

APPENDIX H

STATEMENT OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION REGARDING THE PROPOSED 415 NPA RELIEF PLAN

The California Cable Television Association (CCTA) acquiesces to the full service overlay for the 415 NPA relief¹ only with great reluctance.

CCTA recognizes that when an area code approaches the size of a single municipality, then the overlay *may* be the least disruptive alternative from a consumer perspective. We have reached that point in the 415 NPA where the geography of the current 415 NPA is essentially the geography of San Francisco. As one public speaker explained, "San Francisco really is only seven miles by seven miles and we feel very strongly about our geographic integrity" (9/23/98 Tr. At 30).

Meeting Record Highlights Anti-Competitive Aspects Of Overlays

With a few exceptions, public speakers conveyed the sentiment that San Francisco was too small to split again. However, in doing so, they also demonstrated why new entrants are harmed by the overlay.

As the representative from the California Small Business Association explained, "[For] A lot of small businesses the number itself has a value. If you change the area code it would have a significant impact." (9/23/98 Tr. At 25). A representative of the Geary Boulevard Merchants Association supported an overlay because one section of the city would retain the "prestigious 415" and the rest would get "an ambiguous area code." (9/23/98 Tr. At 47). With an overlay, the "prestigious 415" will largely be under the control of the incumbent. The "ambiguous area code" will be the stock in trade for new entrants. CCTA is concerned that rather than choose a local service provider based on features, service, and price, consumers instead will chose a provider based on area code.

Business Association representatives also reiterated their *impression* that overlays will allow businesses to show that they have been around a long time. As one businessman described; "And plus, you know, the businesses that have been around for a long time can show they have been around for a long time because they have the old area code." (9/22/98 Tr. At 23). CCTA is concerned that Pacific, with the vast majority of 415 numbers, will have an unwarranted advantage over its competition only because it is in a position to capitalize on that impression. Pacific will be able to attract a new business as a customer because that new business will wish to create the impression that it has been around for a while. In addition, existing businesses will be reluctant to change providers if a new entrant can't provide the 415 NPA for additional (non-ported) lines.

¹ It is unclear whether the Industry actually reached consensus on the overlay plan. The majority of voting CLECs abstained from supporting the plan. This CLEC willingness not to further oppose the 415 NPA overlay should not be construed as support for the overlay.

Telephone numbers are a public resource. The value of the existing area code provides the incumbent with a tremendous and unearned advantage in the local phone market. As described in more detail below, this advantage must be mitigated if the Commission is to impose an overlay on the 415 NPA.

The Meeting Record Highlights How New Businesses Will Be Harmed By An Overlay

While the voices of existing small businesses were well represented, the CPUC must consider the impact on new businesses. In expressing support for an overlay, the president of the Small Business Commission in San Francisco described the harm any business with the new area code would suffer;

...it might be a problem and hurt somebody's business when they have a separate area code. Or if I'm in a business ---a service-type business, I'm doing plumbing work or something, seeing a different area code might discourage people from going—using that business and encouraging people with the same area code.”(9/23/98 Tr. At 33)

A new business faces enough obstacles when entering a market. A new business is likely unwilling to face another obstacle in the form of an area code that flags them as a new business. Worse, absent adequate customer education, that new business may be incorrectly viewed as being located outside of the city or reachable only through a long distance toll call.

The Commission Must Assure That Its Overlay Education Program Effectively Educates the Public That The New Area Code Is The 415 NPA's Geographic Twin

The Director of the Golden Gate Restaurant Association feared a “loss of customers and business because, people, by habit, dial certain area codes and numbers.” (9/23/98 Tr. At 25). The Commission must assure that new habits necessary for a successful overlay are instilled into the public's dialing practice to mitigate this negative consequence of the overlay. Not only will this require that the public know that it must now dial ten digits to complete any call, but that San Francisco now has two area codes that are geographically indistinguishable. That message not only mitigates dialing confusion, but also may dampen some of the anti-competitive effect consequent to offering the new “ambiguous area code.”

The Commission Must Vigilantly Assure That Line Number Portability Is Truly Functional.

The representative from the California Small Business Association expressed the belief that competitive issues are “off the table” because portability issues have been addressed. (9/23/98 Tr. At 25). As meetings of the California Number Portability Task Force reveal, significant implementation failures remain. While the incumbents and new entrants are addressing these failures in industry fora – it is certainly premature to claim that the ability to reliably port numbers is available anywhere in California.

Meeting Record Is Not A Substitute For Statistically Valid Consumer Preference Surveys

While the 415 meeting record is one tool to collect public input, the Commission has recognized that such public hearing records are no substitute for statistically valid consumer preference surveys.

Small business associations, such as the California Small Business Association regularly attended public meetings and repeated the claim that changing the area code would be harmful to small business. Largely absent from the public meetings were big business representatives and residential consumer interests. Moreover, based on conversations with business association representatives, it was clear that Pacific Bell played an active and significant part in orchestrating the “pro-overlay” record by meeting with the various small businesses associations prior to the meeting. While it is within Pacific Bell’s discretion to seek support for its view, such efforts call into question whether the meeting record has any value as an unbiased indicator of consumer preference.

There still remains only one set of “scientifically valid” indicators of consumer preference – the surveys ordered by this Commission. As the Commission well knows – those surveys show overwhelming preference for the split. CCTA recognizes that California has experienced several rounds of area code relief since those studies were conducted and that such experience may effect the outcome of future surveys. Indeed, CCTA has enough confidence that public sentiment would have changed sufficiently to warrant support for the overlay **under the circumstance unique to the 415 NPA.**

Overlay Heightens The Need For Number Optimization Measures That Access Incumbent’s Imbedded Base Of Numbers

For the competitor (and consumer) related reasons described above, a 415 NPA overlay heightens the need for the Commission to continue to pursue measures that will greatly improve the utilization of available telephone number resources (e.g. rate center consolidation, number pooling, local porting of unassigned numbers). CCTA urges the Commission to support, where it can, number optimization policies that access the incumbents’ imbedded base of numbers. Both telephone line pooling and porting of unassigned numbers can be used for this purpose. Only then will the market for local telecommunication services not distort the value of well-recognized area codes in favor of the incumbent. CCTA urges the Commission to actively participate in the national forums that have been formed under the auspices of the FCC to improve the utilization of available numbering resources. We believe that with California’s active participation at the national level, many of the measures that will improve number resources utilization and mitigate undue and unearned numbering advantages can be implemented at the national level in the next two to three years.

APPENDIX I

SUMMARY OF AREA CODE CUSTOMER PREFERENCE SURVEYS SUBMITTED TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION:

GTE California Incorporated (GTEC) Survey:

- Initial preference between the two plans shows “near uniformity of opinion across the General Residential, Hispanic and Total Business Samples, *all of whom strongly prefer the Split Plan*” (GTEC at 16. Emphasis added).
- Informed preference between the two plans showed the split plan continued to be chosen decidedly more often than the Overlay plan, with those continuing to prefer the Split Plan claiming to be more strongly committed to their position than those opting for the Overlay Plan (GTEC at 18).
- Even when told a split plan will last *only three years*, residential customers continue to favor the Split, while business customers become divided in their preference between the two plans.

