

PUBLIC UTILITIES COMMISSION

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May 14, 1999

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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: NSD File No. L-99-33 and CC Docket No. 96-98**

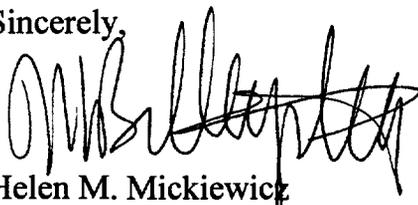
Dear Ms. Salas:

Enclosed please find an original and six copies of the COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA in the above-referenced dockets.

Also enclosed is one additional copy of the document. Kindly file-stamp this copy and return it 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,

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

HMM:ngs

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MAY 17 1999

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

FCC MAIL ROOM

In the matter of:

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

NSD File No. L-99-33

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 OF 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 the Petition for Expedited Decision for Grant of Authority to Implement Number Conservation Measures filed April 2, 1999 by the Florida Public Service Commission (FPSC or Florida).

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, Florida's request for the authority to implement measures that will slow the demand for numbers by allocating them more efficiently.

II. FLORIDA'S REQUEST TO IMPLEMENT CODE CONSERVATION MEASURES

The FPSC requests authority to implement a number of NXX code conservation measures. California either explicitly supports or, at a minimum, does not oppose each of those measures, as set forth below.

A. Thousand Block Number Pooling

The FPSC seeks authority to "institute thousand-block (and perhaps 100 block) number pooling". (FPSC Pet., p. 3.) California fully and completely supports requests by any state, including Florida, to implement number pooling. In the CPUC's view, the root cause of the numbering crisis confronting California, Maine, Massachusetts, New York, Florida, and every other state is the inefficient means by which numbers are allocated in blocks of 10,000, regardless of the carrier's actual customer needs. The sooner the FCC grants states authority to order mandatory number pooling, the better from the public perspective. We note that Florida suggests it may be interested in pursuing 100-block

pooling, something we have not yet considered in California. We have, however, recently requested authority to implement thousand-block pooling from the FCC in our own Petition for Delegation of Additional Authority.¹

B. Implement Sharing of NXX Codes in Rate Centers

The FPSC asks for authority to “implement sharing of NXX codes in rate centers”. (FPSC Pet., p. 3.) It is not entirely clear to the CPUC what Florida has in mind here, but we presume that sharing of NXX codes in rate centers is related to number pooling. Florida may be considering implementing one form of pooling in new NPAs, and another version, which it refers to as sharing of NXX codes, in NPAs with heavy utilization. We support Florida’s efforts to explore code sharing as a means to use NXX codes more efficiently.

C. Revise Rationing Measures and Institute NXX Lotteries Earlier

The FPSC requests authority to “revise rationing measures and institute NXX lotteries (prior to adoption of area code plans or establishment of an area code relief date) to prolong the life of existing area codes”. (FPSC Pet., p. 3.) California is not certain of exactly how the FPSC proposes to revise rationing measures applicable in Florida. The CPUC has adopted an NXX rationing plan developed by the industry, although, at the industry’s request, the CPUC resolved some issues pertaining to California’s NXX code lottery upon which the industry could not reach consensus.² Since issuing a decision

¹ See CPUC Petition for Delegation of Additional Authority, filed April 26, 1999, pp. 8-10.

² The CPUC raised to the FCC in a Petition for Delegation of Additional Authority, filed in November, 1998, the question of whether the CPUC’s resolution of contested issues created a state-mandated NXX code rationing process.

approving the industry-developed NXX code rationing scheme in California, the CPUC has chosen not to make changes to that process other than at the request of the industry. Still, the CPUC recognizes that a state commission may find that the public interest, which is not necessarily congruent with the interests of the industry, requires a deviation from or revision to existing NXX code rationing procedures. Consequently, California supports the FPSC request to revise rationing procedures.

In addition, because of the fact that NPAs frequently go into jeopardy in California before a relief planning process has begun, or in the middle of that process, the industry in California often must initiate the NXX code rationing process prior to the CPUC's adoption of a relief plan or implementation date. In a Petition for Delegation of Additional Authority, filed in November, 1998, the CPUC requested authority from the FCC to continue conducting the California lottery prior to CPUC adoption of relief plans.³ Given our own experience in the different timing of relief planning and code exhaust, we fully support Florida's request for this additional authority.

D. Reclamation of Codes

The FPSC requests authority to "reclaim unused and reserved central office codes". (FPSC Pet., p. 4.) In the CPUC's second Petition for Delegation of Additional Authority, filed April 26, 1999, the CPUC requested authority to order carriers to return to the code administrator unused NXX codes. We also requested authority to order carriers to return unused or under-utilized portions of NXX codes to the pooling

³ In a letter from Yog Varma to Helen M. Mickiewicz, dated December 1, 1998, the Common Carrier Bureau granted the CPUC the interim additional authority requested.

administrator when one is selected. Because we see Florida's request as directly related to our own, the CPUC supports the FPSC's request.

