

PUBLIC UTILITIES COMMISSION

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April 23, 1999

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

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Re: Petition of the California Public Utilities Commission and of the People of the State of California for Delegation of Additional Authority and Petition of the California Public Utilities Commission and of the People of the State of California for Waiver to Implement a Technology-Specific or Service-Specific Area Code NSD File No. L-97-42 and CC Docket No. 96-98

Dear Ms. Salas:

Enclosed please find an original and six copies of the **PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA FOR DELEGATION OF ADDITIONAL AUTHORITY** and the **PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA FOR WAIVER TO IMPLEMENT A TECHNOLOGY-SPECIFIC OR SERVICE-SPECIFIC AREA CODE** in the above-referenced dockets.

Also enclosed are one additional copy each of these documents. Kindly file-stamp these copies and return them to me in the enclosed self-addressed envelope.

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 by mail

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

In the matter of:

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

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

NSD File No. L-97-42

CC Docket No. 96-98

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FCC WASH DC 20554

**PETITION OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE
STATE OF CALIFORNIA
FOR DELEGATION OF ADDITIONAL AUTHORITY**

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit to the Federal Communications Commission (FCC or Commission) this Petition for Delegation of Additional Authority pertaining to area code relief planning and implementation, and to NXX code conservation measures. Specifically, the CPUC requests authority for the following: 1) to implement a mandatory number pooling trial; 2) to order efficient number use practices within NXX codes, such as, for example, fill rates or sequential number allocation; 3) to hear and address requests by individual carriers for assignment of codes outside the NXX code rationing process, 4) to order carriers to return to the code administrator unused NXX

codes, and 5) to order carriers to return unused or under-utilized portions of NXX codes to the pooling administrator, when one is selected.

As will be demonstrated below, California faces a numbering crisis unparalleled in the United States.¹ We cannot continue to create new area codes and to dispense NXX codes in an unchecked fashion without imposing significant hardship on the public. We urge the Commission to carefully consider our request, and to grant us the additional authority we desperately need to begin conserving the public resource of numbers.

I. CURRENT SITUATION IN CALIFORNIA

Later this year, California will open its 26th area code. Our best current projections are that to meet the demand for numbers, without implementing any conservation measures, we will be required to open 15 more NPAs by the end of 2002, bringing the total number of area codes in this state to 41 by the end of that same year.

As of the date of this filing, 190 competitive local exchange carriers (CLECs) are certified to provide service in California. Of that number, roughly half are carriers providing facilities-based local service, or offer a local service which is provided through a combination of CLEC facilities and resale of incumbent LEC facilities. In addition, we have approximately 45 facilities-based cellular carriers, and 11 PCS providers, all of which also need NXX codes so they can assign numbers to their customers. California has roughly 800 rate centers. Pursuant to current number allocation protocols, a carrier

¹ We recognize, as is demonstrated for example in the April 2, 1999 Petition for Grant of Authority to the FCC filed by the Florida Public Service Commission, that other states face comparable pressure. We perceive the situation in California to be more extreme because California has the largest population of any state in the nation, as well as the greatest number of area

seeking to provide service statewide in California would need 8,000,000 numbers to begin offering service.

Finally, public ire about the increasing number of area codes is mounting. Articles appear in the press, and stories run on broadcast media on a weekly if not daily basis. It is now public knowledge that numbers are being allocated inefficiently, with every carrier receiving a block of 10,000 numbers, regardless of how many customers the carrier has or projects it will have in the foreseeable future. A member of the California Legislature proposed a bill that, if enacted, would have triggered a moratorium on implementation of new area codes. Fortunately, for the sake of the CPUC, the telecommunications industry, and the public, the moratorium provision is not in the most recent version of the bill.