Pacific Bell Survey:

- Splits had strong initial support, residential and business customers alike prefer the split to the overlay by as much as a *four to one margin* when given a brief of the two plans (Pacific Bell at C-1).
- Informed evaluation tended to create a little more support for the overlay, but *the split is still preferred by very wide margins.*”(Pacific Bell at C-1)
- Only where overlays last substantially longer than splits, do a small segment of those surveyed show an increased willingness to accept overlays.

Gilmore Survey

- After informed evaluation, splits were favored by 80% by residents and by 72% among business representatives (Gilmore at 34).
- Even when presented with the most negative aspect of a split and the most positive aspects of an overlay, the majority of respondents, both residential and business, regardless of area code, continued to prefer the split.

**Residential and Business
Customer Evaluations of
Split and Overlay Plans
for Area Code Relief**

A Statewide Survey

conducted for
Pacific Bell

RESEARCH REPORT

FIELD

RESEARCH

CORPORATION

MARKETING AND PUBLIC OPINION RESEARCH



AREA CODE EXHAUST TELEPHONE SURVEY

Prepared for:

ICG Access Services, AT & T, CCTA, Sprint, MFS, TCG and MCI

Prepared by:

Gilmore Research Group

July, 1996

**Residential and Business
Customer Evaluations of
Split and Overlay Plans
for Area Code Relief**

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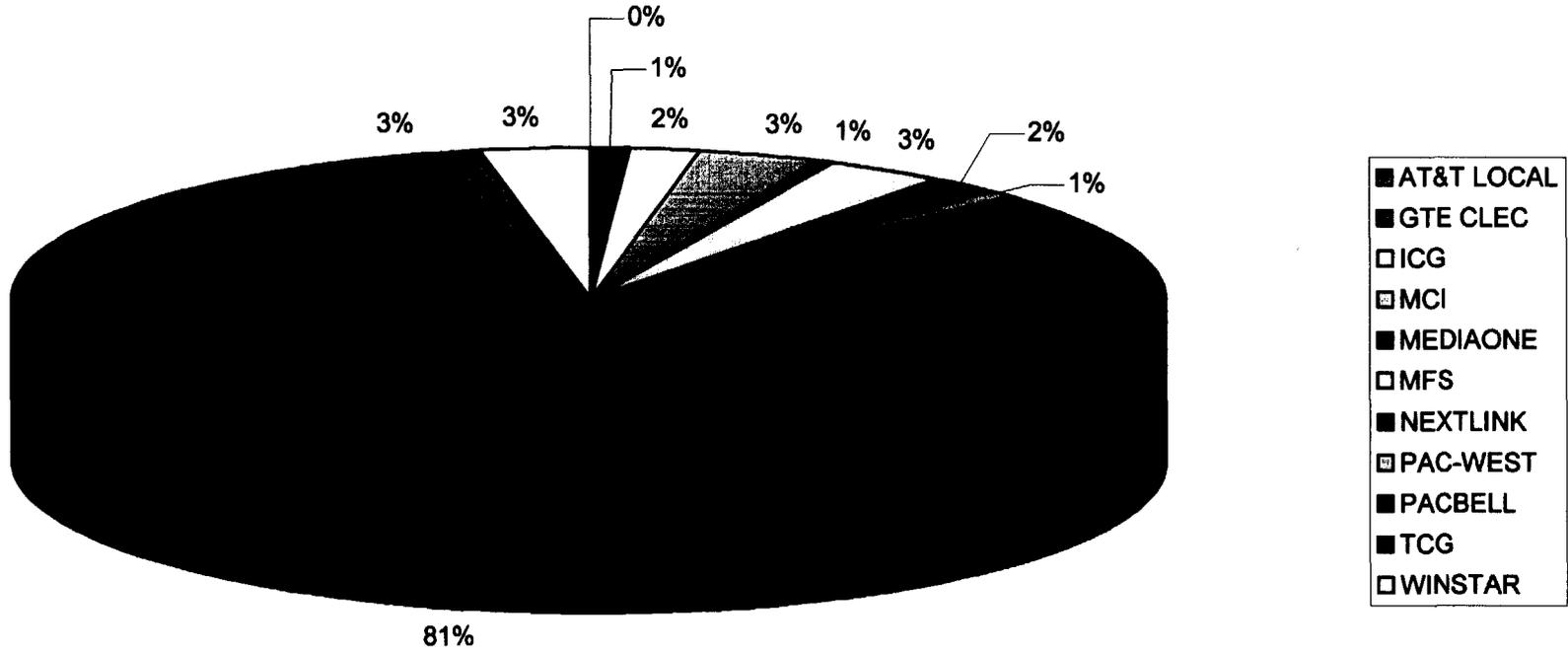
Summary of Preferences

	Residential											Business															
	Total	213	310	415	510	619	714	818	916	408	209	707	805	Total	213	310	415	510	619	714	818	916	408	209	707	805	909
Initial preference:																											
Prefer Split	64	50	62	65	73	66	67	63	66	62	68	59	50	53	58	65	60	56	52	63	64	67					
Prefer Overlay	14	17	18	17	10	15	19	16	13	11	12	22	30	29	28	19	16	22	25	18	18	17					
No preference	21	33	20	19	16	19	15	20	20	27	20	19	20	18	14	15	24	22	23	19	18	16					
After evaluating features																											
Prefer Split	69	53	62	65	77	76	70	70	72	70	71	64	48	55	62	70	71	64	56	70	65	72					
Prefer Overlay	23	33	28	27	16	17	25	24	21	21	21	30	43	39	31	25	23	29	37	25	30	24					
No preference	8	14	10	8	7	8	5	6	7	9	8	6	9	6	7	5	6	7	8	5	5	4					
(Base)	3781	395	315	388	459	479	427	401	490	185	242	4468	426	390	504	497	528	503	457	552	264	347					
After told both last XI years:																											
Value of XI		5	3	4	5	4	5	5	5	5-6	8		5	3	4	5	4	5	5	5	5-6	8					
Prefer Split	61	48	57	58	70	66	64	61	68	60	61	60	46	49	55	66	64	60	51	65	64	67					
Prefer Overlay	22	27	28	25	14	16	24	25	19	23	19	29	39	41	33	25	24	28	34	24	27	21					
No preference	17	24	15	18	16	17	12	15	12	17	20	11	15	9	12	9	11	13	14	11	9	11					
After told split XI, overlay Y																											
Value of XI		5	3	4	5	4	5	5	5	5-6	8		5	3	4	5	4	5	5	5	5-6	8					
Value of Y		10	13	9	10	9	10	10	10	10-13	16		10	13	9	10	9	10	10	10	10-13	16					
Prefer Split	52	43	44	51	59	57	56	53	59	53	53	52	37	37	48	62	58	51	47	62	57	60					
Prefer Overlay	34	39	43	35	25	30	34	38	27	36	33	38	51	56	42	31	32	37	44	30	35	31					
No preference	13	19	13	14	16	13	10	9	14	11	14	9	12	7	11	8	10	12	9	8	8	9					
After 1/2 told keep NPA and 1/2 told get new NPA																											
Prefer split	61	50	58	60	71	65	63	60	63	58	62	63	46	53	55	71	68	64	59	72	65	68					
Prefer overlay	19	27	23	19	15	13	22	20	17	18	21	23	33	31	32	18	20	23	28	18	21	17					
No preference	20	23	19	21	15	22	15	20	20	24	18	14	21	15	13	11	13	14	13	10	14	15					
(Base: Received basic scenario)	3169	345	315	322	358	347	340	322	393	185	242	3694	355	390	393	408	384	378	334	441	264	347					

