

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717.

NSD File No. L-97-42

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996.

CC Docket No.: 96-98

**REPLY OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit to the Federal Communications Commission (Commission or FCC) this Reply to Oppositions, Comments, or Responses to our Petition for Reconsideration (PFR) of FCC 98-224, the Pennsylvania Order, which was filed on November 6, 1998.¹ In addition, California here replies generally to points

¹ Besides California, the following parties filed Petitions for Reconsideration and/or Clarification: the California Cable Television Association (CCTA); the Colorado Public Utilities Commission; the Connecticut Department of Public Utility Control; the Maine Public Utilities Commission; the Massachusetts Department of Telecommunications and Energy; MediaOne Group, Inc. (MediaOne); the National Association of Regulatory Utility Commissioners (NARUC); the New Hampshire Public Utilities Commission; the Pennsylvania Public Utility Commission; SBC Communications Inc.; and the Public Utility Commission of Texas.

raised in Responses, Comments, or Oppositions to Petitions for Reconsideration filed by other parties.²

I. INTRODUCTION

As a preliminary observation, California considers it worth noting the range of petitioners seeking consideration from the FCC. The parties include eight states, California, Connecticut, Colorado, Maine, Massachusetts, New Hampshire, Pennsylvania, and Texas and two representatives of new entrants in the local exchange market, MediaOne and CCTA. While one cannot draw firm conclusions from the mere silence of a party, the CPUC considers it telling that so many states as well as some competitive local exchange carriers (CLECs) found the Pennsylvania Order to be troubling. The CPUC also considers it worth noting that the state with the largest number of area codes, California with twenty-three as of this filing, and at least one state with only one area code, Maine, have both petitioned for reconsideration. This suggests that the problems California perceived in the Pennsylvania Order impact states of all sizes, no matter the scope of their area code relief activities. This alone underscores the need for the FCC to revisit the Pennsylvania Order.

On another preliminary note, California believes it vital that the Commission understand that a paradox exists between the positions taken by national companies in pleadings before the FCC, and the positions taken, or rather, not taken, by those companies' subsidiaries or affiliates before the CPUC. There are two critical points on which this paradox is most striking. First is the lament by many opposing parties that California, among other states, is not timely implementing area code relief. The CPUC will respond directly to specific comments about our planning process later in this Reply. As a starting point, however, we must make clear that we are unaware of any party, in any formal pleading before the CPUC, at any time in the past two years asserting that

² California is aware that the following parties filed Oppositions to the PFRs: AT&T Corp. (AT&T); Bell Atlantic; Bell Atlantic Mobile; the Cellular Telecommunications Industry Association (CTIA); GTE; Nextel Communications, Inc.; SBC Communications Inc. (SBC); Sprint PCS; United States Telephone Association (USTA); and Vanguard Cellular Systems, Inc. The CPUC notes that it did not receive service directly from SBC or GTE, both of which have extensive operations in California.

California is not timely implementing area code relief. Nor have industry participants made such allegations in quarterly statewide industry planning meetings, which CPUC staff attend. Nor have such allegations been made in workshops the CPUC has held on the NXX code lottery process, number pooling, and rate center consolidation. While they often have varying opinions about which form of relief is most appropriate for a particular NPA, industry participants rather have expressed distress and frustration about the fact that the relief planning process is so demanding and time-consuming because of the constant need for implementing new NPAs.

Simply put, the industry is raising to the FCC concerns about California's intensely-active area code relief planning and implementation process that their own California companies and representatives have failed to bring to our attention. Given this significant omission, it would be unreasonable for the FCC to punish California for not responding to industry concerns about the pace at which we implement relief when we have not heretofore been apprised of these concerns.

The second paradox is the claim by several opposing parties that California should begin its planning process earlier.

The solution lies in starting the planning process sooner, not the continuation of rationing plans. The industry guidelines for NPA Code Relief Planning state that the relief planning process should begin for area codes projected to exhaust within the next 5 to 10 years. (GTE Opp., p. 4.)

There is no reason why the California PUC cannot start relief planning early, in order to ensure that relief is implemented (as proposed in the industry guidelines) before jeopardy occurs. (SBC Opp., p. 4, fn. 13.)

Instead of relying on number rationing, states should begin area code relief planning and implement relief well before jeopardy is declared. (AT&T Opp., p. 11.)

AT&T further cites to § 5.0 of the Current NPA Code Relief Planning and Notification Guidelines, which recommend that "NPA relief coordinators shall take the lead to prepare

relief options for each NPA projected to exhaust within the next 5 to 10 years”. (Id., fn. 33.)

We are very puzzled by the opposing parties charges that we do not begin relief planning early enough. To illustrate our puzzlement, we refer to our experience in seeking changes to California law governing area code relief. GTE correctly observes that the CPUC “was instrumental in proposing to the California Legislature sweeping changes to § 7930” of the Public Utilities Code, which became effective January 1, 1999.³ What GTE does not state, however, is that GTE California representatives were actively involved in the process as well, as were representatives of Pacific Bell, SBC’s California affiliate, and more than two dozen other industry representatives.