California is mindful that in the Pennsylvania Order, the FCC stated explicitly that states "do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator". (Pennsylvania Order, ¶ 24.) The Commission went on to explain that states could not order return of codes pursuant to a pooling trial, nor as part of a number rationing scheme. (Id.) Nonetheless, the sweeping initial admonition that states have no authority to order codes returned creates uncertainty for any state seeking to ensure that carriers have obtained codes in compliance with state law, industry guidelines, or FCC rules. Without these tools, however, states can become unwilling participants in a carrier's successful efforts to obtain codes in violation of the law or rules. Thus, the CPUC urges the FCC to grant the FPSC's requests pertaining to reclamation of NXX codes.

E. Maintain NXX Code Rationing For Six Months After Relief Is Implemented

The FPSC requests authority to "maintain the current central office code rationing measures for at least six months after the implementation of all area code relief plans". (FPSC Pet., p. 4.) 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 North American Numbering Plan

Administrator (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 FPSC.

F. Expand Deployment of Permanent Number Portability

The FPSC requests authority to “expand deployment of permanent [local] number portability.” (FPSC Pet., p. 4.) The CPUC is not sure what Florida is proposing. In California, for example, local number portability (LNP) is not deployed in all areas of the state.⁴ Florida may currently be in the same situation as California and may be seeking authority to extend LNP to additional areas in Florida. If so, it is not immediately apparent to California that FCC authority is required for a state to so order. Nonetheless, the CPUC does not oppose Florida’s request.

G. FPSC’s Request to Implement Unassigned Number Porting

The FPSC seeks authority to implement unassigned number porting (UNP). (FPSC Pet., p. 4.) In responding to similar requests by Maine, Massachusetts and New York, the CPUC explained that the FCC and the states need more information on how UNP would work.⁵ Specifically, we have expressed our concern that UNP raises issues regarding how to implement this measure when some providers have not implemented local number portability.⁶ That having been said, California does not oppose the FPSC’s request to implement UNP. Granting Florida’s request would allow the FCC, the industry, and other states to have the benefit of learning from Florida’s experience.

⁴ The CPUC has confirmed that LNP has been fully deployed as required by the FCC, but the FCC’s orders did not require full deployment throughout the entire state of California.

⁵ See Comments of CPUC, filed April 5, 1999, p. 12, and filed April 30, 1999, pp. 5-6; see also Comments of CPUC on the NRO Report, p. 8.)

⁶ See Comments of CPUC, filed April 5, 1999, p. 12.

H. Implement Rate Center Consolidation

The FPSC requests authority to implement rate center consolidation. (FPSC Pet., p. 5.) The CPUC considers consolidating rate centers to be squarely within the jurisdiction of the states, and exercising such jurisdiction should not require clearance from the FCC. Nonetheless, as California pointed out in Petition for Reconsideration (PFR) of the Pennsylvania Order, that decision created some ambiguity on this point. In particular, we noted that the Commission on the one hand, encouraged the states to “consider” rate center consolidation, which the FCC termed a “conservation measure”. At the same time, the FCC strongly disapproved of state efforts to employ conservation measures independent of area code relief planning and implementation.⁷ Given that the Pennsylvania Order was not completely clear on this point, a number of parties have asserted in pleadings to the CPUC that we have no authority to consolidate rate centers.

In our PFR, we asked the FCC to clarify that states do, indeed, have authority to consolidate rate centers, notwithstanding the FCC’s characterization of rate center consolidation as a conservation measure. We urge the FCC to respond to the FPSC’s request by affirming Florida’s existing authority to order rate center consolidation.

III. FPSC’S REQUEST THAT THE FCC ISSUE DIRECTIVES TO THE NANPA

In addition to its requests for additional authority to engage in NXX code conservation measures, the FPSC asks that the FCC issue directives to the North American Numbering Plan Administrator (NANPA).

⁷ See CPUC’s PFR, filed November 6, 1998, pp. 20-22.

A. Update the Central Office Code Utilization Survey Quarterly

The FPSC asks that the FCC order the NANPA to update the Central Office Code Utilization Survey (COCUS) quarterly instead of annually, as the NANPA does now.

The CPUC has not yet addressed this issue, and thus has no formal position on how often the COCUS should be updated. California does agree, however, that “quarterly data would provide a much more current basis for planning area code relief”. (FPSC Pet., p. 5.) Indeed, a number of industry participants in the area code relief planning process in California have openly expressed concern about the accuracy of the COCUS. In addition, the California public, as it becomes more attuned to the details of area code relief planning, are raising questions about the accuracy of forecasts as well as the availability of utilization data generally. Thus, California concurs that gathering and maintaining the best possible data is a desirable goal. To that end, the CPUC supports Florida’s request.

