DA service providers. Would these methods be less burdensome than 411 presubscription? In addition, we seek comment on whether it would be technically, economically or administratively feasible to implement 411 presubscription when other numbering solutions exist that would promote customer choice in the retail DA market.

1. 411 Elimination

45. Telegate states that if presubscription to 411 is not implemented and/or alternative methods are used for providing DA service (*e.g.*, 555 numbers or CACs), then the use of 411 as an access code for DA must be eliminated.[193] We seek comment on this position. Moultrie supports Telegate's proposal for presubscription, but believes that the 411 code should be preserved.[194] Several other commenters who do not support presubscription also believe that the elimination of 411 is a bad idea.[195] We seek comment on the costs and benefits of 411 elimination. What is the potential impact of 411 elimination on customers? Would elimination of 411 create undue customer confusion? Is elimination necessary to create a fully competitive DA market?

2. Enhanced DA

46. At least one industry analyst expects enhanced DA services to grow, in both the wireline and wireless markets.[196] Further, Telegate's proposal indicates that it intends to supply an enhanced DA service, and wishes to do so using "411." Other competing DA providers also indicate their desire to offer enhanced DA. In the *N11 First Report and Order*, the Commission encouraged LECs to expand the range of service they offer to the public, but recognized the possible competitive advantage the LECs would be given if they were able to use N11 codes for their enhanced services offerings.[197] Thus, the Commission concluded that a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, non-discriminatory basis to competing enhanced service providers in the local area for which it is using the code to offer enhanced services.[198] As a result, ILECs cannot provide enhanced services via the 411 number unless they are

(Continued from previous page)

[190] CACs are created when a 101 number is followed by a carrier identification code (CIC). CICs are numeric codes that enable LECs providing interstate interexchange access services to identify the interstate IXC that the originating caller wishes to use to transmit its interstate call. *See* paras. 50-52, *infra*.

[191] *See* paras. 50-52, *infra*.

[192] Metro One Comments at 6.

[193] Telegate *ex parte* at 3, March 14, 2001.

[194] Moultrie Comments at 1.

[195] Bell Atlantic Comments at 10; GTE Comments at 5-7; SBC Reply Comments at 5.

[196] *See* Siwek Affidavit at para. 14 (*citing* Frost & Sullivan Report).

[197] *N11 First Report and Order*, 12 FCC Rcd at 5600-02.

[198] *Id*.

willing to make the code available to other providers. Because 411 presubscription would require ILECs to share the 411 code, we seek comment on the likely result that ILECs would then be able to offer enhanced services through 411.

3. National 555 Numbers

47. National 555 numbers were created to provide a variety of information and telecommunications services in the 555-XXXX format.[199] 555 numbers may be assigned for local or national (non-local) services.[200] The INC 555 Assignment Guidelines[201] define a National 555 number as a unique number in the 555 NXX assigned to an entity for use in at least 30% of all NPAs, states, or provinces in the NANP area.[202]

48. Metro One believes that using national 555 numbers for DA could be an effective alternative to 411 presubscription.[203] Metro One has found, however, that most ILECs will not activate Metro One's assigned 555 numbers.[204] Metro One recommends that the Commission act to ensure that national 555 numbers are made available and activated promptly and that the rates for the services are nondiscriminatory and cost-based.[205] We seek comment on Metro One's request and on the feasibility of using 555 numbers for DA services in general. What are the costs and benefits of implementing 555 numbers for DA services? Would 555 numbers enhance competition in the DA market? We seek comment on how a plan to provide DA using national 555 numbers would be implemented. Would the use of 555 numbers create customer confusion? Do technical or other barriers to the use of 555 numbers exist, and is Commission action necessary to overcome any such barriers?