We also are exploring rate center consolidation. Until recently, the two largest incumbent local exchange carriers (ILECs) had informed us that they could identify no rate centers which could easily be consolidated. Recently, however, those two ILECs have indicated their willingness to further explore rate center consolidation, and we will be pursuing that option. Nonetheless, rate center consolidation poses the prospect of imposing the greatest direct increased costs on end users, which will be controversial. In addition, the very process of consolidating rate centers will require a considerable expenditure of resources by the CPUC and by the industry to reach consensus on how to do so. Finally, we have been informed that rate center consolidation in some other states has produced some problems in the handling of 911 calls, which we understand the

codes. We do not mean to detract from the request of other states.

industry is attempting to resolve. For these reasons, we do not perceive rate center consolidation as a panacea to our numbering crisis.

Simply put, the CPUC is under tremendous pressure to find one or more solutions to the numbering crisis we face. But, we cannot keep pace with the demand for numbers and address the concerns of the public at the same time. In addition to the constant pressure of the NPA relief planning process, we must hear and resolve complaints from the public. Recently, the Cities of Glendale and Burbank filed a protest of the proposed relief plan for the 818 NPA. Addressing the protest will necessarily delay approval of a relief implementation date. Our staff daily filed hundreds of communications via e-mail, telephone, and letter from members of the public complaining bitterly about the number and pace of area code changes taking place in California. Without additional authority from the FCC, we cannot develop a broad slate of solutions to address the problem. We ask the Commission to delegate to us the additional authority we seek.

II. THE PENNSYLVANIA ORDER

In the FCC's Pennsylvania Order², issued September 28, 1998, the Commission clarified the scope of authority over numbering issues it had delegated to the states in the Second Report and Order.³

[T]he Commission delegated to state commissions the authority to implement new area codes. Thus, state commissions can choose among available area code relief mechanisms (a split, an overlay, or a rearrangement of area code boundaries), based on their knowledge of local

² Memorandum Opinion and Order and Order on Reconsideration, FCC 98-228, Released September 28, 1998.
³ Second Report and Order and Memorandum Opinion and Order, FCC 96-333, Released: August 8, 1996.

circumstances, including consumer preferences and demographics. State commissions also can make the decisions pertaining to the details of implementation of one of those new area code relief methods, such as a decision on where the boundary between the old and the new area codes will be for a geographic split. (Pennsylvania Order, ¶ 32.)

The Commission made plain in the Pennsylvania Order that any state attempts to slow the rate at which public number resources are depleted or area codes need to be implemented are beyond the purview of the states. “State commissions may not use conservation measures as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief.” (Id., ¶ 26.) In keeping with the view that conservation measures are best managed at the federal level, the Commission declined “to grant states authority to order mandatory number pooling”. (Id., ¶ 24.) Rather, the FCC authorized state commissions to experiment with voluntary number pooling trials, consistent with the guidelines adopted in the Pennsylvania Order.

[S]tate commissions may order that a certain number of NXX codes in a new area code be withheld from assignment and saved for pooling purposes. No carrier, however, may be denied a NXX code so that it can be saved for pooling purposes. If a NXX code exhaust situation in an area code becomes so dire that there are not NXXs available to assign to carriers, the NXXs that have been withheld from assignment must be made available for carriers. States are thus free to implement number pooling trials that comply with the guidelines set forth in this Order. (Pennsylvania Order, ¶ 27.)

The Commission further clarified that state commissions “do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator”. (Id.)

At the same time, recognizing that circumstances vary from state to state, the FCC authorized states to seek additional authority to conduct number pooling trials “which fall

outside of the guidelines we adopt in this Order". (Id., ¶ 31.)

We therefore encourage such state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these proposed conservation methods, comparable to the authority we are granting to Illinois in this Order. (Id.)

Simply put, the authority the FCC has delegated to the states is not enough for the CPUC to respond with any degree of effectiveness to the overwhelming demand for numbers in California. We are implementing area code relief as fast as is humanly and operationally possible, but the demand for numbers nonetheless has escalated, not slowed. We have area codes going into jeopardy within days or weeks after relief implementation has just concluded.⁴ Moreover, area code exhaustion is eroding public confidence that telecommunications competition will provide any benefits to consumers. In particular, customers rightly resent a charge for local number portability when there are few, if any, competitors offering local telephone service, and the technology does not appear to reduce the need for new area codes. It is not in the public interest for the CPUC to continue to implement new area codes without regard to the inefficiencies inherent in the number allocation system as it presently exists.

