

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the matter of:

▪  
Petition of the California Public Utilities  
Commission and the People of the State of  
California for a Waiver to Implement a  
Technology-Specific or Service-Specific  
Area Code

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

NSD File No. L-99-36

CC Docket No. 96-98

**COMMENTS OF THE ALLIED PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION OF CALIFORNIA IN RESPONSE TO PETITION OF THE  
CALIFORNIA PUBLIC UTILITIES COMMISSION, ET AL. FOR WAIVER TO  
IMPLEMENT A TECHNOLOGY SPECIFIC OR SERVICE SPECIFIC AREA CODE**

**I.**

**INTRODUCTION**

The Allied Personal Communications Industry of California (Allied) is a nonprofit trade association which has represented FCC licensed paging service providers on California regulatory matters for more than 30 years. Allied's membership includes nearly all such licensees.

The California Public Utilities Commission (CPUC) has sought a waiver from this Commission of various restrictions in 47 C.F.R. § 52.19(c)(3). One of these bars technology-specific code overlays. Allied believes that the restriction continues to be justified, and that a wireless-only overlay could significantly hamper the evolution of an entire industry. Allied also

questions whether a wireless-only overlay would relieve the problems cited by the CPUC=s  
Petition.

Most important is that questions regarding overlays are best resolved at a national level, as intended by Congress, and repeatedly affirmed by this Commission. Each and every issue raised by the CPUC Petition, as well as numerous other relevant questions, are the subject of this Commission=s NPRM, which was circulated for nationwide comment shortly after the CPUC=s filing.<sup>1</sup> The *NPRM* is a far better context for discussing national policy than the CPUC=s state-specific Petition.

## II.

### **A WIRELESS-ONLY OVERLAY POLICY IN CALIFORNIA WOULD DISCRIMINATE UNFAIRLY AGAINST CMRS PROVIDERS, AND WOULD NOT ALLEVIATE THE CRISIS DESCRIBED BY THE CPUC PETITION**

Like many other populous areas, California has experienced significant number shortages, and much public debate as to how such shortages may be relieved. While the basic causes of these shortages - population growth, new services, and the impact of the Telecommunications Act of 1996 - are the same everywhere, there are specific factors which have exacerbated matters in California. One of these is the lack of rate center reform. More than anywhere else, ILEC rates are distance sensitive in California, with local calling areas having only a 12 mile radius. With the state having over 800 rate centers, the 190 CLCs certificated by the CPUC since 1996 have little

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<sup>1</sup>. *In the Matter of Numbering Resource Optimization*, Notice of Proposed Rulemaking CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999) (*ANPRM*).

choice but to seek NXXs in hundreds of locations in order to offer prospective customers a semblance of local service. The fact that many (if not most) of these CLCs have not even commenced business in many rate centers is not the point. Every CLC with a hope of succeeding must acquire a very substantial inventory of codes.

There is also the fact that until recently, California was reluctant to consider overlays of any sort as a solution to the burgeoning demand of numbers. Instead, the CPUC established a nearly irrefutable assumption in favor of geographical code splits.<sup>2</sup> It was not until mid-1998 that the Commission Abit the bullet and began to consider overlays on an equal footing with splits.<sup>3</sup> While the issue is somewhat speculative, it is unlikely that California's current problem would be as great if overlays had been introduced earlier.

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<sup>2</sup>. See Order Instituting Rulemaking on the Commission's Own Motion Into Competitive Local Exchange Service, R.95-04-043, I. 95-04-044, Decision of the California Public Utilities Commission, D.96-12-086, (adopted Dec. 20, 1996).

<sup>3</sup>. See Order Instituting Rulemaking on the Commission's Own Motion Into Competitive Local Exchange Service, R.95-04-043, I. 95-04-044, Decision of the California Public Utilities Commission, D.98-05-021, (adopted May 7, 1998).

Throughout these debates, the wireless industry in California has generally favored overlays, but has opposed the creation of wireless ghettos. The reasons are obvious, and are similar to those described by this Commission in its Memorandum and Opinion and Order of September 11, 1998, which reaffirmed the national rule against technology-specific overlays.<sup>4</sup>

Some industry fears have related to end user psychology. For example, many felt that wireless customers would resist ten digit dialing unless wireline subscribers were required to do the same. There was also a common perception among end users that any ten digit call would automatically trigger toll charges by the relevant ILEC.

Allied concedes that appropriate public education programs may mitigate some end user fears. However, one substantial concern that cannot be mitigated is that a wireless-only overlay would hinder CMRS carriers in combining wireless with other services. There is an increasing trend toward utilizing paging and cellular numbers as gateways to fax, long distance, information services, and the like. Any rule which limited certain codes to wireless services would threaten this evolution, and unfairly prejudice an entire industry.