49. We also seek comment on whether certain specific easily identifiable 555 numbers should be set aside for DA service providers. For example, we could set aside the 555-X411 and 555-411X numbers for DA service. We also seek comment on any other benefits or costs associated with setting aside easily identifiable 555 numbers for DA service, and whether any providers should be given priority for assignment of these numbers. We further seek comment whether easily identifiable national 555 numbers would offer access to DA sufficiently comparable to that provided by 411 that presubscription to 411 would not be necessary. If such national 555 numbers were used instead of 411 presubscription, would the introduction of national 555 numbers for DA obviate any need to eliminate 411?

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[199] *See* <www.nanpa.com>; *see also* Industry Numbering Committee, *555 Technical Service Interconnection Arrangements* at para. 1.2 (Sept. 10, 1999) (555 Service Arrangements).

[200] *See* <www.nanpa.com>.

[201] *See* Industry Numbering Committee, *555 NXX Assignment Guidelines* (July 13, 1998) (INC Guidelines).

[202] The NANP was established over 50 years ago by AT&T to facilitate the expansion of long distance calling. It is the basic numbering scheme for the United States, Canada, and most Caribbean countries. The NANP is based on a 10-digit dialing pattern in the format NXX-NXX-XXXX where "N" represents any digit 2-9 and "X" represents any digit 0-9. The first three digits represent the numbering plan area (NPA), commonly known as the area code. The second three digits represent the central office, or NXX code, commonly referred to as an exchange. The last four digits represent the subscriber line number.

[203] Metro One Comments at 6.

[204] *Id.* at 6.

[205] *Id.*

4. Carrier Access Codes

50. Carrier access codes (CACs) are created by adding a CIC to the prefix "101".[206] CICs are unique numeric codes that have traditionally been assigned to IXCs to identify them to LECs providing interstate interexchange access services.[207] A caller using a CAC may "dial around" his or her presubscribed IXC to reach an alternative IXC directly.[208] LECs use the CICs not only to route traffic to the proper IXC, but also to bill for interstate access services provided. CACs facilitate competition in the interexchange market by enabling callers to use the services of any IXC that the caller may choose, whether or not it is the IXC to which the caller is presubscribed.[209]

51. Metro One believes that assigning unique CICs to competitive DA providers would be a better, lower cost alternative to 411 presubscription.[210] LTD, however, states that it will be confusing for consumers to use CACs to access DA.[211] We note that the Commission can, at any time, assign unique CICs to competitive DA providers, and seek comment on whether CACs can provide a viable, immediate, low cost alternative to 411, and the relative costs and benefits of doing so. In particular, we seek comment on whether CACs could be an effective means of providing access to competitive DA service as compared to 411. We also seek comment on whether a limited number of CIC codes should be used for assignment to DA service providers. The Commission has recently reserved the 411X and X411 CICs for possible DA service.[212] We seek comment on whether the 411X and X411 CICs could provide consumers with several easily recognizable alternatives to 411 and whether these CICs should be reserved for particular DA service providers. We also seek comment on whether there would be a need to eliminate 411 or implement 411 presubscription with this approach. We seek comment on the viability and the limitations of this plan. Specifically, how would 411X and X411 CICs be assigned? What methods might be available for an equitable distribution of the 411X and X411 CICs? Should CIC numbers be used in addition to 555 numbers to provide consumers with even more options?

52. If the Commission implements access to DA service using CACs as an alternative to 411 presubscription, Metro One states that the Commission must promulgate and enforce rules and adopt procedures to ensure that these services are made available and activated promptly and that the rates and

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[206] *See* Implementation of the Subscriber Carrier Selection Change Provision of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers *Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 94-129, 14 FCC Rcd 1508, 1595-97 (1998).

[207] *Id*.

[208] *Id*.

[209] *Id*.

[210] Metro One Comments at 6.

[211] LTD Comments at 6.