Further, while we fully appreciate the Commission's desire to maintain control over a national numbering system, it is state commissions, not the FCC, which are daily confronted with the results of the inefficiencies of the system as it exists today. As we

⁴ The 323 NPA relief plan was completed on April 13, 1999. Two days later, on April 15, 1999, the code administrator put a freeze on NXX code assignments in the 323 NPA because it is facing exhaust.

have observed in previous filings, we do not understand the FCC's suggestion in the Pennsylvania Order that a state commission's interest in slowing number allocation is, per se, wrong. Rather, we see that the impact on the public of enduring implementation of a new area code relief plan within two or three years after the last plan, to accommodate an outmoded number allocation system, is inexcusable.

The FCC has promised to act on the NANC's recommendations pertaining to number resource optimization measures, but to date, the FCC has not acted.⁵ Even when the FCC does act, it will be to issue an NPRM, thus initiating a process which will cause further delay before the FCC adopts rules on number pooling.⁶ In the meantime, California is opening new area codes at a rate which is ever more alarming and disconcerting to the public. The industry simply wants more numbers and pursuant to the Pennsylvania Order, California has no alternative but to keep creating new area codes, regardless of the public cost. This state of affairs is becoming intolerable.

With all due respect to the Commission, Congress expressly stated that it was not precluding "the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction". (47 U.S.C.251(e).) The CPUC seeks but a limited additional portion of jurisdiction over numbering to try to gain control of a chaotic situation in California. We are mindful of the Commission's desire to maintain a nationally cohesive numbering system, and we do not wish to undercut that effort. We

⁵ See the Pennsylvania Order, ¶ 27: "[W]e expect a recommendation from the NANC on national standards for number pooling by September 23, 1998, and we anticipate conducting a rulemaking to develop regulations on number pooling".

anticipate working closely with the FCC and the industry to ensure that we do not impede the Commission's efforts.

Therefore, pursuant to ¶ 31 of the Pennsylvania Order, the CPUC requests authority for the following.

1. to order one or more mandatory number pooling trials, which could include 1,000-block pooling and individual telephone number (ITN) pooling;
2. to order efficient number use practices within NXX codes, such as "fill rates" and sequential numbering;
3. to hear and address requests by individual carriers seeking assignment of NXX codes outside the California monthly lottery process;
4. to order carriers to return to the code administrator unused NXX codes; and
5. to order the return of unused or under-utilized portions of NXX codes to the pooling administrator, when one is selected.

III. ADDITIONAL AUTHORITY REQUESTED

A. Mandatory Number Pooling Trial

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 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

⁶ To be sure, California is not suggesting that the FCC circumvent due process. Rather, the CPUC is requesting authority to

force further reported that the CLECs are of two views: a minority wish to pursue a voluntary pooling trial in hopes of obtaining blocks of numbers smaller than 10,000, while the majority of CLECs consider voluntary pooling trials to be a waste of time and resources if the ILECs will not participate.

Thus, in California, we find ourselves at a stalemate in exploring number pooling. The numbering crisis in California, as in other states, has not arisen because we lack sufficient numbers, but rather because those numbers are being allocated and assigned inefficiently. In the Report of the Number Resources Optimization Working Group to the FCC last fall, the NANC stated that because thousands-block pooling can be implemented within 19 months from the date of a regulatory order, it is the pooling option with the greatest potential to be implemented by December 31, 1999.⁷ It now may be too late for either the FCC or the CPUC to implement 1,000-block pooling by December 31st of this year. But we are confident that California could launch a mandatory number pooling effort earlier if granted authority now, rather than awaiting the results of the FCC's anticipated NPRM. We would welcome FCC guidelines on mandatory number pooling, but we see that solution as still many months away. Therefore, we ask that the Commission grant us interim authority to order number pooling in California. We propose to explore 1,000-block pooling and ITN pooling.

