STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 19, 1999

VIA FEDERAL EXPRESS

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Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Reply of the California Public Utilities Commission and the People of the State of California, Docket No. 96-98

Dear Ms. Salas:

Enclosed please find a copy of **REPLY OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA** in the above-referenced docket.

Thank you for your attention to this matter. If you have any questions, I can be reached at (415) 703-1319

Sincerely,

Helen M. Mickiewicz

Helen M. Mickiewicz
Attorney for the People of the
State of California and the Public
Utilities Commission of the
State of California

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

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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 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 or Responses to our Petition for an Additional Delegation of Authority to Conduct NXX Code Rationing, which was sent as a letter to the FCC Common Carrier Bureau Chief on November 3, 1998.[1]

[1] California is aware that the following parties filed Oppositions to or Comments on the CPUC's Petition for Additional Authority: AT&T Corp. (AT&T); Bell Atlantic; California Cable Television Association (CCTA); Focal Communications Corporation (Focal); MCI WorldCom, Inc.; MediaOne Group (MediaOne); New York Department of Public Service; Omnipoint Communications, Inc.; Paging Network, Inc. (PageNet); SBC Communications Inc. (SBC); and Sprint PCS.

I. INTRODUCTION

On September 28, 1998, the FCC issued the Memorandum Opinion and Order and Order on Reconsideration, FCC 98-224, now commonly referred to as the Pennsylvania Order. On November 3, 1998, at the urging of the staff of the Common Carrier Bureau, the CPUC filed the instant Petition for an Additional Delegation of Authority to Conduct NXX Code Rationing (Petition). Three days later, on November 6, 1998, the CPUC filed a Petition for Reconsideration (PFR) of the Pennsylvania Order. The PFR and the instant Petition raise similar and related issues.

Parties responded to California's PFR on February 4, 1999. On February 5, 1999, parties submitted Oppositions to or Comments on the CPUC's Petition for Additional Delegation of Authority. On February 16, 1999, the CPUC submitted a lengthy Reply to Oppositions to, Responses to, and Comments on California's PFR (PFR Reply).

Because issues raised in the PFR and the instant Petition are related, parties filing in opposition to the PFR and the Petition addressed the related or similar issues in both filings. In our PFR Reply, filed February 16th, the CPUC addressed at some length many of the arguments the opposing parties raised in their responses to the instant Petition. To save time and everyone's visual acuity, California will refer, where appropriate, to arguments contained in its PFR Reply and will not repeat those arguments in detail here.

II. THE CALIFORNIA RELIEF PLANNING PROCESS

The CPUC considers it worth pointing out again here, as we did in our PFR Reply, that the many of the positions opposing parties have taken before the FCC differ dramatically from the positions the California representatives of those same parties have taken in the industry planning process in California. (See PFR Reply, pp. 2-6.) The disparity in positions is noteworthy for the reasons stated in our PFR

Reply, as well as because the opposing parties' comments to the FCC demonstrate remarkable ignorance of the California relief planning process. We have described our relief planning process in our PFR, but we will take a moment here to describe the process again.

First, it is important for the FCC to be aware that the relief planning process in California is industry driven. The industry planning group meets regularly. The NANPA determines when a numbering plan area (NPA) is nearing exhaust and notifies the industry, which then meets to decide whether and when to declare jeopardy. The industry planning group determines if and when the remaining NXX codes in a particular NPA should be rationed. All of these steps are taken before the CPUC becomes involved in the planning process. True, CPUC staff often attend industry planning meetings, but CPUC staff do not vote at those meetings; pursuant to industry planning guidelines, only industry participants vote on relief planning issues. Only after the industry planning group declares an NPA to be in jeopardy, and votes to place it into the lottery, does the CPUC staff conduct the lottery, a ministerial function that involves drawing poker chips out of a coffee can. CPUC staff do not determine how many or which NXX codes are to be assigned monthly, nor do they, or the CPUC itself, assign any NXX codes.

The industry develops one or more relief plan(s), which, pursuant to California Public Utilities (P.U.) Code § 7931, the industry, the NANPA, and CPUC staff present to local jurisdictions and to the public in meetings. Based on input from these meetings, the industry planning group may or may not revise the plan(s) presented. Then the industry submits the plan(s) to the CPUC for approval. It is only then that the CPUC's formal involvement in the process begins. The CPUC reviews the industry plan(s) and may adopt one as submitted or, in occasionally, may revise a plan before approving it. Sometimes, a party, such as a city or county, may protest the plan, either after it is submitted to the CPUC and before it is approved, or after the CPUC approves the plan, via an application for

rehearing or a petition to modify. The CPUC must resolve any complaints, formal or informal, about the proposed plan.

That is the process in California. A clear understanding of this process renders meritless and even pointless the comments of many of the opposing parties. For example:

- PageNet states: "Whenever a state deems that number rationing would be warranted . . . ." (PageNet Comm., p. 7.) In California, the industry, not the CPUC, deems that number rationing would be warranted.

- SBC states: "First and foremost, the CPUC can and should require that planning be initiated earlier". (SBC Comm., p. 5.) In California, the industry, not the CPUC, initiates the planning process. Were we to require "that planning be initiated earlier", we would be challenged as exceeding the authority the FCC has delegated to the states.

- SBC states: "Giving the CPUC blanket authority to ration CO codes in area codes where it has not chosen a relief method or established an implementation date . . .". (SBC Comm., p. 6.) We do not seek blanket authority to ration CO codes, since it is the industry, not the CPUC which rations CO codes now in California. The extent of our involvement in the rationing process is that CPUC staff set the dates for the lottery, prepare materials for the lottery, and conduct the lottery by literally pulling poker chips out of a coffee can. We also report the results to the NANPA and the NANPA then assigns the codes to the carriers.[2]

- Sprint PCS states: "California seeks a waiver of [Rule 52.19(a)] so it can become involved in NXX code rationing (*e.g.*, conduct lotteries) *before* it adopts a relief plan for a given area code or Numbering Plan Area ('NPA')". (Sprint PCS Comm., p. 1, emphasis added.) And: "California . . . asserts that the FCC should nonetheless delegate additional authority to it so it can become involved in the rationing process before it adopts an area code relief plan". (Sprint PCS' Comm., p. 4, emphasis added.)