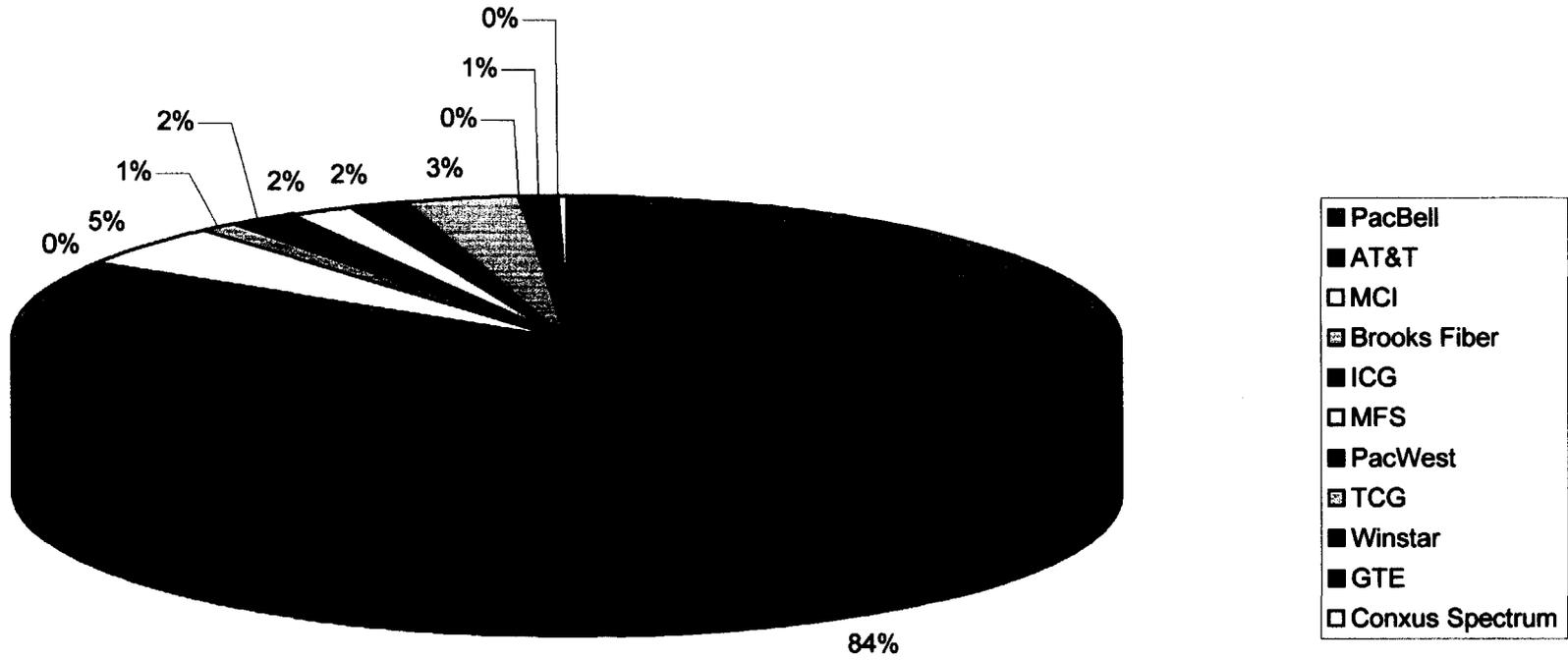
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APPENDIX J