[212] On June 25, 2001, the Chief, Common Carrier Bureau directed the North American Numbering Plan Administrator (NANPA) to make available for assignment additional Feature Group D Carrier Identification Codes, starting on August 6, 2001. *See* Common Carrier Bureau Direct the NANPA to Make Available For Assignment Additional Feature Group D Carrier Identification Codes, *Public Notice*, DA 01-1519 (CCB rel. June 26, 2001).

services are nondiscriminatory and cost-based.[213] We seek comment on whether such regulations would be necessary.

5. 411XX Numbers

53. Metro One argues that the most equitable solution to the DA issue, and possibly the easiest to implement, would be to assign a two or three digit suffix to the 411 access code, thereby giving every DA provider, including the ILECs, its own 411XX code.[214] When a caller dials 411XX, the call would be routed to a designated DA provider instead of the ILECs DA service call center. According to Metro One, this system would even the playing field for competitive DA providers, while preserving the 411 code.[215] SBC states that this idea is not fully developed and ignores potential problems such as the customer confusion that would arise from the use of longer codes with different identification numbers for each DA provider.[216] Some commenters caution that this system is limited by the number of providers it can accommodate due to the N11XX code.[217] We note, however, that adding two digits to 411 result in up to 100 411XX codes for DA service providers. If codes longer than N11XX were used, Bell Atlantic cautions that it would not be a very abbreviated code.[218] We seek comment on the costs and benefits of utilizing 411XX numbers for DA services. Would this five digit abbreviated code be effective in evening the playing field? Is this proposal technically and economically feasible? Furthermore, would using 411XX numbers in addition to 555 numbers or CACs enhance competition? We seek comment on these proposals and concerns.

6. State Regulations

54. We seek comment on how proposals such as 411 presubscription, 411 elimination, enhanced DA services, national 555 numbers, carrier access codes and 411XX numbers would affect the states. Specifically, we seek comment from state public service commissions on how such proposals might affect traditional state regulation of DA. We seek comment on which proposals would be most cost effective for the states and the least burdensome to implement. We also seek comment on the effect on existing state regulations of any of the proposals contained in this notice.

55. In this regard, BellSouth asserts that even if Telegate's proposal were technically and economically feasible, 411 presubscription still raises several public policy problems that the Commission would have to resolve after developing an appropriate record.[219] An initial concern echoed by BellSouth and other ILEC commenters is that state commissions have traditionally imposed requirements related to DA service on ILECs for quality of service, speed-of-answer, price, number of free DA calls per month, or, in the case of people with disabilities, free DA service.[220] ILECs question whether it is fair for the

[213] Metro One Comments at 6.

[214] *Id*.

[215] *Id*.

[216] SBC Reply Comments at 5.

[217] Bell Atlantic Reply Comments at 2; GTE Reply Comments at 7; SBC Reply Comments at 5.

[218] Bell Atlantic Reply Comments at 2-3.

[219] *Id*. at 4-6.

[220] *See* BellSouth Comments at 4-6; GTE Comments at 18.

Commission to take further steps to open the DA market to competition and thus reduce ILEC market share while independent DA providers remain free of these state regulations.[221] We seek comment on this issue. Specifically, would it be necessary for the FCC to establish minimum regulatory guidelines so that state PUCs can apply regulations to all competitors? If so, should all competitive DA providers be subject to such guidelines, or should regulation only be reserved for those providers with more than a *de minimis* share of the DA market?

IV. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

56. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a) (1994). Written submissions, however, will be limited as discussed below.

B. Regulatory Flexibility Act

57. As required by the Regulatory Flexibility Act (RFA),[222] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice*. 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 *Notice* provided below in section IV.D. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). [223] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[224]

1. Need for, and Objectives of, the Proposed Rule Changes

58. The Commission is issuing this *Notice* to seek comment on whether to modify the Commission's rules to permit presubscription to directory assistance services in order to promote competition and choice in the retail DA market. Additionally, the Commission seeks input concerning other methods of providing DA and their impact on consumers and providers. In the *Local Competition Second Report and Order*, the Commission anticipated that presubscription for particular services ultimately would be defined by technological, economic and marketing considerations, and noted its intent to monitor developments in this area and issue a Further Notice of Proposed Rulemaking to address these long range considerations so that end users would be able to preselect alternative providers for a multitude of services, including directory assistance. In the five years since the release of the *Local Competition Second Report and Order*, DA has grown from a simple method of obtaining a telephone number to a sophisticated voice-based portal that potentially can offer the consumer a wide spectrum of high quality services at competitive prices. We solicit comments as to whether the market for the

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[221] *See e.g.*, BellSouth Comments at 5.