B. Establish Code Allocation Standards

The FPSC requests authority to “establish code allocation standards to more efficiently manage numbering resources”. (FPSC Pet., p. 5.) Unfortunately, the FPSC does not identify what specific code allocation standards it has in mind. The CPUC notes, however, that we have requested from the FCC additional authority to establish efficient number use practices, such as “fill rates” or sequential numbering. To the extent that the FPSC seeks authority to adopt similar practice or usage thresholds, the CPUC supports Florida’s request.

We have no specific position at this time on the FPSC's request that the FCC order the NANPA to consult with the FPSC "prior to issuance of additional NXX codes". We cannot determine from the request whether the FPSC is proposing that the NANPA should be required to consult with the FPSC prior to issuing additional NXX codes in the same rate center or in the same NPA, nor can we determine what circumstances would trigger the consultation requirement. Thus, we cannot offer a position on this request.

IV. THE FPSC'S REQUEST FOR AUTHORITY TO REQUIRE WIRELESS CARRIERS TO PROVIDE UTILIZATION DATA

The FPSC requests that the FCC "expressly grant the FPSC authority to require wireless carriers to provide the necessary COCUS and other information needed to carry out our responsibilities". (FPSC Pet., pp. 5-6.) The CPUC believes firmly that state commissions currently possess authority to order all carriers, including wireless carriers, to provide to the state commission utilization data. California is aware that in some other states, wireless carriers have challenged the state commission's authority to request utilization data, on the theory that state commissions no longer possess jurisdiction over the rates of wireless carriers nor their market entry. California does not dispute that Congress has limited state authority over wireless carriers.

At the same time, Congress has delegated to the FCC "exclusive jurisdiction" over the NANP, and in the very same section of the 1996 Federal Telecommunications Act, Congress authorized the FCC to delegate "to State commissions or other entities all or any portion of such jurisdiction." (47 U.S.C. § 251(e)(1).) The FCC, in the Second Report and Order and Memorandum Opinion and Order, FCC 96-333, adopted August 8,

1996, and in the Pennsylvania Order⁸ has explicitly delegated to the states authority to plan and implement area code relief. Efficient planning and implementation of area code relief necessitates the gathering and maintenance of accurate forecasting and utilization data.

We have asserted in previous pleadings that the NANPA is the appropriate entity to gather utilization data, and we continue to believe the NANPA can obtain and maintain utilization data more efficiently than can state commissions.⁹ We also have asserted, however, that states should have access to such data.¹⁰ Since the NANPA is not gathering and maintaining utilization data, it is becoming increasingly apparent to the CPUC that the states may need to engage in this activity themselves. In order for utilization data to be useful, all carriers must provide data to the state commission. Thus, a request by a state commission for utilization data from carriers, whether in a particular NPA or on a statewide basis, for purposes of implementing area code relief, is fully within the state's jurisdiction.

Thus, while the CPUC agrees that all carriers, including wireless carriers, should provide COCUS and other utilization data to the FPSC, California believes the FPSC already possesses authority to so require. The FCC should affirm the FPSC's authority to require that all carriers submit such utilization and COCUS data as the FPSC requests.

⁸ Memorandum Opinion and Order and Order on Reconsideration, FCC 98-224, Released: September 28, 1998.

⁹ See CPUC's Comments on the NANC (NRO) Report, filed January 15, 1999, p. 12.

¹⁰ Id.

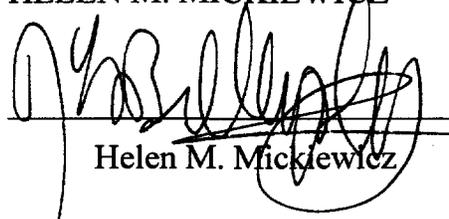
V. CONCLUSION

For the reasons stated, the CPUC supports the FPSC's request for delegation of additional authority. California cannot overstate the extent of the numbering crisis it faces. We are well aware that many other states are engaged in the same struggle, and similarly are doing so with both hands tied behind their backs. We urge the FCC to grant Florida's request for additional jurisdiction over numbering matters.

Respectfully submitted,

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 for HMM

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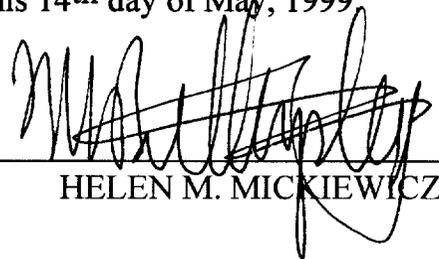
Attorneys for the
Public Utilities Commission
State of California

May 14, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled
**“COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND OF THE PEOPLE OF THE STATE OF
CALIFORNIA”** 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 14th day of May, 1999



HELEN M. MICKIEWICZ FOR HMM