We recognize that in the Pennsylvania Order, the FCC envisioned states proposing

act in the interim, until the FCC has adopted rules through its administrative processes.

⁷ See Public Notice DA98-2265, Released: November 6, 1998, pp. 1, 4.

detailed plans for mandatory number pooling trials.⁸ We are unable to offer such a proposal. Given the Interim Report of our Number Pooling Task Force, we cannot envision that the industry would reach consensus on whether the CPUC should be granted authority to order a mandatory number pooling trial, let alone how that trial should be structured. Thus, in our view, we need and so request from the FCC first authority to order a mandatory number pooling trial, and then we will work with the industry to develop a structure for the trial. We would be prepared to submit a plan to the Common Carrier Bureau for review prior to implementation.

B. Efficient Number Use Practices

In the Pennsylvania Order, the FCC stated that “[s]tate commissions and NXX code administrators also may consider imposing a usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center”. (Pennsylvania Order, ¶ 23.) It is not entirely clear what the Commission meant by this statement. Specifically, it is not altogether apparent to every industry participant in California or the CPUC that this language was meant to authorize state commissions to establish efficient usage practices for numbers within NXX codes.

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

⁸ See the Pennsylvania Order, ¶ 31. We note also the FCC’s suggestion that states submit proposed number pooling plans to

year, after the FCC issued the Pennsylvania Order, Pacific Bell (Pacific) 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 CPUC just denied that appeal, but we also are 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.

The CPUC has no interest in assigning NXX codes. But we do have a strong interest in ensuring that numbers within each NXX code are allocated to customers in the most efficient manner possible, while still allowing carriers the ability to offer customers large blocks or numbers, or specific groups of numbers. To that end, the CPUC seeks explicit authority from the FCC to adopt efficient number management practices such as “fill rates” or sequential numbering. We emphasize that we anticipate working with the industry to develop such number management practices, but for this process to succeed, we need the Commission to affirm our authority to pursue these options.

C. Responding to Requests from Individual Carriers Seeking to Obtain NXX Codes Outside the Code Rationing Process

The CPUC has already been presented with claims from two carriers seeking to obtain NXX codes outside of the monthly 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 met three times in workshops to discuss possible changes to the California lottery process, discussed the Media One request three times, and could not

the NANC, but the same obstacle prevents us from consulting with the NANC prior to obtaining authority from the FCC.

reach consensus to change the existing lottery process to give NXX codes to carriers demonstrating an immediate need for codes outside of the regular lottery process in order to provide service. 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.⁹

In the Pennsylvania Order, the FCC directed the NANC to provide to the Commission 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 the NANC has provided, to date, the requested recommendation to the FCC. In the meantime, we may again find ourselves confronted with one or more requests from carriers to be treated as exceptions to the rules which govern the NXX code rationing process.¹⁰ 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 to carriers outside of the

⁹ We responded to the Media One request before the FCC issued the Pennsylvania Order. Because the Sprint PCS request was withdrawn before we acted on it, we did not have to confront the question raised by the FCC's request for a recommendation from the NANC, in ¶ 58 of the Pennsylvania Order. We ask the FCC to resolve that question by authorizing California here to hear and address such requests.

¹⁰ Indeed, in our Petition for Reconsideration 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.)

code rationing process, if the state determines that to do so would be in the public interest.¹¹

D. Ordering Carriers to Return to the Code Administrator Unused NXX Codes

In the Pennsylvania Order, the Commission explicitly prohibited states from ordering the return of NXX codes or 1,000 number blocks.

We clarify that state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator. First, a state commission may not order such a return pursuant to a pooling trial. . . . Further, a state commission may not order the return of an NXX code or a 1,000 block pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan. (Pennsylvania Order, ¶ 24.)

Once the 26th area code opens later this year, approximately 206 million numbers will be available in California. The CPUC's best guess as to the numbers in use is a range of perhaps 35 to 40 million. We have not conducted a utilization study for several reasons. First, as we have noted in comments to the Commission, we believe that the NANPA should collect and monitor utilization data.¹² At the same time, states should have access to any such data the NANPA gathers. In our comments on the NANC (NRO) Report, we asked the FCC to affirm the authority of state commissions to gather such data if they determine a need for it.¹³ California has approximately 800 rate centers. We have more than 90 CLECs, 20 ILECs, and approximately 56 wireless providers possessing

¹¹ For example, Media One has asserted to the CPUC that it seeks codes outside of the California lottery process specifically to offer residential local exchange service. In California, today, very few carriers are offering residential local exchange service in competition with the ILECs. The CPUC may wish later to consider, as a factor in evaluating such a claim, whether the carrier is proposing to offer service primarily to residential customers.

¹²; Comments of the CPUC on Petitions of New York Public Service Commission and Massachusetts Department of

NXX codes and able to obtain more on a monthly basis. The task of studying the extent to which NXX codes are or are not being used is daunting, and is one for which we do not have staff resources. At present, a bill pending in the California State Legislature, if enacted, would require us to perform a utilization study and audit to gather a snapshot of number resources in California. If the bill passes, the CPUC anticipates that it will also receive more resources by the California Legislature in order to meet the mandate.

Certainly, in order to begin number pooling, the CPUC will need to obtain utilization data. Once we have done that, we want to be able to reclaim codes which, for example, carriers may have held beyond the six-month period provided by industry guidelines and but have not activated. We are not seeking to punish carriers for not activating codes in a reasonable period. Rather, we consider allowing unused codes to remain unused, while California residents and businesses are forced to undergo constant area code changes, to be unreasonable. Therefore, we request express authority from the FCC to order carriers to return unused codes to the code administrator.

E. Ordering Carriers to Return Unused or Under-utilized Portions of NXX Codes to the Pooling Administrator When One Is Selected

For the reasons set forth in § IV.A, supra, the CPUC has not ordered a voluntary number pooling trial. If the FCC grants our request to explore mandatory number pooling, we would further need the ability to order carriers possessing unused or under-utilized blocks of numbers in NXX codes to return them to the pooling administrator,

when one is selected. Number pooling cannot work effectively or efficiently if carriers are allowed retain blocks of unused and under-utilized numbers within NXX codes. Thus, the CPUC requests authority to order carriers to return portions of NXX codes to the pooling administrator, and asks the FCC to grant such authority.

IV. CONCLUSION

For the reasons stated, the CPUC requests that the FCC delegate additional authority to California over numbering matters as set forth here. The CPUC hopes to engage in a multi-faceted effort to ensure that numbers are more efficiently allocated, and more efficiently managed in California. The underlying purpose of our request is not to thwart competition or to undermine the Commission's efforts to maintain a national numbering system. Rather, California is confronted by an explosion of number demand. At the same time, we are ill-equipped by virtue of our limited jurisdiction to take steps to prevent that explosive demand from creating an ever-greater burden on the California

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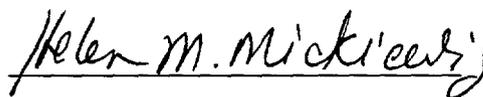
¹³ See Comments of the CPUC on the NANC (NRO) Report, filed January 15, 1999, p. 12.

public. We seek the authority to respond to the needs of the public as well as the needs of the industry.

Respectfully submitted,

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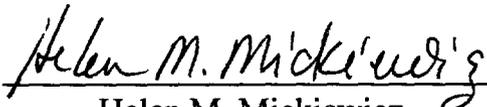
Attorneys for the
Public Utilities Commission
State Of California

April 23, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled
**“PETITION OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE STATE OF
CALIFORNIA FOR DELEGATION OF ADDITIONAL
AUTHORITY”** upon all known parties of record by mailing, by first-class
mail a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 23rd day of April, 1999.


Helen M. Mickiewicz