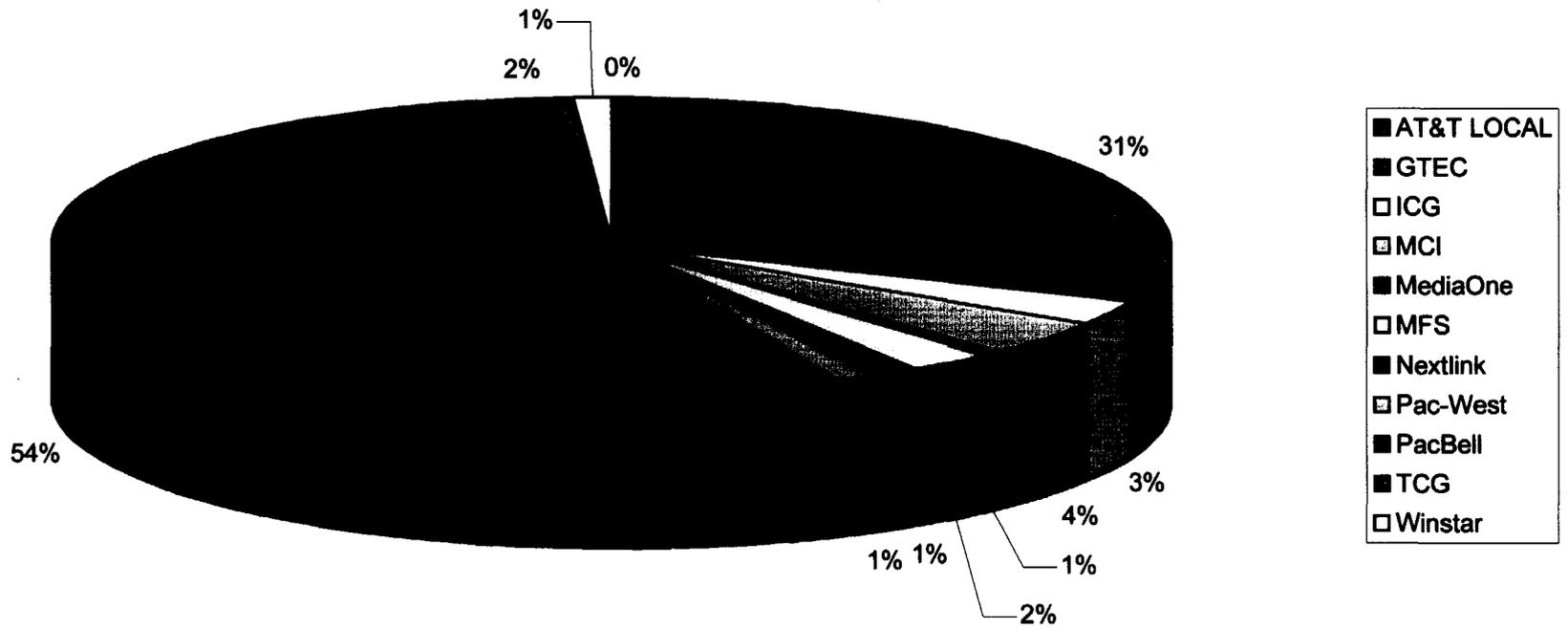
PACBELL'S PIECE OF 310 NPA CODES



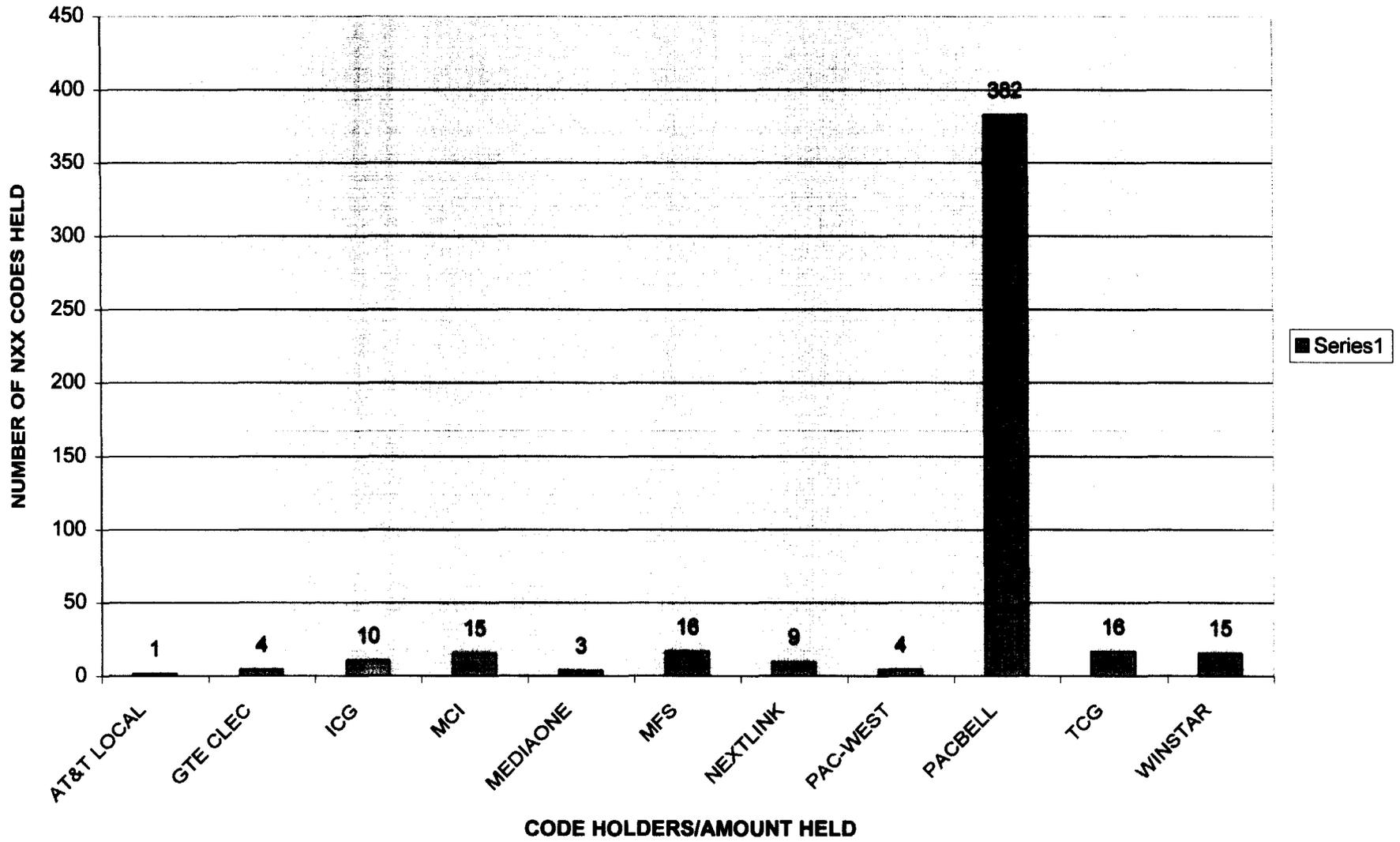
PACBELL'S SLICE OF 415 CODES ASSIGNED TO WIRELINE



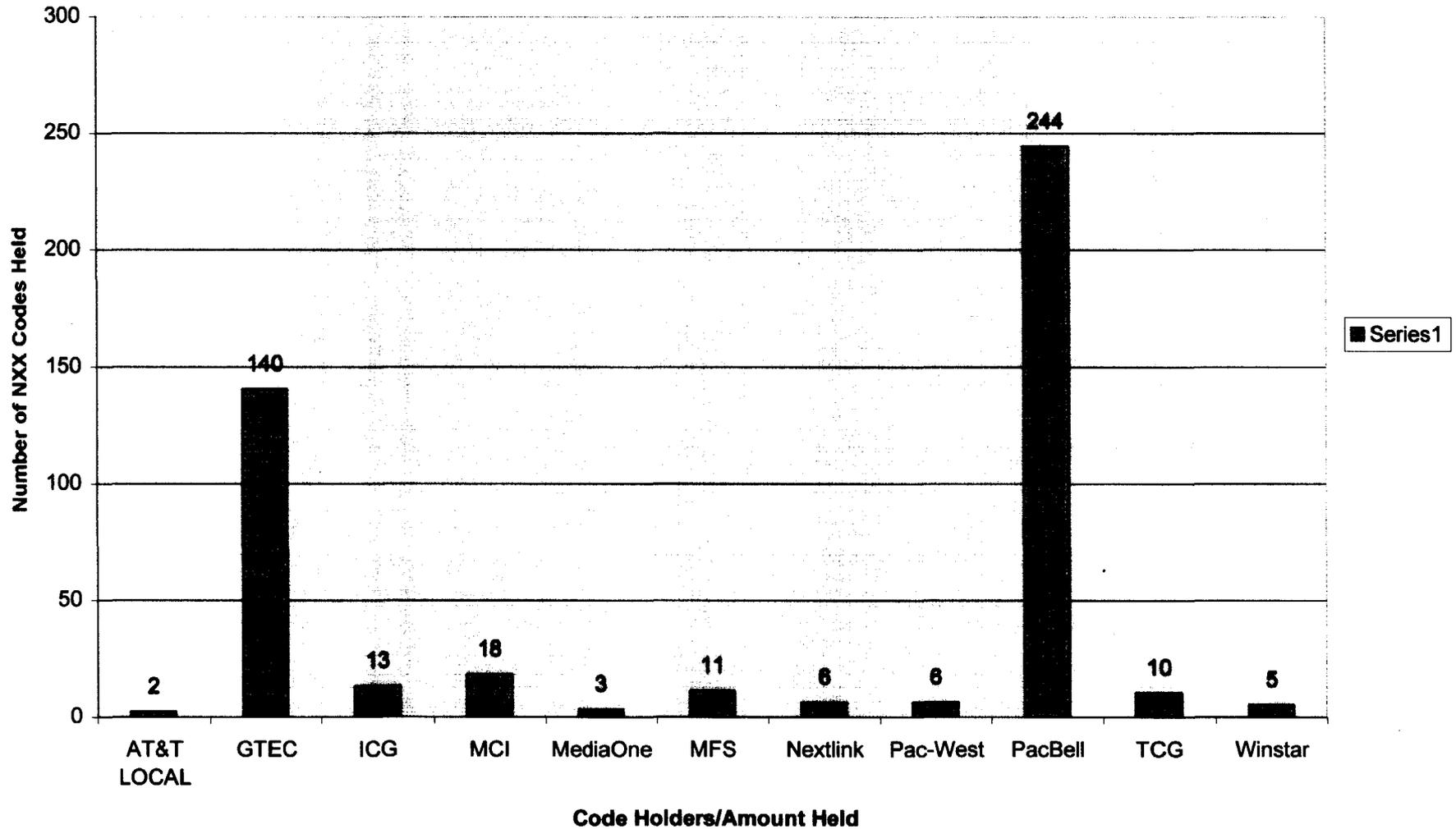
310 NPA CODES ASSIGNED TO WIRELINE PROVIDERS



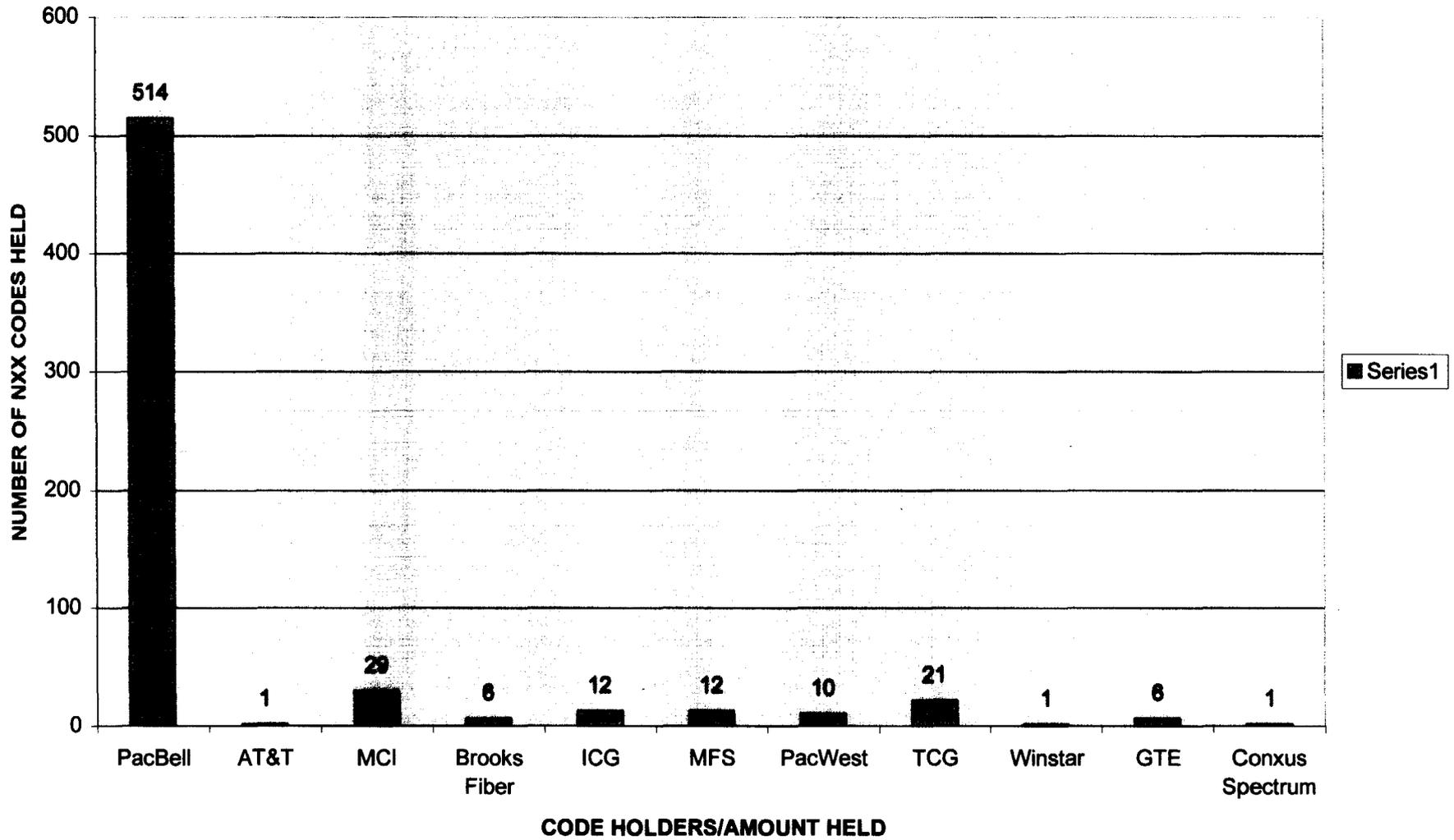
213 NXX CODES ASSIGNED TO WIRELINE PROVIDERS



**310 NXX CODES ASSIGNED TO WIRELINE PROVIDERS
BASED ON LERG (April 23, 1998)**



**415 NXX CODES ASSIGNED TO WIRELINE PROVIDERS
BASED ON THE LERG (APRIL 23, 1998)**



APPENDIX K

Case File

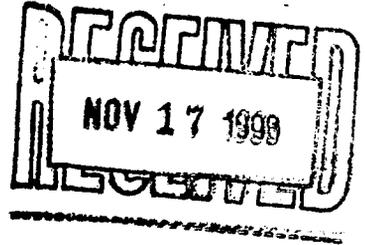
BEFORE THE
PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Order Instituting Rulemaking on
the Commission's Own Motion
Into Competition for Local
Exchange Service.

R.95-04-043

Order Instituting Investigation on
the Commission's Own Motion
into Competition for Local
Exchange Service.

