

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

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In the matter of:

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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-99-21
NSD File No. L-99-19
NSD File No. L-99-17

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

CC Docket No.: 96-98

**COMMENTS 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) submit to the Common Carrier Bureau of the Federal Communications Commission (FCC or Commission) these comments on three petitions for additional authority. Specifically, California here responds to 1) the Petition of the New York Department of Public Service (NYPSC) for Additional Authority to Implement Number Conservation Measures (NYPSC Pet.); 2) the Petition of the Massachusetts Department of Telecommunications and Energy (MDTE) for Additional Authority to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes (MDTE Pet. I), and 3) the companion Petition of the MDTE for

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Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes (MDTE Pet. II). Where the issues raised in the NYPSC and MDTE Petitions pertaining to number conservation measures are common, we will address the two together.

I. INTRODUCTION

As a preliminary matter, California wishes to express general support for states seeking additional authority to respond to the crushing demands of area code relief planning and implementation. As noted in other filings in this docket, no state has more area code activity than California. Still, the CPUC is acutely aware that many other states face the very same problems in trying to respond to the escalating numbering crisis. The industry insists on its need for ever more numbers, and the Commission has restricted the states' abilities to reduce the speed at which a valuable public resource is being depleted. We urge the Commission to grant, at least in part, as discussed below, the requests of New York and Massachusetts for the authority to implement measures that will slow the demand for numbers by allocating them more efficiently.

II. MDTE PETITION TO IMPLEMENT A SERVICE-SPECIFIC OVERLAY IN VARIOUS AREA CODES

The MDTE requests that the Commission grant "a waiver of the Commission's rule prohibiting technology-specific or service specific area code overlays". (MDTE Pet. I, p. 4.) The CPUC, to date, has not taken a position on the use of service-specific or technology-specific overlays. At the moment, a bill pending before the California State Legislature would, if enacted, require the CPUC to seek a similar waiver from the FCC.

Thus, we may be seeking the same or comparable authority from the Commission in the not-too-distant future.

The CPUC urges the FCC to reconsider its decision to disallow any service-specific or technology-specific area code. Given the exponential growth in number demand, the FCC may find that circumstances now warrant a modification of that policy. Because of the FCC's prohibition, California, like all states, is precluded from considering a service-specific or technology-specific overlay. Yet, at public meetings held in California in connection with area code relief planning, one or more public speakers usually ask why we do not create an area code for specific uses, such as faxes or wireless providers. While California has not taken a position on this question yet, the CPUC would like the discretion to consider such an option. Thus, the CPUC urges the FCC to reconsider its ban, and further, to consider delegating to the states the authority to establish service-specific or technology-specific area codes if the state commission deems doing so to be in the public interest.

Finally, we note that the FCC recently granted wireless carriers a two-year extension of the deadline for their implementation of local number portability (LNP). Carriers which are not LNP-capable are not truly able to participate in number pooling. Both the FCC and the states are considering number pooling, whether on a trial basis at the state level per the Pennsylvania Order¹, or via mandatory FCC rules, hopefully to be established sometime in the very near future. These facts suggest two alternatives: 1) the

¹ Memorandum Opinion and Order and Order on Reconsideration, FCC 96-98, Released September 28, 1998.

FCC delays number pooling until the wireless carriers are LNP-capable, or 2) the FCC authorizes number pooling without the participation of wireless carriers, some of which are now well-entrenched carriers with large stockpiles of numbers at their disposal. If the FCC decides on either of these courses, then it is only reasonable for the FCC to reconsider the potential advantages of setting aside specific NPAs for wireless carriers.

III. PETITIONS BY MDTE AND NYPSC TO IMPLEMENT CODE CONSERVATION MEASURES

A. Reclamation of Unused and Reserved Exchange Codes

Both the MDTE and the NYPSC request additional authority pertaining to reclamation of unused or reserved NXX codes. (MDTE Pet. II, pp. 5-7; NYPSC Pet., p. 13.) In particular, the MDTE asks for “authority to require reclamation to the area code administrator of unused exchange codes or thousands number blocks from carriers with excess number resources”. (MDTE Pet. II, p. 5.) The NYPSC makes a narrower request, seeking to “tighten and enforce” the time frames which currently exist in industry guidelines for reserving inactive NXX codes.

California urges the FCC to explicitly delegate to states the authority to order carriers to return to the North American Numbering Plan Administrator (NANPA) unused NXX codes or portions thereof. California has not yet attempted to gather utilization data on a broad basis pertaining to contamination rates of currently-assigned NXX codes. Given that the CPUC has expressed interest in 1,000-block number pooling, we would anticipate gathering or accessing utilization data prior to the start-up of pooling. Such data would also serve the purpose of disclosing whether codes are being used, and if not,

offer the CPUC the option to consider reclaiming unused codes. An explicit affirmation of state authority to engage in the gathering of data and the reclamation of unused codes would assist the petitioners, California, and other states in ensuring that numbers are used more efficiently.

California notes also that some reserved NXX codes are used to provide tariffed services over which state commissions have jurisdiction. To the extent that is the case, the CPUC assumes states already have authority to determine whether NXX codes should be reserved, and if so, how many NXX codes or numbers within those codes should be reserved to provide those tariffed services.

In addition, some special use codes are used by incumbent local exchange carriers (ILECs) to provide services for the public which are not tariffed. For example, in California, ILECs provide a weather service number, which is not tariffed. Because the public interest is implicated in how those services are provided, the FCC should affirm that states have authority over how those special use codes are used.

B. Maintain Current NXX Code Rationing for Six Months After Relief Is Implemented

The MDTE seeks authority to maintain its “current central office code rationing measures until six months after implementation of area code relief” in the 508, 617, 781, and 978 area codes. (MDTE Pet. II, pp. 7-8.) In specific area code relief decisions, the CPUC has adopted the approach of continuing to ration codes after implementation of relief, based on industry recommendations. In addition, at a statewide planning meeting in December, 1998, the California industry area code planning group adopted by

consensus the same approach. Lockheed Martin IMS, in its capacity as the NANPA, has elected to take to the North American Numbering Council (NANC) the issue of whether states should or could adopt different policies regarding maintenance of NXX code rationing after relief has been implemented in a given NPA. Though Lockheed did not oppose the California industry planning group's adoption of this approach, the NANPA suggested that it was concerned about differing state approaches, and wanted guidance from the NANC or the FCC on how to respond to the different policies.

This particular issue has caused some dissention in the California industry planning group. Based on the discussion of this issue at the December, 1998 and March, 1999 statewide planning meetings, it is the view of the California industry and of the CPUC that whether NXX code rationing continues after relief is implemented in a given NPA, and if so, how it is effected, is strictly a matter for the industry within each state to address. Where industry consensus is unattainable or where the public interest demands, the state commission should resolve the matter. California urges the FCC to affirm that, at a minimum, the state industry planning group can decide the policy for continuing to ration NXX codes after relief is implemented. Alternatively, the FCC should conclude that state commissions may so order where the state commission deems continued rationing after relief is implemented to be in the public interest or where the industry cannot reach consensus.

Thus, California supports this specific request of the MDTE.

C. Revision of Rationing Procedures

The MDTE asks the Commission for “authority to revise the rationing procedures now in effect, if necessary, to prolong the life of existing area codes”. (MDTE Pet. II, p. 8.) In California, the industry has developed, and the CPUC has adopted, an NXX rationing plan.² Nonetheless, California supports the MDTE’s request that the FCC affirm explicitly that states have authority to revise NXX code rationing procedures, even where the industry might agree on a different outcome. While the CPUC has chosen not to make changes to the NXX code rationing process in California other than at the request of the industry, any state commission may find that the public interest, which is not parallel to the interests of the industry, requires a deviation from or revision to existing NXX code rationing procedures.

D. Hear and Address Claim of Carriers Seeking Additional Codes

The MDTE asks the Commission for “authority to hear and address claims of carriers seeking additional exchange codes and to work with the area code administrator to ensure that those carriers unable to serve their customer(s) acquire additional exchange codes outside of the rationing plan” until relief is implemented. The CPUC has already been presented with claims from two carriers seeking to obtain NXX codes outside of the California lottery. The CPUC denied the first petition, filed by Media One, and referred the matter to a subsequent series of lottery workshops. The industry has met three times in workshops to discuss possible changes to the California lottery process, has discussed

² The CPUC has described the California NXX code rationing process in other recent pleadings before the FCC. In addition, we note that the CPUC has resolved, at the request of the industry, contentious issues pertaining to the NXX code lottery which the industry itself could not resolve.

the Media One request three times, and has reached no consensus to change the existing lottery process to give NXX codes to carriers demonstrating an immediate need for codes to provide service.³

The second petition, by Sprint PCS, was withdrawn after Sprint PCS received NXX codes in a lottery held in a month subsequent to the filing of its petition.

In the Pennsylvania Order, issued September 28, 1998, the FCC directed the NANC to provide to the FCC a recommendation on the question of carrier access to NXX codes outside the rationing process.

It is further ordered, that the NANC, within 60 days of the effective date of this Order, provide a recommendation as to whether, in the future, the state commissions or the NANPA should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive an NXX or multiple NXXs outside of the parameters of the rationing plan if it demonstrates that it has no number and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service. (Pennsylvania Order, ¶ 58.)

The CPUC is not aware that NANC has provided, as yet, the requested recommendation to the FCC. In the meantime, the states, like California and Massachusetts, find themselves confronted with requests from carriers to be treated as exceptions to the rules which govern the NXX code rationing processes.⁴ In New York, for example, Sprint PCS sought from the FCC an order directing the NANPA to release to Sprint PCS two

³ CPUC staff members led the workshops, and are preparing a workshop report for the CPUC to review.

⁴ Indeed, in our Petition for Reconsideration (PFR) of the Pennsylvania Order, we noted our interest in the anticipated NANC recommendation. (See Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, filed November 6, 1998, pp. 22-23.)

NXX codes which had been reserved for it pursuant to the rationing procedures in place in the 516 NPA.⁵

California emphasizes that it is unfamiliar with the circumstances both underlying Sprint PCS' request in New York, and fueling the request by the MDTE. We note that in California, NXX codes are not reserved for later release to the carrier which is assigned the codes. Rather, the NXX codes reserved for a particular carrier via the lottery process here are released to the carrier in the relatively short time frame completely consistent with industry guidelines. Therefore, we do not comment on the specifics of those situations. The issue remains, however, of critical importance to the states.

Notwithstanding the absence of a recommendation from the NANC, the CPUC urges the FCC to affirm that states do possess authority to order the NANPA to allocate NXX codes outside of the code rationing process, if the state determines that to do so would be in the public interest.⁶ Thus, California supports this specific request by the MDTE.

E. Set Allocation Standards/ Fill Rates

The MDTE requests that the FCC grant it "authority to set the standards for allocation of exchange codes to manage numbering resources more efficiently". (MDTE Pet. II, p. 9.) The NYPSC makes a similar request, asking for authority "to establish

⁵ See Letter to Mr. Ronald R. Conners from Yog R. Varma, FCC Common Carrier Bureau Deputy Chief, dated March 12, 1999.

⁶ For example, Media One has asserted to the CPUC that it seeks codes outside of the California lottery specifically to offer residential local exchange service. In California, today, very few carriers are offering residential local exchange service in competition with ILECs.

minimum fill rates to enhance our efforts to respond appropriately to area code relief by requiring more efficient and effective use of numbering resources". (NYPSC Pet., p. 12.)

In a decision approving an area code overlay for the 310 NPA in Los Angeles, the CPUC established a requirement concerning assignment of numbers in blocks with relative degrees of contamination. That decision went unchallenged, but when we issued a decision, containing an identical provision, ordering an overlay for the 408 NPA last year, after the FCC had issued the Pennsylvania Order, Pacific Bell challenged our order. Pacific claimed that imposing requirements for efficient number management within NXX codes constituted number assignment, a task the FCC has delegated exclusively to the NANPA. The rehearing of that decision is pending before the CPUC. In the meantime, we expect to be seeking comments on what, if any, measures we should impose in all area code relief plans pertaining to efficient management of numbers within NXX codes. We urge the FCC to affirm that states have such authority, and thus support the specific request of the MDTE and the NYPSC.⁷

F. Institute 1,000-Block Number Pooling

Both the MDTE and the NYPSC request authority from the FCC to implement mandatory 1,000-block pooling. (MDTE Pet. II, pp. 9-10; NYPSC Pet., pp. 6-9.) California fully supports these requests. The CPUC has expressed publicly its interest in pursuing number pooling, and established an industry task force to explore options for doing so. In its recent Interim Report to the CPUC, the Number Pooling Task Force

⁷ We also touched on this issue in our Comments on the NRO Report, filed January 22, 1999. (See Comments of the California public Utilities Commission and of the People of the State of California, In the Matter of: North American Numbering Council Report Concerning Telephone Number Pooling and

explained that it had reached consensus “against recommending a voluntary number pooling trial in California at this time, given the positions that various parties have taken on the matter”. Specifically, the Task Force reported that the ILECs refuse to participate in a voluntary trial. The Task Force further reported that the CLECs are of two views: a minority wish to pursue voluntary pooling trial in hopes they can get smaller blocks of numbers, while the majority consider voluntary pooling trials to be a waste of time and resources if the ILECs will not participate.

Thus, in California, as in many other states, we are at a stalemate in pursuing number pooling. In our PFR of the Pennsylvania Order, we recommended that the FCC take comments regarding guidelines for states to order mandatory number pooling trials.⁸ The FCC has not taken comments on number pooling guidelines, and the states are facing an escalating numbering crisis. The crisis has arisen not because we lack sufficient numbers, but because those numbers are being allocated inefficiently. We continue to urge the FCC to promptly establish guidelines for the states to follow in conducting number pooling trials. If the FCC does not intend to act promptly to establish number pooling guidelines, then the CPUC urges the FCC to delegate to the states authority to mandate number pooling.

Therefore, we support the specific requests of the MDTE and the NYPSC.

Other Optimization Methods, hereafter the NRO Report, p. 11.)

⁸ See Petition for Reconsideration by the California Public Utilities Commission and the People of the State of California, pp. 18-20.

G. Extended Local Calling Areas

The MDTE seeks authority to implement extended local calling areas. (MDTE Pet. II, pp. 10-11.) In our Comments on the NRO Report, we stated that “it is not clear to the CPUC exactly what the [NRO] Report contemplates when it discusses ‘wireline-to-wireline ELCA [Extended Local Calling Areas]’”. The details of the MDTE’s request similarly are unclear to us, so the CPUC cannot speak to the specific authority Massachusetts seeks.

H. Inconsistent Rate Centers

The MDTE requests authority from the FCC to “implement Inconsistent Rate Centers”, meaning that CLECs would use different rate center boundaries from those of the ILECs. In adopting rules for local exchange competition in 1996, the CPUC authorized CLECs to create rate centers inconsistent with those of the ILECs. We simply asked that any carrier proposing to create inconsistent rate centers notify the CPUC of its intention to do so. To date, only one carrier has tried to establish inconsistent rate centers.

The CPUC considers establishment of rate centers, as well as any determination as to whether they need be uniform or may vary from carrier to carrier, to be entirely within the domain of the states.² While we consider it unnecessary for Massachusetts to seek approval from the FCC to establish inconsistent rate centers, we urge the Commission to

² We noted in our PFR of the Pennsylvania Order our concern that language in that order appeared to limit the states’ ability to consolidate rate centers. In our PFR, we asked the FCC to clarify its intent on this issue as it was set forth in the Pennsylvania Order.

respond to the MDTE's request by affirming the states' authority allow carriers to use inconsistent rate centers.

I. Unassigned Number Porting

Both the MDTE and the NYPSC ask the FCC for authority to implement Unassigned Number Porting (UNP), though New York limits its request by proposing to use UNP on "a short-term basis and where a carrier can demonstrate a need for the unassigned number(s) to serve specific customers". (See MDTE Pet. II, pp. 11-12; NYPSC Pet., p. 10.) In our Comments on the NRO Report, we noted that the CPUC has not yet considered UNP. We recommended that the FCC and the states need more information on how UNP would work. Specifically, we noted that UNP raises "issues concerning how to implement this measure when some providers are not LNP-capable", and that UNP "may also affect 911 functionality". (CPUC's Comments on NRO Report, p. 8.) We again urge the FCC to address and resolve these issues.

J. Individual Telephone Number Pooling

The NYPSC requests authority to "explore the feasibility of individual telephone number pooling (ITN) and to launch trials where and when technically feasible". (NYPSC Pet., p. 9.) In our Comments on the NRO Report, the CPUC noted that we have not yet formally considered ITN pooling, but "would like the option to pursue any pooling measures which could help slow the rate at which numbers presently are being assigned or increase the efficiency of their usage in California". (CPUC's Comments on NRO Report, p. 8.) In those Comments, however, we also noted the problems that can and will arise in implementing number pooling when a significant group of carriers are

not LNP-capable, and urged the FCC to address and resolve those issues. We continue to urge the FCC to establish, as soon as possible, guidelines for mandatory number pooling, including ITN, or to delegate to the states authority to mandate ITN, if they so choose.

Therefore, California supports the NYPSC request to explore use of ITN.

K. Utilization Surveys

The NYPSC seeks authority to “adopt minimum requirements for [number] utilization surveys”. (NYPSC Pet., pp. 13-14.) In our Comments on the NRO Report, the CPUC stated that “[t]he NANPA should obtain utilization data and the states, if they need the data, should obtain it, in turn, from the NANPA”.¹⁰ (CPUC’s Comments on the NRO Report, p. 12.) Despite expressing a preference for having the NANPA, rather than the states, collect utilization data, we also stated our belief that “the FCC should affirm explicitly the states’ authority to order carriers to provide utilization data to state commissions”. (*Id.*) Thus, we support the request by the NYPSC.

L. NXX Code Rationing

The NYPSC seeks authority from the FCC to “adopt rationing procedures prior to an NPA decision” being adopted. (NYPSC Pet., pp. 14-15.) California has set forth in several recent pleadings before the FCC its views on the need for states to have additional authority to implement NXX code rationing prior to the state commission’s adoption of a relief plan, but after the NPA has gone into jeopardy. We addressed this issue in our PFR

¹⁰ Our preference for the NANPA to perform this function stems from the high number of area codes in California - 25 as of this pleading - and the commensurate resources that the CPUC would need to devote to collecting and processing utilization data. In addition, it is logical for the NANPA to collect this data as the NANPA already performs NPA and NXX forecasting and assignment. If the NANPA were to perform this function, the costs could be added to the existing fixed-contract rate, or included in the next bidding process.

of the Pennsylvania Order, as well as in our Petition for Additional Authority to conduct our own state lottery. We addressed this issue in our replies to responses to those two petitions. We support New York's request for additional authority to impose rationing before a relief plan is adopted, so long as the relief planning is underway, as would be the case in California. We are sensitive to both the FCC's and the industry's concerns that states implement relief in a timely manner. At the same time, California knows from our own extensive experience that even when the industry and a state commission attempt to implement timely relief, the intense demand for numbers cannot be timely met without rationing before relief is implemented.

M. Enforcement

The NYPSC asks the FCC for explicit authority to intervene when "individual carriers do not comply with policies or procedures". (NYPSC Pet., pp. 15-16.) For the reasons set forth in footnote 31 of the NYPSC Petition, the CPUC fully supports New York's request. The FCC appears to assume that carriers can reach consensus on how area code planning should be conducted. As noted in one of our earlier pleadings, the industry planning group in California has engaged in pitched battles over issues such as where to hold meetings. Consensus on much meatier issues is often, if not usually, elusive. Explicit state authority to enforce numbering policies is vital to ensure that carriers comply with those policies, be they FCC, state commission, or industry policies.

N. Auditing

The NYPSC asks the FCC for authority to conduct number utilization audits. (NYPSC Pet., pp. 16-17.) For the reasons set forth in § III.K, supra, we believe the

NANPA should collect utilization data and conduct utilization audits. At the same time, we believe states should be allowed to perform this function if they so choose. Thus, we would support New York's request for such authority.

IV. CONCLUSION

California cannot overemphasize the extent of the numbering crisis the states face, and the dearth of tools the states possess to respond to the current crisis. For the reasons stated, we urge the FCC to grant to Massachusetts and to New York the additional authority they request to adopt number conservation and efficient number management measures.

Respectfully submitted,

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April 2, 1999