[222] 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[223] *See* 5 U.S.C. § 603(a).

[224] *Id.*

competitive provision of directory assistance has developed to the point that additional steps must now be taken to ensure that all competitors have the same opportunity for access to customers and whether the directory assistance market is sufficiently open to competition that further regulatory action is unnecessary.

2. Legal Basis

59. The authority for actions proposed in this *Notice* may be found in sections 1, 2, 3, 4, 201, 202, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 152, 153, 154, 201, 202, 222, and 251.

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

60. 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.[225] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[226] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[227] 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.[228] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[229] Nationwide, as of 1992, there were approximately 275,801 small organizations.[230] "Small governmental jurisdiction"[231] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[232] As of 1992, there were approximately 85,006 such governmental entities in the United States.[233] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[234] The Census Bureau estimates that this

[225] 5 U.S.C. § 604(a)(3).

[226] 5 U.S.C. § 601(6).

[227] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, 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 definition(s) of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[228] Small Business Act, 15 U.S.C. § 632 (1996).

[229] 5 U.S.C. § 601(4).

[230] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[231] 47 C.F.R. § 1.1162.

[232] 5 U.S.C. § 601(5).

[233] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[234] *Id*.

ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities.

61. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, regarding FCC Form 499-A.[235]

62. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[236] These firms include a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator services providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated."[237] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this *Notice*. Since 1992, however, many new carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *Notice.*

63. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[238] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[239] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs.

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[235] FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Tables 1-2 (November 2001) (*Provider Locator*).

[236] *1992 Census* at Firm Size 1-123.

[237] 15 U.S.C. § 632(a)(1).

[238] *1992 Census* at Firm Size 1-123.

[239] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) codes 513310, 513330, and 513340.

64. 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.[240] 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.[241] We have therefore included small incumbent LECs in this RFA analyses, although we emphasize that this RFA action has no effect on FCC analyses and determination in other, non-RFA contexts.

65. *Interexchange Carriers* (IXCs). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[242] The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Reporting Worksheet*, FCC Form 499-A. According to our most recent data, 229 companies reported that they were engaged in the provision of interexchange services.[243] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 229 small entity IXCs that may be affected by the decisions and rules adopted in this *Notice.*

66. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[244] The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Reporting Worksheet*, FCC Form 499-A. According to our most recent data, 532 companies reported that they were engaged in the provision of competitive access services.[245] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate

[240] 15 U.S.C. § 632.

[241] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (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* 15 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). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g.*, Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket, 96-98, *First Report and Order*, 11 FCC Rcd 15499, 16144-45 (1996).

[242] 13 C.F.R. § 121.201, NAICS codes 513310, 513330, and 513340.

[243] *Provider Locator* at Table 1.

[244] 13 C.F.R. § 121.201, NAICS codes 513310, 513330, and 513340.

[245] *Provider Locator* at Table 1.

that there are fewer than 532 small entity CAPs that may be affected by the decisions and rules adopted in this *Notice.*

67. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[246] The most reliable source of information regarding the number of operator services providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Reporting Worksheet*, FCC Form 499-A. According to our most recent data, 22 companies reported that they were engaged in the provision of operator services.[247] Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator services providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 22 small entity operator services providers that may be affected by the decisions and rules adopted in this *Notice*.