I.95-04-044



**REPLY OF THE CALIFORNIA TELECOMMUNICATIONS COALITION
TO "EMERGENCY PETITION" TO MODIFY DECISION 96-12-086**

The California Telecommunications Coalition¹ herewith replies to the "Emergency Petition" ("*Petition*") filed by SBC/Pacific Bell ("SBC/Pacific") to modify this Commission's Decision 96-12-086, governing the methodology the telecommunications industry uses to fashion relief of exhausting area codes in California.

SBC/Pacific's Petition fails to comply with Rule 47(d), and the

¹ Joining this pleading are AT&T Communications of California, Inc. (U 5002 C), AT&T Wireless of California, Inc. (U 3010 C), Redding Cellular Partnership (U 3020 C), Santa Barbara Cellular Systems, Ltd. (U 3015 C), MCI Telecommunications Corp. (U 5011 C), the California Cable Television Association, Sprint Communications Company L.P. (U 5112 C), MediaOne Telecommunications of California, Inc. (U 5549 C), NEXTLINK California (U 5553 C), ICG Telecom Group, Inc. (U 5406 C), and Time Warner Telecom of California, LP (U 5358 C).

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Commission must therefore summarily deny it. In addition, SBC/Pacific offers no credible reason for this Commission to modify Ordering Paragraph 1 articulating a policy that limits the adoption of overlays as a method of area code relief before the end of 2000. Rather than treating Ordering Paragraph 1 as a ban, as SBC/Pacific alleges, the Commission has recognized that Ordering Paragraph 1 sets a rebuttable presumption in favor of splits, based on an extensive record, including three customer surveys (one of which was sponsored by SBC/Pacific) demonstrating "broad customer preferences in favor of geographic splits...." (D.96-12-086 (*mimeo*) at 22), as well as the anticompetitive aspects of overlays prior to the availability of 10 digit dialing and the implementation of number portability.

The Commission's practice under Ordering Paragraph 1 has thus allowed this Commission to consider overlays where consumers indicate a preference for overlay relief, and where some of the anticompetitive aspects of overlays have been mitigated. The Commission should continue to leave the industry free to fashion area code relief in a manner that best suits the circumstances pertaining to any particular NPA, on a case-by-case basis, and consistent with its findings in D.96-12-086. It can do this without altering its presumption in favor of splits.

Moreover, SBC/Pacific has failed to show that the circumstances which formed the basis for the adoption of the Commission's presumption in favor of splits have changed, and that customers no longer prefer split relief to overlays. Accordingly, the Coalition strongly opposes the *Petition's* urging

that the Commission erect a "rebuttable presumption" in favor of overlays in all of California's major metropolitan areas.

I. The Petition Fails To Comply with Rule 47(d).

Rule 47(d) of this Commission's Rules of Practice and Procedure² requires that, for any petition for modification filed more than one year after the decision sought to be modified, the petitioner explain why the petition could not have been filed within the year. SBC/Pacific's attempt to comply with the Rule consists of two justifications of its attempt to overturn a decision nearly two years old: an allegation that the "explosion in demand" for numbers in California occurred after December, 1997, and the contention that the Commission "extended" what SBC/Pacific incorrectly characterizes as a "ban" on overlay relief in D.98-06-018.

These assertions are false. First, the explosion in demand for telephone numbers in California has been developing for some time. After all, it was Pacific Bell that argued, in Case Nos. 94-09-058 and 95-01-001

² Rule 47 provides:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

(regarding relief for the 310 NPA),³ that demand for numbers in California was “exploding” as long ago as 1995.⁴ This was, indeed, one of the bases for Pacific Bell’s advocacy of an overlay in that case – in strikingly similar language to that contained in the instant Petition. In addition, SBC/Pacific was, until recently, the California Code Administrator. For it to claim that it did not know about the explosion in demand for numbers in California until after December, 1997, is simply not credible. Moreover, the demand for numbers is irrelevant to customer preferences, which is the basis for the policy adopted in D. 96-12-086.

SBC/Pacific’s other proposed justification of its late filing of this attempt to overturn D.96-12-086 is two-pronged: the Decision constituted a “ban” on overlays, even extending to a ban on *discussion* of overlays (*Petition* at 38-39), and D.98-06-018, declining to adopt an overlay for relief of the 619 NPA, was an “extension” of this “ban.” Both assertions are false. As discussed further below, both this Commission and the industry have actually considered overlays as a method for relieving virtually every area code for which exhaust planning has occurred since December of 1996. The Commission has, in fact, ordered an overlay for relief of the 310 NPA;

³ Under the North American Numbering Plan, area codes are referred to as Number Planning Areas or “NPAs.”

⁴ See Case Nos. 94-09-058 and 95-01-001 (1995), Exhibit (“Ex.”) 29 (Testimony of Bruce Bennett, Pacific Bell) at 10, *ff*; Ex. 30 (COCUS Results); Ex. 27 (Pacific Bell Press Release: “310 Running Out of Telephone Numbers Faster Than Industry Predictions”); Ex. 21 (Testimony of Diane Holguin, Pacific Bell) at 3-4.

has drafted a decision for the November 19, 1998 conference that would allow an overlay in the 408 NPA based on the particular circumstances in that NPA; and will soon receive two relief plans from the Code Administrator, Lockheed Martin, reflecting an industry consensus for overlay of the 415 NPA and 650 NPA. Consequently, no controversial area code relief plans will be subject to resolution under the Commission's policy.⁵ Moreover, D.96-12-086 provided for a further phase of this proceeding to "consider development of an overlay policy for densely populated regions where relief will not be implemented until after January 1, 2001." (Ordering Paragraph 3). It is, thus, misleading to characterize the Commission's approach to overlay as a "ban."

Further, it is entirely inapposite to describe as "an extension of the ban" this Commission's rejection of an overlay for relief of the 619 NPA, in D.98-06-018. When it considered the overlay alternative that SBC/Pacific and others posed for relief of the 619 NPA, it did not "extend the overlay ban to area codes not listed in D.96-12-086," as SBC/Pacific claims,⁶ but merely applied the policy considerations it set out in D.96-12-086 and subsequent decisions to the facts presented regarding relief of the 619 NPA.

⁵ The overlay options for the 760, 714, 818 and 510 NPAs have implementation dates of January 6, 2001 and later. The Coalition recognizes, however, that the Commission may choose to accelerate relief for those area codes so that they are implemented before January 1, 2001. Only if the Commission does so is the policy established in D.96-12-086 implicated.

⁶ *Pacific Bell's Emergency Petition to Modify Decision 96-12-086* (October 15, 1998) (hereafter "Petition") at 15.

The considerations underlying this Commission's policy on area code relief were well known to SBC/Pacific at all times since December of 1996. Thus, their application, in June of 1998, to relief of the 619 NPA was neither new or unexpected. SBC/Pacific's claim that "it was not clear until...June, 1998" (*Petition* at 14) that the Commission would apply those principles to the 619 NPA is simply untrue.

Because SBC/Pacific has, thus, not justified its submission of a petition for modification of D.96-12-086 nearly two years after its issuance, this Commission should summarily deny it, as Rule 47(d), *supra*, directs.

II. The Commission Does Not Need To Alter Ordering Paragraph I

The Coalition regards the words of Ordering Paragraph 1 of D.96-12-086 as setting a presumption and, thus, does not believe that the Commission needs to modify that language to make it clear that the industry may, and the Commission will, consider all potential forms of area code relief in each relief project, selecting the method that conforms to the requirements of competitive neutrality, to consumer preferences, and is best suited to the unique factors found in the particular areas to be relieved.

A. Overlays Are Already Being Considered in All Relief Planning.

The industry currently considers all possible means of relieving each area code that is approaching exhaust; indeed, the "Overlay Coalition" to which SBC/Pacific's *Petition* (at 14) alludes has been creative in fashioning

phased relief so that initial relief – implemented before the advent of local number portability (“LNP”) in the area relieved – would be by geographic split, with subsequent relief – implemented after LNP is made available – by overlay.⁷

As a result, overlays have been, or are being, considered in *every area code where relief will be implemented by the end of 2000*. Thus, SBC/Pacific is already enjoying a portion of the “relief” it is requesting. The Commission’s practice, as well as industry’s practice, clearly indicate that Ordering Paragraph 1 identifies a presumption in favor of splits, not a “ban” on overlays, as SBC/Pacific alleges.⁸

B. A “Rebuttable Presumption” in Favor of Overlays Would Be Poor Public Policy.

SBC/Pacific’s *Petition* asserts, without foundation, that geographic splits take longer than overlays to implement and are less “effective” (*Petition* at 23-28), that there are no remaining competitive concerns regarding overlays (*Petition* at 28-31), and that the Commission’s current policy violates the Public Utilities Code (*Petition* at 38-39). All of these contentions are incorrect, as established below.

⁷ See, e.g., *408 NPA Exhaust Relief Plan* (August 20, 1998). The industry will also present a phased split/overlay plan to local jurisdictions at the December 8, 1998 planning meeting for the 760 NPA.

⁸ If, however, the Commission is troubled by any inconsistency between the literal words of Ordering Paragraph 1 of D.96-12-086 and the industry’s actual practice, AT&T would separately support a modification of D.96-12-086 that would permit overlay relief anywhere that LNP and mandatory eleven-digit dialing has been implemented throughout the area to be relieved.

The selection of a split vs. an overlay for any particular area requires consideration of a complex mix of factors, including the geography of the area, the variability in business and residential growth rates across the region, the number of times the area has previously been split, the physical size of the area to be relieved, and the projected lives of the new area codes after relief. Nevertheless, this Commission adopted Ordering Paragraph 1 because three customer surveys, one of which SBC/Pacific sponsored, indicated that customers preferred split relief to overlays. SBC/Pacific offers no evidence to indicate that customer preference for splits has changed.

In fact, the "changed circumstances which SBC/Pacific describes (the shortages and rationing of NXXs) is unrelated to the issues addressed in D.96-12-086 (e.g., consumer impacts of geographic splits vs. overlays). While designed to portray overlays as the "solution" to the number shortage, SBC/Pacific's Petition shows that the number shortage continues, even in areas where an overlay has been adopted. As SBC/Pacific states, "the specific high growth urban NPAs specifically listed above are the most problematic high growth areas of the state, areas subject to an extremely high level of rationing..." (p.40). The list SBC/Pacific cited includes the 310/424 overlay area codes. A better way to address the number shortages SBC/Pacific cites is the adoption of number conservation measures and, where appropriate, area code relief consistent with FCC guidelines. Accordingly, this Commission should reject SBC/Pacific's suggestion of a "rebuttable presumption" in favor of overlays as a relief method in all cases.

1. **This Commission Has Already Considered, And Rejected, SBC/Pacific's Contention That Overlays Can Necessarily Be Implemented More Quickly Than Geographic Splits, or are Otherwise More "Effective."**

The Coalition acknowledges and accepts the incontrovertible fact that carriers' demand for new NXXs is growing exponentially. The Coalition denies, however, that the level of demand or its geographic distribution has been affected in any way by the selection of geographic splits as the primary means of relieving exhausting area codes.⁹ In virtually every pleading SBC/Pacific has filed since D.95-08-052 rejected its initial recommendation of an overlay for the 310 NPA, SBC/Pacific has contended that it can implement overlays more quickly than it can implement geographic splits. In fact, in Case Nos. 94-09-058 and 95-01-001, Pacific Bell actually testified that the quickest it could implement a geographic split of the 310 NPA was 22 months! See Ex. 42 (Testimony of Philip Mahoney, Pacific Bell) at 3. Obviously, SBC/Pacific managed to implement the 310/562 split – and every subsequent geographic split since then -- in less than 22 months.

The simple fact is that SBC/Pacific has never implemented an overlay in California and, thus, has little or no basis for speculating about the relative speed of implementation of the two main methods for area code relief. Moreover, SBC/Pacific is only now in the process of completing its

⁹ In this Reply, the Coalition will make no further response to this claim, even though it consumes by far the vast majority of SBC/Pacific's *Petition*. This Reply, by contrast, concentrates instead on the real policy issues presented by the choice of a geographic split or an overlay for the relief of any particular area code.

deployment of LNP in California's major metropolitan areas. To date, only 6,350 numbers have been ported in the entire western coast region,¹⁰ and call completion problems have surfaced. Since this Commission has correctly made the successful implementation of LNP a condition precedent to adopting overlay relief in any area, it must assure itself that such implementation is operating according to specifications before adopting an overlay in any particular area.

Carriers have already begun informing this Commission about the inevitable "shake out" issues with SBC/Pacific's implementation of LNP.¹¹ While the Coalition is confident that the industry, working cooperatively, can overcome these problems, there is simply no basis for any party – not even SBC/Pacific – to claim with the certainty assumed by SBC/Pacific's *Petition* that overlays will *always* be an appropriate relief method, or that consumers have indicated a preference for overlays. Only a consensus of the industry – including the business, competitive and technological perspectives of a wide variety of carriers – can determine what will be competitively neutral and work the most quickly and effectively in any given area.

¹⁰ See *Active Subscription Versions Report* NPAC website (www.NPAC.com/docs/sv_cvt.txt).

¹¹ *California Public Utilities Commission Telecommunications Division Final Staff Report, Pacific Bell and Pacific Bell Communications Notice of Intent to File Section 271 Application for InterLATA Authority in California* (October 5, 1998) (*mimeo*) at 128-131; *California LNP Task Force Meeting Minutes* (October 15, 1998) at Attachment 4 (*OPI Subcommittee Report*, October 14, 1998) at 2 ("Activation Troubles"), *ff.*

The Coalition acknowledges that, in major urban areas where the size of area codes has become sufficiently limited and further geographic splits cannot be accomplished without dividing major communities of interest, overlays may be preferable to splits, notwithstanding the overlay's remaining anticompetitive attributes. The industry and this Commission, however, should not adopt a presumption on an *a priori* basis, without evidence that overall customer preferences for splits have changed. Until that has been shown, only case-by-case consideration of the many relevant factors can lead to the best decision for each locale requiring area code relief.

This Commission's policy, reflected in Ordering Paragraph 1 of D.96-12-086, was based on customer preferences for splits. Ironically, nowhere in SBC/Pacific's Petition does it suggest that the Commission ask whether the customer preferences have changed. Thus, the Commission must reject SBC/Pacific's allegation that "changed circumstances" require modification of Ordering Paragraph 1.

2. Notwithstanding the Implementation of LNP and Mandatory, Eleven-Digit Dialing, Overlays Pose Serious Competitive Problems for New Entrants.

While this Commission has identified the implementation of LNP and mandatory eleven-digit dialing in the vicinity of proposed area code relief as conditions precedent to the implementation of overlay relief, there are other factors that continue to make overlay relief competitively more desirable for ILECs than for their competitors.

The fact is that, through "churn" -- the coming and going of customers from any geographic area -- the ILECs will typically have more numbers in existing, familiar and, therefore, desirable area codes than will new entrants. This is so even with the lottery guaranteeing a priority for "initial codes" new entrants. With SBC/Pacific continuing to serve over 97% of the lines in its service territory nearly three years after the passage of the Telecommunications Act of 1996, it is continually retrieving the telephone numbers of customers that move out of the area served by those numbers. In this way, SBC/Pacific is guaranteed a virtually inexhaustible supply of numbers in well-established, recognized and, therefore, desirable older area codes. Thus, it is almost always SBC/Pacific, and not its rivals, that can offer a customer an initial number in one of those desirable area codes. Moreover, and for the same reason, SBC/Pacific is -- and will remain for the foreseeable future -- much more likely than its competitors to be able to offer customers additional lines in the same area code.

The *Petition* devotes many pages to complaints about the NXX code lottery, even though there is no connection between its existence and the means selected to relieve area code exhaustion -- and SBC/Pacific demonstrates none. As an aside, the Coalition notes that, contrary to SBC/Pacific's assertion, SBC/Pacific is in no worse position in the lottery than any carrier that has already received its initial NXX in a particular NPA. Today, some CLCs have received initial codes in NPAs they wish to serve, so they are in the same position as SBC/Pacific *vis-à-vis* the lottery, and while

more NXXs are assigned from the initial category, far more carriers are competing for them, making any individual carrier's chances slim. The Commission should, thus, simply ignore the *Petition's* lengthy diatribe against the lottery. The Coalition urges the Commission to proceed apace with number conservation measures that the FCC has found to be within its authority, such as rate center consolidation, to address the inefficient use of NXXs by carriers.

So long as SBC/Pacific retains its advantage in being able regularly to retrieve numbers relinquished by its millions of customers, overlays will merely work to expand its superior competitive position. Code conservation measures, such as thousands-block assignments, individual telephone number assignments, porting of unassigned numbers, and, most important, rate center consolidation, can eventually vitiate SBC/Pacific's competitive advantage, but these measures will not be implemented soon. Until they are, overlays will continue to provide SBC/Pacific with an unwarranted competitive advantage over its rivals wherever they are implemented.

The carriers in the Coalition are resigned to SBC/Pacific's competitive advantage whenever they conclude, as they have for the 415 NPA, that overlay is the best area code relief method for a particular area. This is because the Coalition partners acknowledge that it is necessary to have numbers available, even if their availability comes at a steep competitive price. This Commission, however, should not, as SBC/Pacific suggests, *mandate* this competitive advantage for SBC/Pacific by creating the

“rebuttable presumption” in favor of overlays that SBC/Pacific seeks.

3. D.96-12-086 in no way violates PU Code §7930.

The most dubious assertion in SBC/Pacific’s *Petition* is its claim that this Commission’s area code relief policies somehow violate the provision of the Public Utilities (“PU”) Code that governs the conduct of public meetings. PU Code §7930 directs that public meetings present measures to mitigate potential disruptions or economic hardships that area code relief may impose. SBC/Pacific argues (*Petition* at 38-39) that failing to present overlay as an alternative relief method in public meetings violates this statutory requirement, because, in SBC/Pacific’s view, overlay would mitigate potential disruptions and economic hardships. This argument ignores the fact that, at *all* recently-held public meetings, the industry has presented overlay alternatives or, at a minimum, phased split-overlay alternatives to the public.

Not only, then, has this Commission’s policy not violated PU Code §7930, but SBC/Pacific has taken maximum advantage of its ubiquity, its community involvement, and its massive resources to organize “public” input to this Commission in favor of overlay.¹² Clearly, there is no statutory violation (*Petition* at 38-39) inherent in the Commission’s implementation of area code relief policy.

¹² The Coalition places “public” in quotes since many of the witnesses that testify in favor of overlays at public meetings are ones that SBC/Pacific has mobilized, including retired SBC/Pacific executives and recipients of SBC/Pacific “community involvement” grants.

III. Summary and Conclusions

The Commission should dismiss the *Petition*, for two reasons: it violates Commission Rule 47(d)¹³ and seeks establishment of an unwise presumption in favor of one particular method of relieving exhausting area codes. On the procedural issue, all of the matters SBC/Pacific raises in the *Petition* have appeared in its pleadings over the years since D.95-08-052, regarding the initial relief of the 310 NPA, and are subject to *res judicata*. There was, thus, no legitimate reason for SBC/Pacific to have waited until now to seek modification of D.96-12-086.

Substantively, the *Petition* seeks the establishment of a so-called “rebuttable presumption” in favor of overlays as an area code relief method in all of California’s major metropolitan areas, without adequate basis. There is no proof that, as SBC/Pacific claims, overlays will always be quicker or more effective in relieving area codes than are splits. Accordingly, the Commission does not need to alter Ordering Paragraph 1, which reflects the consumer preference for splits, and can continue the current practice of considering all permissible relief methods (i.e., those that meet the

¹³ SBC/Pacific requests, in the alternative, that the *Petition* be treated as a Motion. The filing of a Motion alleging legal error – as does the *Petition* – is not appropriate under this Commission’s Rules. Such a Motion can only be made by a Petition for Rehearing. SBC/Pacific, however, already filed a Petition for Rehearing of D.96-12-086, which Petition the Commission denied. Under Rule 85, moreover, any such Petition could not be filed now.

requirements of competitive neutrality) and permits the implementation of either splits or overlays in all remaining area code relief projects.

Respectfully submitted,
THE CALIFORNIA
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