Because area code planning has been a highly contentious process in California, the CPUC was acutely aware that legislative changes realistically could only be enacted with substantial industry support. Hoping to secure that support, the CPUC staff held a series of meetings with the industry over a period of several months, beginning in the fall of 1997 and extending through the winter of 1998. The CPUC staff presented a draft statute to which the industry participants proposed changes. In the course of the meetings, tempers flared, postures were struck, and compromises were negotiated. In the end, however, the industry unanimously supported or declined to oppose the proposed revisions to the area code statutes. The CPUC sponsored the legislation and but one party voiced token opposition which was resolved by a minor language change at the last minute.⁴ The Legislature enacted the measure, and the Governor subsequently signed it into law.⁵

In the process just described, at no point did any party, including the representatives of GTE California and of Pacific Bell (and several from both companies attended), ever propose that we push our relief planning process out so that it begins a

³ In fact, the CPUC proposed changes to several sections of the Public Utilities Code. The one which GTE finds most troublesome, based on its criticisms, is § 7931, not § 7930.

⁴ Indeed, the CPUC obtained signed letters from several industry participants, including GTE California and Pacific Bell, that they would not oppose the legislation, and they honored that commitment.

⁵ Both the prior and newly-revised statutes, §§ 2887 and 7930 et seq. of the California Public Utilities (P.U.) Code, were attached to our PFR.

minimum of 5 years ahead of relief implementation. Indeed, the industry initially resisted the staff's proposal to begin the planning process earlier than the twenty-four months required by our previous statute. Pursuant to the two-year schedule, the industry was often unable to complete the planning process in a timely fashion. Eventually, all parties agreed that earlier planning was necessary in order for the industry to accomplish all of the tasks it must undertake to develop and recommend an area code relief plan. With enactment of the new statute, California now begins the relief planning process thirty months prior to the expected implementation date. Even with the extra six months, which only applies to area code planning initiated since January 1, 1999, the explosion in demand for numbers is such that the industry can barely accommodate the current schedule.

California considers the position of AT&T to be a cogent example of how diverse are the positions of AT&T-California (AT&T-C) and of AT&T, as set forth in its Opposition. In a pleading before the CPUC, filed in early 1998 by the California Telecommunications Coalition, to which AT&T-C was a signatory, the Coalition made the following argument.

[T]he urgency of the need to conserve NXX Codes is precisely the need to reduce NPA relief. The goal of NXX conservation efforts should be *doing* something about the problem, not just talking.

(Reply Comments of the California Telecommunications Coalition Concerning NXX Code Conservation Measures, CPUC Local Competition Docket R.95-04-043/I.95-04-044, filed March 13, 1998, p. 4, emphasis in original.)⁶

Less than a year later, at the end of a two-year period in which California has opened ten new NPAs, some of the same parties which signed those comments supporting the need

⁶ The members of the Coalition joining in the March 13, 1998 comments were the following: AT&T Communications of California, Inc.; AT&T Wireless Services, Inc.; California Cable Television Association; ICG Telecom Group, Inc.; MCI Telecommunications Corporation; NEXTLINK California, LLC; Sprint Communications Company, L.P.; Teleport Communications Group, Inc.; Time Warner AxS of California, L.P.; and WorldCom Technologies Inc.

for the CPUC to actively pursue code conservation measures now tell the FCC that the states should not devote their resources to code conservation.⁷

The posture of some of these companies is very surprising in both the content and tone of their pleadings. The CPUC staff has found companies such as AT&T-C, GTE California, MCI, and sometimes Pacific Bell (SBC), to be supporters of our numbering policies, including our code rationing process and our stated interest in pursuing conservation measures. California recognizes, of course, that a state commission has a perspective very different from that of a national corporation, which may have holdings and interests in many industry segments, such as long distance service, local service, and wireless service. These divisions within a company may have competing, even adverse interests on numbering policies. For example, wireless interests may be different from those of incumbent LECs which may be different again from the interests of CLECs, as exemplified by the PFR of the California Cable Television Association. In light of the diversity of views represented by these different interests, California expected a more balanced perspective to be expressed in the pleadings of many of the opposing parties.

The FCC should recognize that the message being communicated in Oppositions to our PFR differs dramatically from the relatively cooperative working relationship we have experienced between the industry and the CPUC.⁸ We urge the Commission to bear this fact in mind in evaluating the positions set forth in the Oppositions.

II. PROCEDURAL ISSUE

Bell Atlantic Mobile takes to task petitioners for “rehash[ing] arguments that many of them already made earlier in this proceeding”. (Bell Atlantic Mobile Opp., p. 5.) Bell Atlantic Mobile then recommends that the FCC simply dismiss all petitions, suggesting that they constitute “bare disagreement, absent new facts”. Of the states petitioning for reconsideration of the Pennsylvania Order, only Colorado participated in the proceeding which produced that order. The PFRs contain new facts - California’s in particular set

⁷ In fairness, we note the Coalition recommendation that the CPUC explore two main forms of code conservation - rate center consolidation and number pooling.

⁸ The CPUC does not wish to overstate the case - we have had our differences with various industry segments over specific area code policies. But we believe that our staff interaction with industry personnel overall has been reasonably constructive and productive.

forth both the extent of our area code relief efforts, and the manner in which our NXX code lottery is conducted. Further, we pointed out that none of this information was before the FCC when it considered the rule changes adopted in the Pennsylvania Order. We urged the Commission to reconsider those rule changes in light of the information we presented.

III. THE OPPOSITIONS DEMONSTRATE THE VAST DIFFERENCE BETWEEN THE PERSPECTIVES OF MUCH OF THE INDUSTRY AND OF THE PUBLIC

If one message is clear from the filings of most of the industry opponents, it is that the industry in general, and the wireless industry in particular, wants numbers and corresponding area code proliferation at any cost. California finds most disturbing the arguments of industry participants who assert without hesitation that the solution to the numbering crisis in the United States is simply to create more and more and more numbers, regardless of the consequences visited upon the public. The mere expression of a state's interest in trying to slow the drain on public numbering resources by more efficiently allocating numbers has elicited derisive misstatement of the state's position, or sneering contempt. At the same time, at least some opponents concede that number conservation has value. "True number conservation can delay the date that area code relief becomes necessary". (Sprint PCS Opp., p. 7, emphasis in original.) Yet, the opposing parties argue that conservation will neither stem the demand for numbers, nor solve the current crisis. (Id.; AT&T Opp., pp. 3-4.)

California's filing of its PFR was not premised on a naïve belief that conservation measures will stem the demand for numbers, or solve the current crisis. Rather, California is seeking authority to explore the means to, in Sprint PCS' words, "delay the date that area code relief becomes necessary". The CPUC has a very difficult time understanding why industry interests represented by the opposing parties consider it, by definition, bad to try to slow the pace at which numbers are doled out. California has no desire to use NXX code rationing or conservation measures such as number pooling as alternatives to area code relief. Rather, the CPUC sees that implementing code conservation measures now can begin gradually to reduce the breathtaking speed at which

we are required to dispense numbers. Instead of taking any steps to conserve numbers, the opposing parties would have the states respond unquestioningly and unhesitatingly to the industry's insatiable demand for numbers by allocating an unending stream of area codes at any and all cost to the public, for whose benefit the drive towards competition allegedly has been undertaken. Opposing parties comments also suggest that they have no concern for the fact that the North American Numbering Plan (NANP) is itself a dwindling resource that will be exhausted with unchecked allocation of more and more area codes.

Sprint PCS best articulates this "the-public-be-damned" attitude. In its Opposition, Sprint PCS derides the statement in our PFR that "[t]he CPUC is well acquainted with the collective unhappiness of thirty million" of consumers facing a constantly growing slate of area codes.

Sprint PCS does not dispute either the existence or legitimacy of these public concerns; anyone "asked" to accept a second number change in two years understandably would be outraged. However Sprint submits that the public will become even more outraged once they learn that they cannot obtain the services they desire because their preferred carrier does not have available numbers to assign. (Sprint PCS Opp., p. 17.)

In recent years, the CPUC has heard through public hearings, via e-mail and conventional correspondence, and via formal and informal complaints repeated, heated concerns from individual members of the public and from municipalities and local jurisdictions about the appalling pace at which area code relief is being implemented. Interestingly, not one member of the public or representative of a local jurisdiction has complained to the CPUC that the individual, business, or community government was unable to obtain the "services they desire because their preferred carrier does not have available numbers". Sprint PCS is describing a scenario that does not exist in any meaningful way for the public. On the other hand, the constant need to adjust to the introduction of new area codes all over the state, as well as the more localized experience of having one's own area code change or a new area code overlaid upon it every two or

three years, has become all too real, immediate, and unpleasant for millions of Californians.

The public in California is not expressing to us any general or specific sympathy for the business needs of telecommunications providers. Rather, the public is expressing outright anger at the constant inconvenience, confusion, and expense created by opening new NPAs. They do not particularly care that competition and new technologies are driving the demand for new numbers and for new area codes. Indeed, they frequently suggest that the CPUC is pandering to private interests instead of protecting the public interest. It is left to state commissions to explain, as best we can, that we are in a transition, that both the FCC and the CPUC have adopted pro-competitive policies which are contributing to this result, and that ultimately, consumers will reap the benefits of competition. The public does not find these answers especially compelling or comforting. This message, above all else, we wish the Commission to hear and to acknowledge.

IV. RATE CENTER CONSOLIDATION

Various commenting parties have recommended that states should implement rate center consolidation as a number conservation measure and suggest that the Pennsylvania Order has no impact on states' ability to do so. As California discussed in its PFR, "the language in ¶ 22 of the [Pennsylvania] Order appears to foreclose state commissions from exploring rate [center] consolidation". (CPUC PFR, p. 21). On the one hand, the Pennsylvania Order encourages state commissions to consider certain conservation measures like rate center consolidation (¶ 29); yet on the other hand, it strongly disapproves of state commissions engaging in conservation methods which are not intended to further area code relief (¶22). Some industry participants in California have asserted that the Pennsylvania Order does not permit the states to order number conservation measures. However, some of the opposing parties recommend that the states expeditiously implement rate center consolidation, which they tout as a conservation measure. The CPUC finds it ironic that these parties in this forum now assert categorically that states have a clear right to implement one form of code

conservation, i.e., rate center consolidation, but should have no authority to engage in another form of code conservation, i.e., number pooling. The CPUC also notes, as we did in our PFR, that consolidating rate centers would be a process with tremendous associated rate impacts. This is not similarly true for number pooling, which may be why many states would prefer to explore number pooling first.

Notably, Sprint PCS criticizes California and other states for not implementing rate center consolidation and asserts that, had we adopted it, the crisis that exists in the states today would likely have never occurred. (Sprint PCS Opp., pp. 9-10.) Sprint PCS conveniently ignores the actions we have taken on rate center issues during the last several years. In fact, we considered them in 1995 and, subsequently issued D.96-03-020 which allowed CLCs to utilize inconsistent rate centers, so long as they notify the CPUC before doing so. However, until recently, no CLC has chosen to do so. Moreover, Sprint PCS disregards the CPUC's August 1998 decision which ordered workshops on number conservation issues including rate center consolidation.² Unfortunately, the uncertainty over the extent of state authority with respect to number conservation measures has forestalled these efforts.

Finally, California did not and does not “blame the FCC” for the fact that we have not pursued more actively rate center consolidation. (Sprint PCS Opp., p. 9, fn. 20.) The statement in our PFR that the Pennsylvania Order “appears to foreclose state commissions from exploring rate center consolidation” was intended as a prospective concern, fueled by the contradictory language we saw in that order. We were by no means claiming that prior to issuance of the Pennsylvania Order we were prohibited from taking action on rate center consolidation. If the CPUC had thought that we were prohibited from consolidating rate centers before issuance of the Pennsylvania Order, we would not, in

² CPUC Decision 98-08-037.

D.98-08-037, have ordered workshops to explore rate center consolidation. We attach D.98-08-037 to demonstrate that California is by no means attempting to delay implementing area code relief.

Finally, California finds it curious that opposing parties so easily criticize the states for failing to institute their preferred code conservation measure, rate center consolidation. Yet many of these same parties have shown no willingness to help solve the number crisis by using number resources more efficiently. For example, CTIA has petitioned the FCC for a two-year delay in the date by which several CMRS providers must meet the FCC's requirement that local number portability be implemented. CMRS providers have been the first to assert vehemently to the CPUC and separately to the FCC that regulators cannot rely on number pooling as a means of conserving numbers because to participate in number pooling, a code-holder must be LNP-capable. Indeed, in its Opposition, Sprint PCS suggests that CMRS providers should not participate in number pooling, arguing that “[t]rue number conservation” includes “number pooling by landline carriers”. (Sprint PCS Opp., p. iii.) Sprint PCS asserts that CMRS providers cannot code share either. (*Id.* at 12-13.) Given that CMRS providers “cannot” engage in number pooling because of their business choice not to implement LNP, and given that they “cannot” code share, they have concluded that the only course left is for the public to endure the consequences of an ever-growing number of area codes. California hopes the FCC can find a more moderate course.

V. TIMELINESS OF RELIEF IMPLEMENTATION

The CPUC is especially frustrated by the opponents' criticism of California's relief planning process, which has been overwhelmingly driven by the industry planning group. For example, in California, the industry planning group determines when area code relief will be necessary, develops one or more plans for the CPUC to consider, participates in planning and holding meetings to take input from representatives of local jurisdictions and from members of the public. Only after all of those steps have been taken does the CPUC even receive a plan for review and adoption.¹⁰ On some occasions,

¹⁰ Pursuant to a newly-enacted state statute, all of our draft decisions, including those proposing to adopt

plans have been submitted to the CPUC late, thus delaying the approval process. Sometimes a city or other party challenges a relief plan once it is filed but before the CPUC has rendered a decision adopting a plan. In other instances, a city or other party challenges the CPUC's decision adopting a plan, either through an application for rehearing or a petition to modify. Any challenge requires CPUC action before the relief plan can be implemented. And, in fairness, sometimes the CPUC, for internal resource reasons, may itself delay issuing a decision adopting an area code relief plan, though this is by no means a common occurrence.

Sprint PCS appears to have a particular ax to grind on this score, disputing our claim that we are implementing relief with all deliberate speed. (Sprint PCS Opp., p. 16.) In the very next breath, however, Sprint PCS states that we have not "actively pursued rate center consolidation" even though we acknowledge the large number of rate centers in California.¹¹ Sprint PCS seems to believe we are not implementing relief fast enough because we are not consolidating rate centers. This argument flies in the face of Sprint PCS' own position that number conservation is not area code relief.

Given the intensive participation of the industry, and the fact that the industry takes the lead in the planning process, California is at a loss to explain why any perceived delays in implementing relief are being attributed to the CPUC. It has been the experience of the CPUC staff that while many issues are contentious among industry participants, the area code relief planning process has largely been one of collaboration between the industry as a whole and the CPUC.

California finds completely unjustified the blatant charges that we have declined to implement timely area code relief. We presently have twenty-three NPAs in California. By the end of this year, we will have opened three more area codes, bringing the total to

an area code relief plan, must be circulated for public comment for a 30-day period.

¹¹ Should it be surprising that in a state 1500 miles long and 500 miles wide, with a population upwards of 30 million, and containing four of the larger metropolitan areas in the United States, California has a large number of rate centers? We do not quite see why this is the fault of the CPUC. Further, we note that the rate center system is a legacy of incumbent LECs. When the CPUC asked the two largest ILECs in California, Pacific Bell and GTE California, which rate centers could easily be consolidated, they both said "none".

twenty-six area codes. From 1997 through 2000, we will have opened or plan to open new NPAs in California as listed below.¹²

<u>Year</u>	<u>Number of New NPAs</u>
1997	5
1998	5
1999	3
2000	2 (more expected)

In addition, fourteen NPAs in California are in various stages of the relief planning process today. We are aware of no other state which opened ten new NPAs in a two-year period, and which will have opened a minimum of 15 new NPAs between January, 1997 and December, 2000. We find charges that we are not timely implementing area code relief to be so unfathomable as to be spurious.¹³ California has made many hard choices, and has made them in a timely fashion. The simplistic explanation from the industry's perspective for the numbering crisis in California is that the CPUC is to blame; we believe the problem is much bigger than one state and one commission.

More importantly, we perceive the opposing party's objections to our relief planning process to be aimed primarily at the fact that we insist on public input. GTE, for example, cites to our state statute, § 7931, and complains that the law "resulted in even more detailed meeting and notice requirements for implementing area code relief". (GTE's Opp., p. 4.) Leaving aside the fact that GTE California supported this legislation, we note that industry guidelines allow for notice to the public of area code relief plans and public input about the proposed plans. (See § 5.8 & 5.9, NPA Code Relief Planning and Notification Guidelines, INC 97-0404-016.) California's prior version of § 7931 of the P.U. Code contained a requirement for public notice and meetings. The revised statute expanded those requirements because the CPUC had received numerous informal

¹² The CPUC anticipates that we will have to open more than two codes in 2000, but to date only two new NPAs have been approved for implementation in 2000.

¹³ For instance, Sprint PCS criticizes some states, including California, for not adopting relief plans for NPAs that have been placed in jeopardy since the Pennsylvania Order was issued. California notes that no relief plan has been submitted to the CPUC for review and approval in any of the four California NPAs Sprint PCS cites, i.e., 530, 626, 707, and 760. Moreover, for three of those NPAs, the industry has just barely begun the relief planning process; the public and local jurisdiction meetings have yet to be held.

and formal complaints from counties, cities, and the public that they were not adequately apprised of area code relief plans affecting them, and had not had sufficient opportunity to comment. In addition, a number of cities filed formal complaints and/or petitions to modify area code relief plans, again asserting that they had been left out of the process. In order to respond to these concerns, and with the hope of reducing the filing of such petitions and formal complaints, the CPUC proposed the amendments to the governing California statute, which the industry assisted in drafting and did not oppose. California notes that the filing of a petition to modify or formal complaint causes implementation of relief to be delayed through no fault of the CPUC.

Now opposing parties suggest that the FCC adopt rigid timelines for implementing area code relief or for code rationing. (Vanguard's Opp., pp. 5-7; Sprint PCS' Opp., pp. 18-23.)¹⁴ Sprint PCS, for example, offers the following plan for streamlining area code relief planning:

Once the relief coordinator notifies industry of the need for relief, the industry meets to discuss the relief option that should be adopted. [Footnote omitted] Sometimes the industry is successful in reaching consensus over a particular plan; oftentimes, it cannot reach consensus. But even where consensus is not reached, industry is generally successful narrowing the viable options. . . .

Industry now has considerable experience with these meetings; indeed the same carrier representatives often attend these meetings regardless of the state or NPA involved. Sprint PCS therefore recommends that industry be given two months to conduct this work, but that they be given the option of extending their deliberations for a third month by providing notice to the Common Carrier Bureau. . . .

State Commission Adoption of a Relief Plan
(four months). . . .

Sprint PCS recommends that state commission be allotted four months from the date a relief petition is filed to adopt a final relief plan.

¹⁴ Despite the CPUC's disagreement with Vanguard on this point, California appreciates Vanguard's support of the need for states to have flexibility to ration codes prior to adopting an area code relief plan.

(Sprint PCS Opp., pp. 19-20.)

Sprint PCS' proposal is not too far afield of the current timeline embodied in California's P.U. Code § 7931 as it pertains to the CPUC's decisionmaking time. Our process allows the CPUC approximately six months from receipt of the industry's proposed plan to issue a decision. For the most part, California has been able to issue decisions in less than six months, often as short a time as four months, if no party protests the plan. We could, of course, more likely meet the four-month timeline routinely if we simply did not allow for any protest from the public.¹⁵

The larger problem the CPUC perceives in Sprint PCS' proposed timeline is the period it affords the industry to develop a relief plan - a mere two months from determining that relief is needed to achieving consensus on the plan. The process in California today takes more than a year. Part of the reason the process takes as long as it does is that the NANPA, industry, and the CPUC must hold a series of three public meetings and one local jurisdiction meeting required by § 7931 of our code, which must occur within a six-month period. The industry takes all of the information from the public input process and develops a proposed relief plan - the industry has two months from conclusion of the public and local jurisdiction meetings to prepare and submit a plan to the CPUC. Section 7931 also requires notices to the public, informing them of the relief planning underway.

To accommodate the timeline Sprint PCS recommends would require that California simply eliminate notices to customers and all participation in the planning process by local jurisdictions and the public.¹⁶ Sprint PCS and other opposing parties plainly consider this to be not only a reasonable result, but a desirable one. Curiously, however, when the CPUC was engaged in negotiations with the industry over revisions to § 7931 last year, many industry representatives strongly supported expanding the notice and public input provisions. They did so precisely because they also know that the

¹⁵ Eliminating the opportunity to protest would require legislation to modify § 7931(e)(3) of our code, which now limits the protest period to sixty days after a relief plan is filed with the CPUC.

¹⁶ Again, this change would require legislation.

public needs to be informed as a means to ward off even greater outrage, as well as to forestall additional delays that result from challenges to relief plans which catch the public by surprise.

GTE is correct in its observation, cited earlier, that the CPUC was “instrumental” in proposing changes to our statute governing area code relief planning. We confess; we did insist on codifying clear opportunities for public input. We considered that to be the proper role of a state agency both empowered to and charged with representing the interests of the public. We received industry support in that endeavor. Industry representatives attend the public and local jurisdiction meetings held in conjunction with every area code relief planning process. They are acutely aware that the meetings afford the public the chance to learn more about the process, as well as for the industry and the CPUC to hear the concerns of the public. For these reasons, the public meetings have proven to be invaluable.

We invite representatives of Sprint PCS to come out from Kansas City, or of AT&T to join us from New Jersey, or of GTE to fly in from Texas. We would be happy to have them attend some public meetings, where they can tell members of the public directly that more numbers and more NPAs are better, and that efforts to slow the demand for new NPAs through more efficient number allocation methods are, as they seem to view it, a waste of time. The CPUC invites these industry representatives to explain to the public why having to change one’s area code three times in six years, or even to accept an overlay with the associated 10-digit dialing is a better approach than, for example, trying to find a way to dispense numbers in blocks smaller than 10,000.

Of course, we know the representatives from Kansas, New Jersey, and Texas will not attend our meetings. They rely on their affiliates to interact with the public in California because their affiliate representatives are attuned to the situation here. At the same time, corporations based in Kansas, New Jersey, and Texas, to name but a few places, are all too willing to tell the FCC that the California public should not have the chance to participate in the process which is producing new area codes in this state at the rate of three to five a year. They advocate a cookie cutter approach to relief planning which evinces no regard to differing circumstances among the fifty states. Sprint PCS’

proposed timeline might work in a state with very few existing area codes, and with no public input requirements. It will not work in California, and the CPUC urges the FCC to reject a standardized approach to area code relief.

VI. CODE RATIONING

Many opposing parties criticize California and other states for the manner in which they conduct code rationing, and reject any notion that the FCC should modify the rule change adopted in the Pennsylvania Order, which requires a state to adopt a relief plan prior to any NXX code rationing. The opposing parties also criticize the states for their interest in trying to conserve numbers.

A. The California Lottery

California had intended that its PFR expressed an additional concern, i.e., that the Pennsylvania Order prevents the states from exploring ways to more efficiently use a valuable public resource. The public, and the entire NANP, benefits from efficient usage of NXXs and consequent reduction in the speed with which new area codes are required. The industry is aware that the NANP has a finite number of NPAs, just as each NPA contains a finite number of NXX codes. Efficient use of valuable scarce numbering resources well serves both the public interest and the development of vigorous competitive marketplaces. Blithely continuing to hand out numbers like they are party favors is not the answer; efficient assignment and use of those numbers is.

SBC claims that, by arguing for authority to ration NXX codes after jeopardy is declared but before relief is ordered, the petitions “miss the entire point of” the

Pennsylvania Order.

The Commission was properly concerned that rationing not be used as a means to artificially extend the life of area codes and thereby delay the date needed for relief. As the Commission recognized, entering jeopardy is a failure of the area code relief process, on that, if it occurs, must be immediately corrected. . . . (SBC Opp., p. 3.)

It may be true that some states attempt to “artificially” extend the life of an area code through code rationing; the CPUC has no knowledge of and takes no position on the possibility that this may occur in other states. However, it certainly is not true in California, as SBC should know, since it has operations here. SBC seems to be assuming that the CPUC controls the declaration of jeopardy, and thus is somehow responsible for delaying the pace of, or declining to implement, area code relief. As SBC should be well aware, it is the industry that votes to declare jeopardy, and the industry that votes to put an NPA into the lottery. In fact, CPUC staff do attend the industry meetings at which these matters are decided, but they do not vote; in accordance with industry guidelines, however, industry representatives, including those of SBC/Pacific Bell, can and do vote on these matters. If entering jeopardy is a “failure of the relief planning process”, than SBC/Pacific bears a great deal more responsibility for the alleged “failure” than does the CPUC.

SBC further claims that California should start relief planning earlier, “in order to ensure that relief is implemented (as proposed in the industry guidelines) before jeopardy occurs.” (SBC Opp., p. 4.) While it sounds good in theory, SBC’s assertion completely ignores NPA relief practices in California, which are already conducted in general accordance with the industry consensus planning guidelines. As the CPUC has explained, it is the NANPA which notifies the industry to commence the planning process.¹⁷ The CPUC is not responsible for that notification, nor are we responsible for conducting the forecasts which drive such notifications, i.e. the COCUS. The CPUC cannot commence relief planning any earlier than is already the case, because we do not

¹⁷ California notes that previously, the notifying party was the former California Code Administrator, Pacific Bell.

control the relief planning process. That process is governed by industry guidelines, state law, and prior state and federal decisions.

Furthermore, contrary to SBC's claim, the CPUC has no desire to conduct "perpetual lotteries". (SBC Opp., p. 4.) The CPUC performs the ministerial functions of the lottery at the request of the industry, and only for that reason. The industry developed the lottery framework, and the industry requested that the CPUC conduct the lottery.¹⁸ CPUC staff have absolutely no independent interest in devoting their time to conducting the monthly lottery. The CPUC recently conducted workshops to discuss whether the lottery procedures should be changed. One of the topics of discussion was whether the CPUC should continue to conduct the lottery, or whether the NANPA should assume responsibility. Despite statements by the CPUC staff of their willingness to turn the lottery over to the NANPA, industry members attending the November 13, 1998 lottery workshop voted unanimously to have the CPUC continue to conduct the lottery.¹⁹

B. Form Of Relief

A number of opposing parties complain bitterly that some states have refused to implement overlays, and thus, those state commissions are responsible for the numbering crisis. Sprint PCS takes issue in particular with the CPUC's policies regarding the use of splits and overlays for area code relief, and claims that "state commissions must bear part of the responsibility for the current public outcry". (Sprint PCS Opp., p.17.) California strongly disagrees. The CPUC's policies are based upon an extensive evidentiary record and are explicitly designed to further the development of a competitive market for local exchange services. Sprint PCS apparently is more concerned with its narrow competitive interests than with the greater goal of creating competitive alternatives for customers. The CPUC, however, must balance the needs of all market participants and the public interest. Toward that end, the CPUC is currently reviewing its area code relief policies to

¹⁸ As noted in both our PFR and our Petition for Additional Authority, the CPUC did resolve disputed issues pertaining to the lottery, which the industry presented to the CPUC for resolution.

¹⁹ Representatives of SBC's affiliate, Pacific Bell, attended the November 13, 1998 workshop and voted on the question of whether CPUC staff should continue to conduct the lottery.

determine if any changes are needed. This review provides for input from all segments of the industry and from the public.

In any event, the public is unhappy about the need to implement new area codes regardless of the relief method selected; people are inconvenienced by both splits and overlays. From California's perspective, the method of relief has been less of a public issue in terms of the longevity of a given NPA. Rather, the need to continually implement new area codes, which is exacerbated by inefficient NXX number assignment and use practices, is more the focus of public concern about area code relief.²⁰ The states should be free to implement conservation measures appropriate to their individual circumstances, consistent with federal guidelines, whether the conservation measure is rate center consolidation, number pooling or some other option. What is necessary and appropriate in a state like California may not be the best solutions for North Dakota or New York.

C. Continued Availability of NXX Codes

Several opposing parties dispute California's claim, in its PFR, that if we are not permitted to ration NXX codes after jeopardy is declared but before a relief plan is adopted, "NXX codes in those NPAs already in jeopardy will virtually vanish overnight". (CPUC PFR, p. 11.) AT&T responds to this claim simply: "These concerns are unfounded". We cannot help but wonder how AT&T can be so sure. Similarly, Sprint PCS insists that our claim "entirely unsupported, is rebutted by all available evidence".

Sprint PCS and AT&T may have "little or no fear that NXX codes will 'vanish overnight'" if rationing is not implemented prior to the CPUC determining the relief plan and implementation date.²¹ We do not know what "evidence" supports their opinions, but we do know that those opinions are not shared by the majority of industry members in California, who are responsible for the decision to put an NPA into the lottery. The

²⁰ We do not mean to suggest that whether the CPUC should adopt a split or overlay in a given NPA is uncontroversial. But it has been our experience in the past year that the public is more concerned about any relief than the form of relief. This is usually expressed as "WHAT!?! Not another area code?!?"

²¹ The CPUC here reiterates that it does not decide to declare jeopardy or to put an NPA into the lottery; those decisions are made by the industry. The CPUC merely conducts the lottery on behalf of the industry for those NPAs which the industry has chosen to ration.

industry would not casually place an NPA into lottery, especially knowing that relief is over a year away. In the past, considerable controversy arose when jeopardy was declared in an NPA without simultaneously placing the NPA in the lottery. This controversy was caused by some companies making “runs” on NXX codes after jeopardy was declared but before the NPA was put into the lottery. Therefore, the industry today typically votes to place an NPA into the lottery at the same time jeopardy is declared, in order to ensure that NXX codes continue to be available.

Further, we note that in its Comments in response to our Petition for An Additional Delegation of Authority to Conduct NXX Code Rationing, NSD File No. L-98-136, MediaOne confirmed our view.

[T]he situation would be far worse if the California NXX code lottery were discontinued. Without the lottery, all remaining codes would disappear in a few days, leaving no codes for facilities-based competitive providers, such as MediaOne, to bring their services to additional rate centers. Thus, though the lottery is undoubtedly less than a perfect situation, the alternative is chaos. (Comments of MediaOne, NSD File L-98-136, filed Feb. 5, 1999, p. 2.)

Simply put, we have no idea what state’s experience has been the impetus for the views of AT&T and Sprint PCS that we would not face an immediate crisis in California without authority to ration codes after jeopardy is declared and before a relief plan is adopted. Whatever formed the basis for these opinions, it cannot be the situation in California, where all the “available evidence” runs contrary to their claims.

Furthermore, Sprint PCS’ assertions demonstrate again its ignorance of the relief planning situation in California. Sprint PCS states that “[i]n every situation that Sprint is aware of, the industry was able to agree upon a rationing plan—without the assistance of a state regulator.” (Sprint PCS Opp., pp. 23-24.) This statement mischaracterizes the process. In California, the industry does not revisit for each individual NPA how the “rationing plan”, i.e., the NXX lottery, is to be conducted. Rather, the industry operates under rules developed in 1996 and adopted by the CPUC in its D.96-09-087. Because those rules have been in place for two and a half years, on an NPA-by-NPA basis, the

industry only considers when to declare jeopardy and whether the NPA should be subject to rationing. The rationing plan used in California was developed by the industry with the assistance of the state commission. As described in our PFR, the industry previously developed the basic lottery plan, but the CPUC resolved the issues upon which the industry could not reach consensus. Given these facts, Sprint PCS' claim that "[i]n every situation Sprint PCS is aware of, the industry was able to agree upon a rationing plan" is simply not relevant to the practice in California.

VII. RESPONSE TO SPRINT PCS

The Opposition of Sprint PCS was so pointed in its tone and inaccurate in so many of its allegations that the CPUC must respond directly to charges not addressed elsewhere because only Sprint PCS raised them.

A. Reverse Billing Arrangements

In its argument that states are ignoring the numbering crisis, Sprint PCS misleads the FCC when it asserts that California is exacerbating the demand for NXX codes with respect to reverse billing arrangements. Sprint PCS states that:

[T]he California Commission recently permitted Pacific Bell to withdraw its reverse billing arrangements - further exacerbating the demand for additional NXX codes to offset the loss of this service. (Sprint PCS Opp., p. 16.)

Reverse billing arrangements are governed by the terms of telecommunications providers interconnection agreements, which are the subject of negotiations between the parties to the agreement. While these agreements are submitted to the CPUC for review, the CPUC does not resolve disputed issues among the terms of these arrangements unless parties protest. If Sprint PCS or any other carrier found the reverse billing arrangements problematic the party could have and should have requested that the CPUC arbitrate the dispute. Alternatively, Sprint PCS, at the very least, should have protested interconnection agreements of other carriers which contained an undesirable term when those agreements were submitted for approval to the CPUC.

B. Inability To Provide Service To Customers

California disputes Sprint PCS' implication that, because state commissions have not timely approved relief plans, new entrants have been completely unable to provide service to new customers. (Sprint PCS Opp., p. 5.) In the CPUC's decision approving the California NXX code rationing plan, D.96-09-087, we directed our staff to closely monitor whether any new entrants were foreclosed from entry into a given market solely because the entrant could not obtain NXX codes.²² While some entrants have noted delays in getting NXX codes in the lottery, we have received no evidence that a single new entrant has been completely foreclosed from market entry. Even in its opposition to the PFRs, Sprint PCS conceded that it withdrew its emergency petition to receive NXX codes in California because it obtained at least one code in a desired NPA in California's NXX code lottery. The CPUC staff, in conducting the monthly NXX code lottery, also has observed that some carriers make inconsistent and untimely requests for codes in the lottery, which then contribute to delays in obtaining codes through the rationing process. Moreover, California notes that this state's lottery currently allocates 60% of NXX codes for initial use and 40% of codes for growth. We adopted this rule specifically to strike "an appropriate balance between the goals of removing barriers to competitive entry and assuring fair access to number resources by all telecommunications carriers" when the need for rationing arises. (CPUC D.96-09-087, mimeo, p. 24.)

C. Sprint PCS' Emergency Petition To The CPUC

In the same vein as its more general desire to eliminate public participation in the area code planning process, Sprint PCS suggests that the FCC "establish a time period in which state commissions decide emergency petitions". (Sprint PCS Opp., p. 22.) The CPUC cannot imagine a greater intrusion into the management of a state commission's time, resources, and caseload. State commissions have rules of practice and procedure which they must follow, which are intended to ensure appropriate due process rights by providing parties notice and an opportunity to comment. Sprint states that it filed its

²² CPUC Decision 96-09-087, p. 24. The CPUC attached D.96-09-087 to its PFR.

“emergency petition” on August 6, 1998. Pursuant to the CPUC’s Rules of Practice and Procedure, parties were afforded fifteen days to respond to Sprint’s motion. Various parties filed comments and the CPUC took the matter under advisement. Before a draft decision on the motion could be issued, however, Sprint received an NXX code in the October NXX code lottery. Sprint subsequently withdrew its motion on November 9, 1998. Three months hardly constitutes an unreasonable regulatory delay. Indeed, California suspects that Sprint PCS’ proposal would result in even longer delays if the FCC were required to examine and adjudicate such petitions.

VIII. CONCLUSION

California cannot overemphasize the extent of the numbering crisis we face. We categorically reject the claims by opposing parties that we have failed to implement timely relief, or that our policies have produced the crisis. We strongly urge the Commission to consider the arguments set forth here and in our Petition for Reconsideration. We have been engaged in a struggle to keep ahead of the numbering

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tide for the past several years, and we desperately need relief. We look forward to the opportunity to work with the FCC to devise long-lasting policies aimed at finding permanent solutions to not only our numbering crisis, but the national situation as well.

Respectfully submitted,

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