The Pennsylvania Order assumed that the state commission initiates and is responsible for the area code relief planning process. Based on that assumption,

[2] We will address later in this Reply the argument that we should not actually conduct the lottery.

the FCC delegated to state commissions authority to ration NXX codes only after a relief plan has been adopted and a relief date set. Many of the opposing parties' comments reflect the FCC's assumption. But in California, the CPUC does not initiate the planning process, and its responsibility for the process is limited as set forth above. Therefore, the FCC's restriction on code rationing, embodied in Rule 52.19(a), will have an unintended effect in California because the FCC assumed that the state commission both declares jeopardy and initiates code rationing. In California, the CPUC does neither. The NANPA declares jeopardy based on a recommendation from the industry planning group, and the industry initiates NXX code rationing. The CPUC's role is to adopt an area code relief plan. Thus, the Pennsylvania Order imposes restrictions on the CPUC pertaining to activities it does not control. That, in short, is the problem, which many of the opposing parties simply did not grasp.

III. THE CPUC IS IMPLEMENTING TIMELY AREA CODE RELIEF

As they did in responding to California's PFR, many opposing parties claim that the CPUC is not implementing timely area code relief. A careful analysis of these claims reveals that they are premised on two conclusions: 1) the CPUC is not timely implementing NPA relief because it has not moved earlier to consolidate rate centers, and 2) the CPUC is not timely implementing relief because it adopted a policy generally prohibiting use of overlays before January 1, 2000.[3]

> It bears noting that the current crisis in California likely could have been averted had either rate centers been consolidated or overlay relief plans been adopted instead of geographic splits. (Sprint Resp., p. 2; see also SBC Comm., pp. 1, 5.)

[3] That policy, adopted in CPUC Decision 96-12-086 allowed a specific exception for the 310 area code. In D.98-05-021, the CPUC approved the first overlay relief plan in California, to be implemented this year in the 310 NPA. In D.98-11-065, the CPUC made an exception to our overlay policy and approved an overlay for the 408 area code.

If only it were that simple. The facts are that California has implemented area code relief in ten NPAs over the past two years, will open three more NPAs this year and will open a minimum of two NPAs in 2000. Aside from disagreeing with our policies, the opposing parties just cannot seriously expect the FCC, or anybody else, to believe that opening this many NPAs in this period of time, a record unmatched by any other state, demonstrates California's efforts to "avoid making a decision on area code relief".[4] (Sprint PCS' Comm., p. 5; see also SBC's Comm., p. 1;.) If California is failing to timely implement relief, given the pace at which we are going, we have no remote idea of what the opposing parties expect us to do - perhaps implement twenty new NPAs per year? We note also the technical difficulties associated with opening more NPAs annually. The ILECs, particularly SBC's affiliate Pacific Bell, stated that they may not be technically capable of implementing new NPAs much faster than they do at present. We simply do not understand what rate of relief implementation will satisfy the opposing parties.

A. Use of Overlays

In the Second Report and Order, the FCC explicitly delegated to the states authority over area code relief planning and implementation.

> We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration, including the guidelines enumerated in the *Ameritech Order* and in this *Order* as detailed below. (Second Report & Order,, ¶ 272.)

[4] We wish to thank the few voices in the wilderness who expressed support for California's NPA relief efforts: CCTA, MediaOne, and especially Focal, for its assessment that "[t]he CPUC has shown foresight and leadership in addressing the numbering crisis in California". (Focal Comm., p. 2.)

> In this *Order*, we are authorizing the states to continue the task of overseeing the introduction of new area codes subject to the Commission's numbering administration guidelines. (Id., ¶ 281.)

In responding to the "suggestion of some parties that we prohibit or severely restrict the states' right to choose overlay plans", the FCC instead explicitly left to the states the decision on whether to implement an area code split or an overlay in any given relief planning situation. (Id., ¶ 282.)

> As we note above, states are uniquely situated to determine what type of area code relief is best suited to local circumstances. Certain localities may have circumstances that would support the use of area code overlays. (Id., ¶ 283.)

In the Pennsylvania Order, the Commission affirmed its delegation of authority to the states to plan and implement area code relief consistent with FCC guidelines.

> In the *Local Competition Second Report and Order*, the Commission delegated the authority to implement new area codes to the state commissions, but retained broad authority over numbering. (Pennsylvania Order, ¶ 7.)
>
> Under our rules, states can introduce new area codes through the use of: (1) a geographic split . . . ; (2) an area code boundary realignment . . .; or (3) an area code overlay . . .. The Commission noted that certain localities may have circumstances that would support the use of area code overlays, and that states "may make decisions regarding the relative merits of area code splits and overlays so long at they act consistently with the Commission's guidelines". (Id., ¶ 8.)

Plainly, in selecting a geographic split, an overlay, or a boundary realignment as the mode of area code relief, the CPUC is acting pursuant to authority the FCC has delegated to the states.[5] It is correct that the CPUC adopted a policy of not considering overlays for any area code relief plan prior to

[5] The CPUC has employed all three methods, in different NPAs.

January 1, 2000, except for the 310 NPA. The CPUC's decision was not arbitrary and capricious; it was based on the record before the CPUC at the time. In that regard, just as the FCC was urged to prohibit the use of overlays, many parties, particularly new entrants in the local exchange market, urged the CPUC not to allow overlays. In contrast, incumbent local exchange carriers (ILECs), such as Pacific Bell and GTE California, urged the Commission to make liberal use of overlays. Because of competitive concerns arising from the fact that local number portability was not yet deployed and would not be widely deployed for some time, the CPUC elected to prohibit use of overlays until 2000.

Further, Sprint PCS urges the FCC to ignore public input on area code relief issues. Specifically, Sprint argues that "[t]he FCC should give no credence to MediaOne's uncross-examined assertion the 'consumer research consistently shows a strong preference of NPA splits over overlays'". (Sprint PCS Comm., p. 3, fn. 12.) As a preliminary matter, the CPUC observes that it is actually Sprint PCS' assertions regarding public opinion in California that are "uncross-examined". It is unclear to the CPUC what survey or surveys MediaOne is referring to in its December 9, 1998 PFR. However, in California, three separate surveys of public opinions regarding area code relief options have been conducted. Each survey was performed by a different professional public opinion polling organization, such as Field Research; each contained different questions; and each was performed upon a different, statistically valid population sample. All three surveys yielded similar results. Curiously, Sprint PCS' own comments describe results of "published studies" that yielded consumer opinion results of similar to those of the three California studies.

Sprint PCS provided no information about the Colorado survey which it refers to in footnote 12 of its Comments on our Petition. Merely because customer preference research results are contained in "published studies" does not ensure that the underlying survey was a professionally-conducted, statistically-valid

opinion survey. Even if that were the case, the views of Colorado residents are not necessarily the same as those of California residents. In any event, this merely confirms that differences can and likely do exist in the conditions and customer preferences among the states. Imposing a uniform national approach to area code relief planning, like that advocated by Sprint PCS, would be ill-advised because it would ignore these differences.

Notwithstanding the CPUC's general prohibition against using overlays before 2000, the CPUC has approved use of an overlay in the 310 NPA, which will be implemented this year. In addition, the CPUC late in 1998 approved an overlay for the 408 NPA, to be implemented in January 2000. The industry has presented to the CPUC for approval two more consensus recommendations for overlays, in the 415 and the 650 NPAs. And the industry has submitted to the CPUC two alternatives – an overlay and a geographic split—for relieving the 510, 714, and 818 NPAs. The CPUC already has issued a proposed decision for comment on 714 NPA relief, and expects to issue proposed decisions for the other plans very soon. Therefore, PageNet's suggestion that we lift "the ban on overlay area codes" already has been realized. (PageNet Comm., p. 2.)

Recognizing that circumstances may have changed, the CPUC has opened an Order Instituting Rulemaking (OIR) to take a fresh look at its statewide area code policy. Among the issues being addressed in the OIR is the question of whether the CPUC should favor overlays, favor splits, or implement area code relief on a case-by-case basis. That matter currently is pending before the CPUC.[6]

[6] SBC complains that the CPUC issued the OIR in response to Pacific Bell's Emergency Petition to Modify [CPUC] Decision 96-12-086, rather than taking "immediate action" on Pacific's request. The subject of Pacific's Emergency Petition was that the CPUC should revisit its policy on implementing overlays. That issue is being addressed in the OIR. In the meantime, the CPUC has approved introduction of an overlay in both the 310 and 408 NPAs, and two more consensus industry recommendations for overlays in 650 and 415 are pending before the CPUC.

Sprint PCS and SBC do not claim that California has failed to implement area code relief plans in accordance with FCC guidelines.[7] Indeed, no party commenting on California's PFR or the instant Petition has asserted that our area code planning process is inconsistent with the FCC's guidelines.[8] We note that the Second Report and Order specifically contemplated that carriers might object to a state's area code relief plan.

> If a state acts inconsistently with federal numbering guidelines designed to ensure the fair and timely availability of numbering resources to all telecommunications carriers, parties wishing to dispute a proposed area code plan may file a petition for declaratory ruling, rulemaking, or other appropriate action with the Commission. (Second Report & Order, ¶ 291.)

In implementing our area code relief planning process, the CPUC has been scrupulous in following what we understand to be the FCC's rules. To date, no carrier has challenged at the FCC an area code relief plan adopted by the CPUC. The charge being leveled by opposing parties, thus, is not that we are failing to follow the FCC's rules, but that we have adopted an area code implementation policy with which they disagree. As long as we are, indeed, complying with FCC guidelines, it would be inappropriate for the Commission to take punitive action against California simply because some parties object to our policies.

B. Rate Center Consolidation

Sprint PCS is particularly exercised about what it views as the CPUC's complete and utter failure to do something meaningful about conserving numbers,

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[7] Sprint PCS' claim that overlays "can be implemented quickly and painlessly" has yet to be tested in California. Press coverage suggests that the public is wary at best of our mandate for 1+10 digit dialing for all calls in the overlaid area and of having multiple NPAs in one community, home, or business. In any event, no new NPA can be implemented quickly and painlessly – network changes are required to implement both splits and overlays. The public plainly does not consider adjusting to any new NPA to be "painless".

[8] We will address later SBC's claim that the CPUC's approved allocation of 60% of NXX codes to new entrants and 40% for growth. Because this charge pertains only to the manner in which the California lottery is conducted, we do not consider this to be an allegation that our area code planning process generally is inconsistent with FCC guidelines.

for example, by consolidating rate centers.[9] Sprint PCS asserts in a cavalier manner that "[h]ad California reduced the number of LA rate centers by half, the current crisis likely would not have been anywhere near as severe as it is". (Sprint PCS Resp., p. 4.) Sprint PCS plainly assumes that, had California begun rate center consolidation in 1997, for example, we would have completed the process by now and fifty percent of California's rate centers would be gone. That might have been true if every potential party to a rate center consolidation proceeding were in complete accord as to 1) how the consolidation should be accomplished, 2) which rate centers should be retained and which eliminated, 3) the timetable for such consolidation, 4) the revenue impacts for both ILECs and interexchange carriers (IXCs), 5) how those revenue impacts should accounted for, i.e., whether they should be recovered and how, and 6) other unspecified issues the parties undoubtedly would raise. We do not anticipate agreement among the parties on these issues.

The ILECs' existing rate structure is based on the configuration of their rate centers. Given the high number of rate centers in California, the consolidation process would be time-consuming, arduous, extremely contentious, and likely would result in some type of rate increase for some service(s).[10] These factors make rate center consolidation an unattractive option, but one which the CPUC began to pursue last year. In response to a request the CPUC posed to Pacific Bell and GTE California regarding which of their rate centers could be easily consolidated, both ILECs responded, "none". This merely confirms our expectation that rate center consolidation will be a daunting and formidable

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[9] We note that while SBC joins Sprint PCS in condemning our policy regarding use of overlays, SBC does not share Sprint PCS' and other parties' avid interest in rate center consolidation. It would be, of course, SBC affiliate Pacific Bell's rate centers, among other ILECs', that would have to be consolidated.

[10] A complete rate design for ILECs may be required; the last complete rate design for Pacific Bell and GTE California took the better part of two years to complete.

process. We have no reason to believe it will quickly alleviate the pressure on numbering resources. Finally, we note that the NRO Report found that rate center consolidation works best prospectively. Notwithstanding Sprint PCS' scolding the CPUC for having not consolidated rate centers already, at this point, we question how useful it will be when compared to number pooling.

Additionally, as we have said in our PFR and in our PFR Reply, the Pennsylvania Order has cast doubt on the states' ability to implement rate center consolidation since the FCC reasoned that states could not employ conservation measures except in connection with implementing area code relief. We cannot envision how we would implement rate center consolidation only in one NPA, or why we would want that result. Given the complexity of the process, it would be more efficient to consider rate center consolidation on a regional basis at a minimum. We believe the Pennsylvania Order is unclear as to the scope of the states' authority to pursue rate center consolidation.[11]

Finally, we note the inconsistency in Sprint PCS' position. After railing in its opposition to our PFR and its opposition to the instant Petition that we have not consolidated rate centers, Sprint makes the following statement.

> The FCC adopted Rule 52.19(a) with a reason: to ensure that state commissions focus their finite resources on area code relief – rather than on conservation measures or rationing .... (Sprint Resp., p. 6, emphasis added.)

Recognizing that the states have "finite resources", Sprint here suggests that we should be devoting those resources to implementing area code relief. That is precisely where California has been putting its resources. That is why we have opened ten NPAs in two years, with three more scheduled to open this year and a

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11 Some opposing parties insist that the Pennsylvania Order is clear in giving authority to the states over rate center consolidation. We were certain that the Second Report and Order authorized states to implement code rationing as we have done in California, and the Pennsylvania Order told us otherwise. We are hesitant to assume jurisdiction in light of the specific language in the Pennsylvania Order.

minimum of two slated to open in 2000. Yet, Sprint PCS also demands that California use those same finite resources to pursue Sprint's favored conservation measure – rate center consolidation – and no other conservation measures. Sprint cannot have it both ways.

C. Public Input

The subtext of many opposing parties' laments about "untimely" relief planning in California focuses on the statutory requirements for public participation in the relief planning process. California is completely unapologetic about seeking statutory changes, enacted in 1998 and effective January 1, 1999, that have codified enhanced notice provisions, and include a requirement for three public meetings and one local jurisdiction meeting to be conducted in connection with every relief planning process. As discussed in our PFR Reply, the industry participated in drafting the new statutory language, and supported or did not oppose the code revisions before the California Legislature. (See PRF Reply, pp. 4-5.) Many of the participants in the legislative drafting process were representatives of the very companies that before the FCC are objecting to the same statutory changes their California representatives supported last year.[12]

In our PFR Reply, we discussed the need for public involvement in the area code relief planning process, and we will not repeat that discussion here. (See PFR Reply, pp. 7-9; 13-17.) We note only that the opposing parties, with a few exceptions, appear all too willing to push aside public concerns about the frenetic pace at which area codes are being introduced in California. The CPUC does not have that luxury.

Consequently, we have no interest in pursuing "modification of [our] state legislation" in order to reduce the opportunities for the public to participate in the

[12] For example, SBC/Pacific Bell, GTE, and AT&T representatives all participated in the statutory drafting process. All three have criticized the statutory changes in opposing either the instant Petition or our PFR.

relief planning process. (See Omnipoint Comm., p. 7.) As it is, the public's role in relief planning is very small. As noted in our PFR Reply, and discussed in more detail later in this pleading, the relief planning process in California is an industry process. Our role is largely limited to 1) holding local jurisdiction and public meetings in conjunction with the industry and the NANPA, 2) adopting area code relief plans after they are developed by the industry and submitted to the CPUC, 3) overseeing dissemination of information to the public, and 4) performing the ministerial function of conducting the monthly lottery.[13] Given that the primary opportunity for the public to have any input is via the local jurisdiction and public meetings, the CPUC will not seek to curtail that input.

Thus, we reject the recommendation by PageNet that we urge "the California legislature to amend the notice and meeting requirements of the Code in light of the current numbering crisis". (PageNet Comm., p. 2.) It is precisely because of the "current numbering crisis" and the attendant need to open new NPAs at the rate of three to five a year that the public outcry has grown louder. Closing down or reducing opportunities for the public to participate will only engender more public anger and resentment. We see no upside to that prospect, for the CPUC, the industry, or the public.

Finally, since many opposing parties advocate that the relief planning process be started earlier, we do not understand their simultaneous opposition to statutory changes which extended the relief planning process in order to accommodate the industry's needs as well as the need to more fully inform the public. The importance of informing the public cannot be overstated, as above all else, the public incurs actual economic as well as social costs whenever a new NPA is opened. We note that Omnipoint considers costs to be significant. "In particular, pooling of blocks of 1,000 numbers entails significant economic costs

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[13] We will discuss why we conduct the lottery later in this pleading.

as well as allocation delays . . .".[14] Plainly, industry participants object to costs they might incur through better management of numbering resources. Yet, they express no similar concern for the costs the public incurs routinely as a result of the many NPAs opening in California.

IV. PLANNING IN CALIFORNIA CAN START EARLIER, IF THE INDUSTRY SO DESIRES

Several parties assert that the CPUC should begin the area code relief planning process earlier.

> [T]he California PUC may be able to initiate its area code relief planning process at a longer interval before implementation is needed, and/or complete the planning and implementation process within a shorter time period. (Omnipoint Comm., p. 7.)

> [T]he CPUC has an obligation to begin the NPA relief planning process far enough in advance of jeopardy to keep use of lotteries to an absolute minimum. (MCI Comm., p. 2.)

> The current California statute requires relief planning to begin 30 months before implementation of new area codes. The NPA Code Relief Planning & Notification Guidelines require a 5 year (60 month) minimum relief planning period. (SBC Comm., p. 5.)

As explained in our PFR Reply, in 1998 the CPUC sought changes to our state statute governing area code changes. (See PFR Reply, pp. 4-5.) We did so only after a process involving numerous meetings with industry representatives, who participated in drafting the statutory language. While Omnipoint, which does not even operate in California, and MCI were not involved in that process, SBC's affiliate Pacific Bell certainly was.[15] The prior version of P.U. Code § 7931

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[14] Omnipoint does not identify the alleged "allocation delays".

[15] Indeed, the counsel who signed SBC's Comments on the instant Petition, as well as SBC's Opposition to our PFR, was working on area code matters for Pacific Bell when the CPUC was holding meetings about revising California's area code statutes. He attended at least one statewide industry planning meeting, at Pacific Bell in San Ramon in December, 1997, when the status of the proposed statutory changes was discussed.

contemplated a twenty-four month NPA relief planning period, and also was premised on a monopoly local exchange service provider. To conform the code to the current planning practices, the CPUC proposed changes to § 7931.[16] In meetings with the industry, CPUC staff first recommended a twenty-seven month planning period, which the industry representatives initially resisted. After considerable discussion over several meetings, the group agreed to thirty-month planning period.[17] At no point in that process did Pacific Bell's representative, or any other industry representative, propose that California conform its relief planning process to the sixty-month period contained in the NPA Code Relief Planning & Notification Guidelines. In fact, the industry representatives grumbled loudly about moving the process out from twenty-four to thirty months.

At the same time, since the planning process in California is initiated by the industry, the CPUC would not impede any effort by the industry to initiate relief planning earlier than the thirty months specified in § 7931. Indeed, § 7931 states that "[w]hen the [NANPA] determines the need to establish a new area code, at least thirty months prior to the projected opening of the new area code, the coordinator shall provide written notice to the commission regarding the need to establish the new area code". Nothing in § 7931 prohibits the industry planning group from starting the process more than thirty months ahead of projected implementation of a new NPA. The CPUC invites SBC's affiliate Pacific Bell, MCI, or any other party to propose to the California industry relief planning group that the relief process be started earlier, because the industry planning group, not the CPUC, is the entity in California responsible for deciding when to commence the relief planning process.

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16 The CPUC attached copies of both the prior version and the current version of our area code statutes to our PFR.

17 As noted in our PFR Reply, the statutory changes which the CPUC sponsored were unanimously supported by or at least not opposed by the industry. (See PFR Reply, pp. 4-5.)

V. CODE RATIONING IN CALIFORNIA

Opposing parties' comments demonstrate confusion about the CPUC's request for additional authority. For example, PageNet states that "California bases its request almost entirely on the fact that the lottery plan was implemented pursuant to an 'industry consensus plan'". (PageNet Comm., p. 8.) PageNet then suggests that if the industry decides to retain the existing lottery in California, no FCC action would be necessary. PageNet has missed the point of our Petition.

We are not "basing our request" for additional authority on the fact that the industry proposed a lottery plan by consensus. It is correct that the industry in California might well endorse the existing NXX code rationing process, especially since the industry developed the process.[18] The reason for our Petition, rather, was the FCC staff's tentative conclusion that because the CPUC, at the request of the industry, resolved two issues pertaining to how the lottery should be conducted, California has in place a "state-ordered lottery". The FCC staff reached this tentative conclusion despite the fact that the industry, not the CPUC, decides when to put an NPA into jeopardy, and the industry, not the CPUC, decides when the lottery must be instituted. The lottery is invoked in California on an NPA-by-NPA basis by the industry, not by the CPUC. Still, because we issued a decision in 1996 approving the lottery process, and resolving outstanding issues, the FCC staff recommended that we raise the issue to the FCC, which we did in our PFR. In addition, the FCC staff urged the CPUC to seek additional authority from the FCC to continue to conduct the lottery as it has been conducted to date.

We also expressed deep concern in our PFR that if NXX code rationing cannot be instituted in California until after we have adopted an area code relief implementation plan and date, NXX codes will be claimed in a matter of days after

[18] In fact, as noted in our PFR, we took a straw poll of industry participants and found overwhelming support for continuing the lottery, though many industry participants supported the idea of making changes to the lottery. To that end, we have been conducting workshops on lottery reform.

jeopardy is declared. Demonstrating again its ignorance of the relief planning process in California, Sprint PCS challenges our position. "There is, in short, no basis to California's claim that NXX codes will 'vanish overnight' if it does not control the code-rationing problem – in addition to controlling the relief process."[19] We note that the CPUC is not the only proponent of the view that NXX codes will disappear quickly in California once jeopardy is declared if rationing cannot be instituted until after an implementation plan is approved and a date set. "If all lotteries were abandoned [in California], it is likely that number *shortages* would be replaced by total number *exhaust*, so that no NXX codes were available for any carriers." (AT&T Comm., p. 4.) MediaOne echoes this sentiment:

> 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. (MediaOne Comm., p. 2.)

The disparity of views between Sprint PCS on the one hand, and AT&T and MediaOne on the other hand exemplify the contentiousness of the area code relief planning process in California. We agree with the assessments of AT&T and MediaOne. As we noted in our PFR Reply, California has in fact experienced "runs" on NXX codes when rationing was not instituted simultaneous with the declaration of jeopardy. (PFR Reply, pp. 20-21.)

A. The CPUC Does Not Use NXX Code Rationing to Avoid Implementing Area Code Relief

Several opposing parties claim that the CPUC is using NXX code rationing as a means to avoid implementing area code relief. (Sprint PCS' Comm., p. 7; AT&T Comm., p. 3.) Nothing could be further from the truth, given the pace at

[19] Again, the industry, not the CPUC controls the code-rationing and the area code relief planning processes in California.

which we have opened and are continuing to open new NPAs. No party has cited, or could cite, a single instance in which California has "delayed making the extremely difficult choices required to avoid NPA exhaust and [has] used NXX rationing as a substitute for well-organized, long-run NPA relief planning". (MCI Comm., p. 4.) The FCC has delegated very limited authority to the states to plan and implement area code relief. In California, the industry drives the relief planning process. It is unclear to the CPUC exactly how we, either alone or in conjunction with the NANC and the NANPA, would go about developing a long-run NPA relief planning process. (SBC Comm., p. 9.) It seems to us that this criticism more appropriately should be lodged against the industry planning group in California, which developed and controls the relief planning process.

Sprint PCS is particularly off the mark.

> In every jeopardy NPA situation of which Sprint PCS is aware, industry has been able to agree upon and implement a rationing plan – without the assistance of a state regulator. There is, in short, no basis to California's claim that NXX codes will "vanish overnight" if it does not control the code-rationing problem – in addition to controlling the relief process. The documented experience in other states proves that industry can – and will – adopt and implement needed rationing plans. Given the jeopardy situations industry increasingly finds itself [sic], industry has no choice but to adopt needs-based rationing plans. (Sprint PCS' Comm., p. 6.)

Sprint PCS is conflating two issues: 1) achieving industry consensus on a rationing plan, and 2) declaring jeopardy in a given NPA. Sprint PCS appears to assume that, if given a chance, the industry can develop a rationing plan that will avoid the need for jeopardy to be declared. Based on that assumption, Sprint PCS chastises the CPUC for attempting to "control" both the code rationing process and the relief planning process. In fact, as stated repeatedly, the CPUC controls neither the code rationing process nor the relief planning process. Both are controlled by the industry, and the CPUC is not seeking to change that arrangement. Rather, the

CPUC is apprising the FCC of the fact that the demand for NXX codes is so high in California that jeopardy sometimes is declared soon after relief has been implemented.[20] When that happens, so much of the relief planning process remains to be performed that the industry cannot complete the process before the NPA exhausts unless the NXX codes in that NPA are rationed. Because the industry does not have enough time to develop and submit a plan, the CPUC is unable to meet the Pennsylvania Order's requirement that a plan be approved before placing an NPA into rationing. This is the reality in California, regardless of how Sprint PCS and other parties have mischaracterized it.

We also note that when we took a straw poll of industry participants as to whether we should continue the California lottery in light of the Pennsylvania Order, the respondents overwhelmingly supported continuing the lottery. Curiously, representatives of some of the same companies that oppose our request for additional authority to continue the lottery before the FCC in fact supported the California lottery in our straw poll, specifically, PageNet, SBC/Pacific Bell, and Sprint PCS.

B. Allegations That California's NXX Code Rationing Process Is Discriminatory

California objects to the allegations of SBC and Omnipoint that the California NXX code rationing process is discriminatory. Contrary to the claims of SBC, the NXX code lottery was not "designed to disadvantage carriers who need more than one code in a rate center area". (SBC's Comm., p. 3.) The NXX code lottery in California allots sixty percent of the available NXX codes in each NPA for each month to carriers seeking an initial NXX code in a rate center (initial NXX codes). The remaining forty percent of the available NXX codes assigned in

[20] For example, the 650 NPA opened in February, 1998, and the NANPA declared it to be in jeopardy in June, 1998.

each NPA for each month are for carriers seeking additional NXX codes in a rate center (growth NXX codes).

This system is not designed to discriminate against any carrier or class of carriers. Instead, it is designed to ensure that new entrants with no codes in a rate center are able to obtain an initial NXX code and thus, begin serving customers. Since incumbent local exchange carriers already have at least one NXX code in each rate center in their service territory, they do not need to establish a first NXX code in these rate centers. For all subsequent NXX codes in that rate area, every carrier's request goes into the same pool. CLECs, paging companies, and new wireless providers are not treated any differently from "incumbent LECs and established wireless providers".

Moreover, SBC's assertion that the 60/ 40 distribution is discriminatory is misleading because it omits several key aspects of the NXX code lottery in California. First, any carrier may apply for a code in either an initial or a growth NXX code in the lottery, so long as the carrier meets the requirements for that category. This means, for example, that an affiliate of an incumbent local exchange carrier, such as Pacific Bell CLC, may apply for NXX codes in the initial category in rate centers for which it does not already have an NXX code. Second, SBC ignores the fact that the 60/ 40 distribution sometimes is not applied in drawings for specific NPAs in the lottery. The California lottery procedure provides for unallocated NXX codes from one category to be transferred to the other category. For instance, if the full allocation for initial codes is not requested by carriers for an NPA in a given month, the remaining available codes are then transferred to the growth pool for distribution to carriers, and vice versa. This means that up to 100 percent of the NXX codes available in an NPA for a given month could be available for a single category, i.e. initial or growth. CPUC staff has observed during the last several months that excess growth codes are more frequently transferred to the initial category than the reverse.

SBC also makes unsubstantiated claims that the California lottery has rendered undue harm on its affiliate.

> In the greater Bay Area in the year 1998 alone, Pacific Bell was unable to meet customer requests for almost 275,000 telephone numbers (SBC Comments, p. 4)

SBC provides no reference or citation to a filed document in support of its claim. If SBC's affiliate Pacific Bell has actually provided this data to the CPUC, then it should have been cited in its Opposition. Without such a reference, the FCC has no evidence to refer to in properly evaluating SBC's claim. Nor, for that matter, does the CPUC, which has not been informed of this problem. It is unclear whether this alleged problem is broadbased or whether it only affects one or a few customers. Indeed, SBC is not claiming that its affiliate Pacific Bell is unable to obtain any NXX codes in the San Francisco Bay Area. Likewise SBC is not claiming that its affiliate has had to deny service to customers. Nor has Pacific Bell asserted a need for carrier of last resort (COLR) status in the California lottery (discussed below).

Omnipoint's claims of discrimination are similarly unfounded. Omnipoint asserts that the California lottery "discriminates in favor of existing wireline carriers and against new entrants by granting first priority for NXX codes to carriers of last resort (COLRs, i.e., ILECs) with no numbers in a particular wire center". (Omnipoint Comm., p. 4.) The CPUC does not dispute that the lottery rules allow for priority to be given to COLRs to avoid denial of service in a given wire center when <u>no other carrier with numbers</u> is willing to provide service in that wire center. However, Omnipoint's comments demonstrate a misunderstanding of the situation in California. Omnipoint is incorrect that COLRs <u>must be</u> ILECs in California. In CPUC D.96-10-066, the CPUC reformed its universal service rules to accommodate a competitive local exchange marketplace. Specifically, the CPUC established a definition of basic service that must be provided by all

COLRs, but also allowed for any carrier, including CLECs, to become COLRs in California. That decision also provides for the existence of multiple COLRs in a given area. To date, no CLEC has applied for COLR status in California. In addition, the lottery has not discriminated in favor of existing wireline carriers, as Omnipoint asserts. No such discrimination could have occurred in California because, to date, no carrier has applied for COLR status in the NXX code lottery.

Given that the rationing process in California today is primarily the result of industry concensus, the CPUC finds it particularly perplexing that the industry is attacking the CPUC for the very existence of the lottery. In establishing the rationing process, the CPUC merely resolved those issues that the industry could not agree on, and which the industry asked the CPUC to resolve. In fact, we do not disagree with AT&T that "the industry can modify the lottery system or adopt different rationing or other conservation plans by consensus". (AT&T Comm., p. 3.) In November 1998, the CPUC implemented changes to the rationing process that were the result of industry consensus. Furthermore, the purpose of our recent lottery workshops has been to afford the industry a forum to review the lottery process and to propose changes.

C. The Consensus NXX Code Rationing Process in California

Yet again demonstrating its unfamiliarity with the California relief planning and code rationing processes, Sprint PCS criticizes the CPUC for the manner in which we approved the industry consensus recommendation for an NXX code rationing plan. First, Sprint PCS assumes that, contrary to what we said in our PFR, we decided to undercut industry attempts to reach a consensus on how the lottery should be performed, in the interests of establishing "control" over the code rationing process.

> California also wants the authority to "resolve dispute among industry participants pertaining to the terms and conditions of NXX

> code rationing". In support it recites the fact that in 1996 it "determined that 60% of all new NXX codes assigned should be as initial codes, and 40% as growth codes". The example, however, does not prove the proposition for which it is cited. It is true that in comments filed with the California Commission, all parties did not propose the identical allocation formula. But given that the California Commission decided that this was a decision it should make, industry never had the opportunity to reach consensus over the details of the rationing plan – as it has done in other states where commissions do not micromanage the industry. (Sprint PCS Comm., p. 6.)

In the CPUC's PFR we stated: "industry participants could not agree on what percentage of NXX codes should be assigned as 'initial' codes versus for 'growth'". (PFR, p. 9.) We also said, "[in CPUC Decision 96-09-087] <u>at the request of the industry</u>, the CPUC resolved issues on which the industry could not or did not reach consensus". (PFR, p. 14, emphasis added.) Sprint PCS alleges that we "decided" that the allocation of codes "was a decision [the CPUC] should make", and therefore, the industry did not have the opportunity to resolve the issue itself. The fact is that the industry attempted to resolve the issue, could not, and <u>asked</u> the CPUC to resolve it. We fail to see how responding to the industry's request equates to a power grab by the CPUC over the code rationing process.[21]

Further, we note that the industry has again taken up the issue of the growth-code-versus-initial-code allocation. In two workshops, one in November 1998 and one in January 1999, the industry has discussed this issue. The industry will continue discussing this issue at the next lottery workshop, to be held on February 25, 1999. So far, the industry participants have been unable to agree on whether the allocation should be changed at all, let alone what changes should be

[21] To further demonstrate that the CPUC deferred to the industry, the CPUC rejected its own staff's recommendation on how to structure the lottery, and adopted the industry recommendation instead.

made. This is a bone of contention within the industry in California, and Sprint PCS' effort to pin the problem on the CPUC will not change that fact.

D. Who Should Conduct the Lottery in California

Once again, parties' comments on the question of who should conduct the lottery in California demonstrate unfamiliarity with the relief planning process here. Several parties criticize the CPUC directly or indirectly for the fact that our staff actually conduct the lottery.

> The [CPUC] should also transfer responsibility to conduct the lottery from the CaPUC to the NANPA. (AT&T Comm., pp. 3-4.)
>
> Bell Atlantic also disagrees with the CPUC on the narrow question it poses to the Commission. There is no reason for the CPUC itself to run the lottery for the industry once the industry has decided that one is required. (Bell Atlantic Comm., p. 2.)
>
> California became involved in NXX code rationing lotteries because some carriers complained about the then code administrator/relief coordinator, Pacific Bell, conducting lotteries. [Cite omitted.] Since then, however, this responsibility has been assumed by NANPA, so the original reason California became involved has vanished. (Sprint PCS' Comm., pp. 5-6, fn. 29.)

Sprint PCS in particular is wrong about its facts and its conclusions. The CPUC did not take the lottery over from Pacific Bell, because Pacific Bell <u>never</u> conducted the lottery. Rather, the industry asked the CPUC to conduct the lottery from the beginning of code rationing in California, in 1996. It is true that the reason the industry asked the CPUC to conduct the lottery was distrust of Pacific Bell. It also is true that with creation of an independent code administrator, the NANPA could take over the lottery in California. Indeed, nothing would please the CPUC numbering staff more than to be relieved of the monthly obligation to conduct the lottery. The lottery consumes several work days a month for several CPUC employees.

In the lottery workshop held in November 1998, the CPUC staff expressed its interest, even desire, to turn the lottery over to the NANPA. The industry representatives at the workshop, including representatives of Pacific Bell and Sprint PCS, unanimously voted not to have the NANPA take over the monthly lottery. The NANPA has indicated that, because Pacific Bell never conducted the lottery, it may not be a task the NANPA is obligated to perform pursuant to the Requirements Document. Consequently, if the NANPA were to take over the lottery, the cost of it's doing so would not be included in the fixed bid Lockheed Martin submitted to the NANC. The industry would have to pay for the NANPA to conduct the lottery, something the industry in California currently is unwilling to do since the CPUC staff conducts the lottery for free. Thus, while the CPUC has absolutely no objection to transferring the lottery to the NANPA, we find ourselves pressed into service.

E. NXX Code Shortages Are Not the Result of Delayed Action by the CPUC

Sprint PCS claims that "[t]he goal of rationing is to help ensure that, in a time of *artificial* shortage, carriers most in need of numbers can obtain them". (Sprint PCS' Comm., p. 7.) Unfortunately, there is nothing "artificial" about the NXX code shortages in California. NXX code shortages are the direct result of an explosive demand for numbering resources and an inefficient legacy system – the rate-center based NXX code assignment practices of the ILECs. As MCI notes, the solution is efficient usage practices, which must be employed if we are to solve our numbering crisis before we run out of NPAs.

> Situations like that in California make clear that thousand-block assignment (1000-block number pooling) is absolutely crucial to providing conservation alternatives to states that can defer premature NPA exhaust without the need to ration NXXs and throttle competitive services for end users. (MCI Comm., pp. 5-6.)

California agrees that number pooling is a conservation measure the FCC must make all efforts to implement as soon as possible. We remind the FCC of the recommendation in our PFR that the Commission adopt guidelines for the states to follow in establishing mandatory number pooling trials.

> ILECs in California have generally refused to cooperate in number pooling or unassigned number porting – measures which could both prolong the life of existing NPAs and also assist CLECs without an NXX in a particular rate center to enter the market, even in a jeopardy situation. Without industry cooperation, assistance of the CPUC in rationing codes and resolving disputes is essential. (Focal Comm., p. 2.)

Further, the CPUC notes that if all carriers were able to 1000-block pool, existing stocks of numbers would be used more efficiently, and the current merry-go-round of NPA relief could be slowed.

F. SBC's Proposals to Fix the Relief Planning Process in California

The CPUC appreciates SBC's recommendation that the FCC grant California a temporary additional authority to ration NXX. But SBC urges the FCC to attach conditions to that grant of authority. (SBC Comm., pp. 6-9.) The CPUC opposes SBC's recommendations for three reform measures because they are misguided and seriously flawed.

First, SBC suggests that "all preferences for carriers" in the California lottery be eliminated and that a nondiscriminatory rationing scheme be established no later than 30 days after the grant of additional authority. As we have shown, the California rationing process is not discriminatory and, thus, it is unnecessary for the CPUC to develop an alternate scheme; that is the job of the industry planning group. We have also demonstrated that the rationing process which exists today is primarily the result of industry consensus. The industry is free to change the NXX code rationing process to modify or eliminate the 60/40

allocation factor. Our recent lottery workshops show that we are trying to facilitate industry consensus on changes to the lottery. SBC's suggestion is nothing more than an attempt to overturn the CPUC's resolution of items which the industry could not agree on, and which the CPUC resolved in a manner which SBC opposes.[22]

SBC also insists that the CPUC should establish a program and detailed timetable for providing relief to area codes currently in the lottery. It is both unnecessary and inappropriate to establish such a timetable. With this proposal, SBC creates a false impression that area codes currently in the lottery do not have definitive timetables for relief. When the industry determines that a given NPA should be rationed, the length of time that it will be subject to the lottery also is determined. The NANPA and the industry use that time frame to determine how many NXX codes should be rationed in each NPA each month. In addition, relief plans already have been adopted for many of the NPAs currently in the lottery. These NPAs will likely be removed from the lottery once relief is implemented[23]. The industry and the NANPA have just recently submitted area code relief plans, for some NPAs in the lottery, for the CPUC to evaluate. Those plans are pending before the CPUC. For the remaining NPAs now in the lottery, the industry and NANPA have yet to submit area code relief plans to the CPUC for review and approval. It is impossible for the CPUC to render decisions on plans or establish timetables for such decisions before the relief plans are submitted.

Third, SBC demands that the CPUC should establish and implement a definitive plan with a detailed timetable for "improving the California process" for executing and implementing area code relief. While the CPUC helps facilitate

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[22] We note that in our PFR, we asked the FCC to affirm that state commissions have authority to resolve issues pertaining to the code rationing process when the industry cannot reach consensus.

[23] The CPUC notes that certain NPAs have either continued rationing or dropped out of the lottery for a short time because subsequent relief was necessary. In these cases, the relief for those NPAs was shorter than industry forecasts. The CPUC has not yet determined that the

public and local jurisdiction meetings and monitors the relief planning process, this suggestion is completely inappropriate. The industry is responsible for declaring area codes in jeopardy, for initiating rationing and for developing area code relief plans. The industry is free to "improve" its process and develop detailed timetables, if that is the industry's choice. The CPUC only reviews and approves area code relief plans once they are received from the NANPA and the industry. If the CPUC were to work with the NANC and the NANPA to create a definitive detailed timetable for "improving the California relief process", we would be, in essence, taking over control of the relief planning process from the industry. Since the opposing parties believe we are responsible for delays in the process now, we do not know what they believe would be gained by having the CPUC remove the process from the industry.[24]

VI. CONCLUSION

For all of the reasons set forth in this Reply, California again requests that the FCC grant the CPUC additional authority to continue to conduct the industry-consensus NXX code rationing process as we have done for the past two years.

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problem with the forecasts is related to a particular method of relief, i.e., splits or overlays.

[24] We also wonder whether we could take over the planning process without the industry participants in California challenging that action at the FCC.

We also ask that the FCC confirm our authority to resolve industry disputes pertaining to the NXX code lottery. We ask that this additional authority be granted pending the FCC's resolution of issues raised in our PFR.

Respectfully submitted,

PETER ARTH, JR.
LIONEL B. WILSON
HELEN M. MICKIEWICZ

By: Helen M. Mickiewicz

HELEN M. MICKIEWICZ
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703- 1319
Fax: (415) 703-4592

Attorneys for the
Public Utilities Commission
State Of California

February 19, 1999

CERTIFICATE OF SERVICE

I, Helen M. Mickiewicz, hereby certify that on this 19th day of February, 1999, a true and correct copy of the foregoing **REPLY OF THE CALIFORNIA PUBLIC UTILTIES COMMISSION AND THE PEOPLE OF THE ST ATE OF CALIFORNIA** in CC Docket No. 96-98, was mailed first class, postage prepaid to all known parties.

Helen M. Mickiewicz

Helen M. Mickiewicz