68. *Payphone Providers*. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to payphone providers. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[248] The most reliable source of information regarding the number of payphone providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *Telecommunications Reporting Worksheet*, FCC Form 499-A. According to our most recent data, 936 companies reported that they were engaged in the provision of pay telephone services.[249] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of payphone providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 936 small entity payphone providers that may be affected by this *Notice*.

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

69. Future rules may require carriers to submit status reports concerning the technologies they will use to provide DA services. We expect the costs incurred in generating such reports to be nominal for all carriers, including small entities. Any costs incurred as a result of this proceeding on the entities affected, including any small businesses, will vary depending on the method of DA provision utilized and its underlying implementation costs. This proceeding may allow some small businesses to participate in the DA market for the first time, which would involve initial start-up costs. These costs, however, could be offset by future profits upon entering the market.

[246] 13 C.F.R. § 121.201, NAICS codes 513310, 513330, and 513340.

[247] *Provider Locator* at Table 1.

[248] 13 C.F.R. § 121.201, NAICS codes 513310, 513330, and 513340.

[249] *Provider Locator* at Table 1.

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

70. 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.[250]

71. This *Notice* offers several possible methods of opening the local DA market up to competition. Each of these methods will have a different impact on small businesses. One alternative involves eliminating the 411 code for DA services. This alternative would provide expanded opportunities for small businesses to enter the market; however, the cost of market entry appears significant. This alternative is discussed *supra* at paragraph 45. While this alternative provides a level playing field for all entities, it could also be the most technologically advanced requirement and the alternative with the greatest cost. A second alternative considered herein explores the possibility of using alternative dialing schemes (such as 555 numbers and abbreviated 411XX dialing codes). National 555 numbers were created to provide a variety of information and telecommunications services. In addition, 555 numbers and 411XX codes could be used instead of the alternative of 411 presubscription. Further comment on these thoughts is included *supra* in paragraphs 47 through 52. These alternatives could be easier to implement and less costly for small businesses to enter the market. Both of these alternatives are designed to open the local DA market to competition. Our belief is that by enhancing competition, we have created a space for small businesses to enter the market.

6. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules.

72. None.

C. Initial Paperwork Reduction Act of 1995 Analysis

73. This *Notice c*ontains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this *Notice*; OMB comments are due 60 days from date of publication of this *Notice* in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

[250] 5 U.S.C. § 603(c).

D. Comment Filing Procedures

74. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties shall file comments on or before thirty (30) days from the date of publication of this *Notice* in the Federal Register, and reply comments forty-five (45) days from the date of publication of this *Notice* in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 13 FCC Rcd. 11322, 11326 (1998).

75. Comments filed through the ECFS can be sent as an electronic file via the Internet to <www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, 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, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal From (FORM-ET) at <www.fcc.gov/e-file/email.html> .

76. 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 be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filing to Pam Slipakoff, Network Services Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C421, Washington, D.C. 20554.

77. Parties who choose to file by paper should also submit their comments on diskette to Pam Slipakoff, Network Services Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C421, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 99-273, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554.

78. Written comments by the public on the proposed and/or modified information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. No. 104-13, are due on or before 30 days after date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 – 17th Street, N.W., Washington, D.C. 20503.

79. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com**.** Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

80. Other requirements. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commissions rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments also must clearly identify the specific portion of this *Notice* to which a particular comment or set of comments is responsive. If a portion of a party's comments does not fall under a particular topic listed in the outline of this *Notice*, such comments must be included in a clearly labeled section at the beginning or end of the filing. For further information contact: Pam Slipakoff at (202) 418-7705 (voice), (202) 418-0484 (TTY), or pslipako@fcc.gov (e-mail).

V. ORDERING CLAUSES

81. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, 3, 4, 201, 202, 222, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154, 201,202, 222, and 251 the *Notice of Proposed Rulemaking* is hereby ADOPTED.

82. IT IS FURTHER ORDERED that the Commission’s Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary