

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

In the matter of

Petition of the California Public
Utilities Commission and the People
of the State of California for an
Additional Delegation of Authority to
Conduct NXX Code Rationing

NSD File No. L-98-136

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

CC Docket No. 96-98

**REPLY COMMENTS OF THE CALIFORNIA
CABLE TELEVISION ASSOCIATION
IN SUPPORT OF CALIFORNIA**

In accordance with the notice issued by the Common Carrier Bureau on January 6, 1999,¹ the California Cable Television Association (“CCTA”) respectfully submits its reply comments in support of the petition of the California Public Utilities Commission and the People of the State of California (“CPUC” or “California”) for an additional delegation of authority to conduct NXX code rationing. CCTA submits that the Commission should grant California’s petition and clarify that California has the authority to conduct an NXX code lottery in order to ensure carriers sufficient NXX codes to offer service and, further, that California has the authority to resolve disputes concerning all aspects of such a lottery. However, CCTA continues to believe that the Commission should first address the broader issues pertaining to

California's request for additional authority in ruling on the pending petitions for reconsideration ("PFRs") of FCC-98-224.

In its comments, MCI Worldcom, Inc., correctly acknowledges the immense pressures on state regulators and the unique situation in California and asks that California be granted the authority it requests until December 31, 1999.² CCTA agrees that California should be granted the requested authority, although it believes a time limit is unwarranted.

AT&T states its support for the Commission's "granting a special exception to California."³ CCTA similarly agrees with this statement by AT&T. However, CCTA also believes that the determination of issues pertaining to the California NXX code lottery are properly made by an agency with a public interest responsibility, not industry participants. Unless the California Commission determines such matters, decisions affecting the depletion of a finite resource will be made without representation of consumers and consideration of the overall public interest. Second, the lottery should not be conducted by NANPA instead of the California Commission. NANPA has taken the position it does not wish to conduct a lottery and that its duties under its operating agreement do not include such an obligation. Moreover, just as the California Commission is in the best position to resolve issues and disputes that pertain to the lottery, it is also in the best position to conduct the lottery.

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¹ DA 99-108, NSD File No. L-98-136, CC Docket No. 96-98 (Jan. 6, 1999).

² MCI Worldcom Comments, pp. 1-2, 6.

SBC Communications, Inc., states that it agrees with many of the facts included in California's petition but that it cannot agree with California's conclusion.⁴ It contends that if California expedites its area code relief planning process, rationing will be unnecessary.⁵ It also argues that California's lottery unduly discriminates against Pacific Bell, SBC's California incumbent local exchange carrier affiliate, and that that California should be given temporary, conditional authority to conduct the lottery only if it (1) eliminates the 60/40 initial/growth split, (2) establishes a program and detailed timetable within 60 days of the Commission's order for relieving the area codes currently in the lottery, and (3) establishes and implements within 120 days of the Commission's order a definitive plan with a detailed timetable for expediting the planning and execution of area code relief.⁶ CCTA strongly disagrees with SBC's comments.

First, contrary to SBC's argument, when one considers the magnitude and nature of the current NXX code exhaust crisis in California and nationally, it is not reasonable to suppose that the indiscriminate and expedited implementation of NPAs will obviate the need for some conservation. While CCTA does not contend that conservation is a substitute for area code relief, SBC's suggestion that the Commission rush headlong toward the depletion of a finite resource without even considering reasonable conservation methods makes little sense. That is particularly

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³ AT&T Comments, p. 3.

⁴ SBC Comments, p. 1.

⁵ *Id.*

⁶ *Id.*, pp. 3, 7-9.

so in light of recent model area code exhaust projections by NANPA that without rationing, NPA exhaust will occur by the year 2001.⁷

In addition, contrary to SBC's argument, the California NXX code lottery's current 60/40 initial/growth split is neither discriminatory nor in violation of the Commission's regulations. As found by the CPUC on a more than adequate record, the 60/40 feature of the lottery is necessary to effectuate the CPUC's duty to eliminate undue discrimination and hence *serves* the Commission's regulations.⁸

The rationale of the California Commission in seeking to maintain a competitive balance bears repeating here:

We conclude that a 60%/40% allocation patterned after the plan adopted in the State of Massachusetts strikes an appropriate balance between the goals of removing barriers to competitive entry and assuring fair access to numbering resources by all telecommunications carriers. By allocating a somewhat greater share of the codes to the initial relative to the growth category, new entrants will have an enhanced opportunity of receiving at least some codes so that they will not be foreclosed from competing within an area code subject to code shortages. We decline at this time to adopt the proposal for case-by-case exemptions from the lottery as proposed by CCTA/TW/COX. We shall closely monitor the results of any lottery, however, and shall direct the Commission's Telecommunications Division to keep careful statistics on any new entrants who are foreclosed from entry into a given market solely because of denial of NXX codes. We shall keep our options open for dealing with this potential problem as conditions warrant.

We decline to adopt the CACD proposal for weighting the chances of lottery selection based on the number of NXX codes held by each carrier. We believe that the measures

⁷ NANPA *Ex Parte*, CC Docket No. 92-237, WT Docket No. 98-229 (Feb. 4, 1999), Attachment, p. 20.

⁸ 47 C.F.R. § 52.9(a)(2).

outlined above address the concerns regarding the ability of new carriers to have an opportunity to obtain codes in a random lottery. We are concerned, however, that the weighting proposed by CACD is unduly complicated and may go too far in the direction of biasing the lottery results in the opposite direction.

The goal of any code allocation process should be to strive for nondiscriminatory treatment of all carriers, irrespective of the number of codes they already possess. We appreciate the concern that incumbent LECs, through their control of the majority of NXX codes, have a competitive advantage over new entrants in meeting customer demand for numbers. It is not our intention that new entrants be competitively disadvantaged in their access to codes through a random lottery. We are concerned, however, that the weighting proposed by CACD does not reasonably correlate the weighting to any competitive harm experienced. For example, the weightings proposed by CACD would give a carrier with 10% of the NXX codes in a given wire center a five-fold advantage over carriers with 40% or more of the NXX codes. Yet, we find no basis to conclude that the carrier with 10% of the codes is at a five-fold competitive disadvantage. If there is concern that the LECs' existing inventory of NXX codes reduces their need for new numbers, then the preferred remedy is to more rigorously scrutinize the LECs' claimed demand for new codes. Accordingly, we decline to adopt a weighting as proposed by the CACD.⁹

SBC nevertheless alleges it is the chief victim of an unduly discriminatory numbering lottery policy in California. As purported evidence, it asserts that in 1998 Pacific Bell “was unable to meet customer requests for almost 275,000 telephone numbers.”¹⁰ However, the asserted figure is double the number cited to the CPUC in October 1998, when Pacific stated it had been unable to meet

⁹ CPUC Decision No. 96-09-087, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, __ Cal.P.U.C.2d __, 1996 Cal.PUC LEXIS 960, *28-*30 (Sept. 20, 1996).

requests for 136,800 additional lines made by just 231 existing Pacific Bell customers.¹¹ Pacific Bell's alleged "hardship" in the San Francisco Bay Area must be viewed in light of the fact that – speaking conservatively – Pacific Bell holds more than 80% of all 415 NXX codes assigned to wireline providers.¹² All its wireline competitors combined share the remaining codes. Thus any hardship experienced by Pacific Bell is far more severe among its competitors. Indeed, speaking conservatively once again, Pacific Bell added some 800,000 lines in California in 1997 alone,¹³ and added more second lines than any other ILEC in the nation.¹⁴

The California Commission was correct and fully consistent with Commission regulations in establishing the 60/40 split. Rather than discriminating against Pacific Bell, the 60/40 split feature of California's lottery is necessary to mitigate undue discrimination and anticompetitive biases created by Pacific Bell's former monopoly status. The Commission should clarify that California has the authority to implement mechanisms necessary to ensure a competitive balance between competitive LECs and incumbents.

Moreover, SBC's criticisms of California's area code relief procedures seem hollow indeed when one considers that Pacific Bell and SBC were major participants in the development of those procedures. What SBC is really asking the

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¹⁰ SBC Comments, p. 4.

¹¹ See Attach. A to Pacific Bell's Emergency Petition to Modify Decision 96-12-086, which is Attachment B to SBC's Comments herein.

¹² See CCTA PFR, NSD File No. L-97-42 (dated Dec. 15, 1998), at Appendix J.

¹³ SBC 1997 Annual Report (filed Mar. 30, 1998).

¹⁴ See "Pacific Bell Will Spend 2.2 Billion to Meet Huge Demand for Lines," San Francisco Chronicle (Apr. 16, 1998).

Commission is to ignore the fact that the current procedures were the result of the participation of many different stakeholders in a number of different forums, including industry forums, the CPUC and the California Legislature. While current procedures are cumbersome and preclude compliance with the *Pennsylvania Order* as presently written, the Commission should not rush to preempt the results of state and local discourse in which many interested parties have participated. The Commission should allow state authorities the opportunity to ameliorate the current situation and should reject SBC's request that it impose requirements on California which would mandate early relief efforts – even before jeopardy is declared – and push California toward the maximum implementation of new NPAs before the anticompetitive effect of overlays and the magnitude of the embedded base of numbers in the possession of incumbents is fully investigated.¹⁵

As previously noted herein and in NSD File No. L-97-42, without California's having clear authority to conduct its lottery, and to resolve disputes that may arise in connection with the lottery, carriers such as CCTA's members will not have sufficient NXX codes to provide service in many NPAs. California's petition for additional authority should therefore be granted.

¹⁵ Omnipoint – a cellular carrier which does not now compete in the California market – criticises the California lottery, but its criticism does not accurately reflect the realities of the lottery. For example, while Omnipoint claims that carriers of last resort with no numbers in a particular wire center have priority in the lottery, in practice this “advantage” has never been used. Ironically, Omnipoint would be the greatest beneficiary under California's lottery scheme. Not only would it be able to draw from the lottery's initial category for its first code in tandem, but it would also be able to draw a second initial code for its end office in the same geographical area. New wireline entrants, in contrast, are restricted to a single “initial” code for each geographical area. Finally, Omnipoint must bear in mind that, but for the lottery, the most competitively desirable areas in California would have suffered complete numbering exhaust. California's lottery has served to protect as-yet “unborn competitors”
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Dated: February 22, 1999

Respectfully submitted,

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such as Omnipoint, by assuring them the opportunity to obtain numbers when they do arrive in California.

CERTIFICATE OF SERVICE

I, Mark Fogelman, hereby certify that I have today caused a true and correct copy of the foregoing COMMENTS OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION IN SUPPORT OF CALIFORNIA'S PETITION to be served on all known parties of record by serving a copy on each party on the attached list in the manner indicated thereon.

Executed at San Francisco, California, this 22nd day of February, 1999.

Mark Fogelman

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