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<sup>4</sup>. See 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, *Memorandum Opinion and Order and Order on Reconsideration*, CC Docket No. 96-98, 13 FCC Rcd. 19009, 19029 (1998) (*Pennsylvania Numbering Order*).

It should also be apparent from the PUC's own statistics that a wireless overlay would be unlikely to resolve, or even alleviate California's number shortage. The basic causes for this shortage are 1) rapid economic growth, 2) the proliferation of new services (many of them not wireless), 3) the abnormally high number of rate centers in the state, and 4) the proliferation of certificated CLECs with substantial inventories of underutilized codes. The CPUC Petition tells us, for example, that out of 1,832 codes assigned in 1998, fully 1,094 were assigned to CLECs. Most of the CLEC codes are under-utilized, while the codes (520) allocated to wireless carriers are utilized far more fully by actual end users.<sup>5</sup>

For these reasons, Allied believes that viable solutions are far more likely to be found in rate center reform, number utilization guidelines, and number pooling among carriers (largely CLECs) which at this point in their development require only a token presence in many rate centers. The solution does not reside in an unfair segregation of wireless carriers.

### **III.**

#### **THE ISSUES RAISED BY THE CPUC ARE NATIONAL**

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<sup>5</sup>There are obvious reasons why CMRS providers have more fully utilized their codes. Chief among these is that wireless technologies are not dependent on access to the ILECs' local loops. Instead, CMRS providers for more than two decades have provided millions of California users with an alternative means of originating and/or terminating calls. CLECs are generally the result of the 1996 Act, and are highly dependent on access to ILEC loops and other unbundled network elements. The incumbent LECs, to put it mildly, have resisted the CLECs, which for the most part have not successfully penetrated the local market.

## **IN SCOPE AND SHOULD BE RESOLVED AT THE NATIONAL LEVEL**

In its Petition, the CPUC requests a waiver of 47 C.F.R. § 52.19(c) so that it may implement technology or service-specific overlays at its discretion. The CPUC claims that a good cause exists as required by 47 C.F.R. § 1.3. The Petition should be denied. The FCC's rules on technology or service-specific area codes are national in scope. Moreover, this Commission is currently reviewing all of California arguments in the *NPRM*. The CPUC's Petition is therefore either premature or moot.

Both Congress and this Commission have recognized that numbering issues are national in scope. Section 251(e)(1) of the Communications Act grants the FCC plenary jurisdiction over numbering issues.<sup>6</sup> While this section gives the FCC the authority to delegate to State commissions all or any portion of its jurisdiction, the FCC has expressly retained jurisdiction over all matters it does not specifically delegate.<sup>7</sup>

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<sup>6</sup> 47 U.S.C. § 251(e)(1) provides:

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

<sup>7</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-98, 11 FCC Rcd 19392, 19516 (1996) (*Local Competition Second Report and Order*).

One matter which the FCC specifically delegated to State commissions is the authority to adopt final area code relief plans.<sup>8</sup> This authority, however, is specifically subject to the FCC's guidelines for numbering administration.<sup>9</sup> Thus in a declaratory ruling on Ameritech's area code relief plan for Chicago (*Ameritech Order*),<sup>10</sup> the FCC rejected a wireless-only overlay plan for the 708 area code on the grounds that it would be unreasonably discriminatory and would unduly inhibit competition. More recently, this Commission granted in part a petition for declaratory ruling challenging an area code relief plan of the Pennsylvania Public Utility Commission on the basis that it unduly discriminated against wireless carriers.<sup>11</sup>

Clearly, this Commission considers service-specific or technology-specific overlays to be an important national issue. That is why the Commission agreed to re-examine these rules in the

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<sup>8</sup> 47 C.F.R. § 52.19.

<sup>9</sup> 47 C.F.R. § 52.9(a)(1)-(3). These guidelines provide that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage a particular industry segment or group of consumers; and (3) not unduly favor one technology over another.

<sup>10</sup> See Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, *Declaratory Ruling and Order*, 10 FCC Rcd 4596 (1995) (*Ameritech Order*).

<sup>11</sup> *Pennsylvania Numbering Order*, 13 FCC Rcd at 19031, 19035-37.

recently released *NPRM*. *NPRM*, at §§ 256B261. The proper resolution of this issue, therefore, should be in the context of the *NPRM*, not the CPUC's Petition.

The CPUC submits that the following facts establish a good cause to justify its Petition for a Waiver:

1. **Current Number Allocation System is Inefficient.** The CPUC maintains that the current number allocation system, which requires numbers to be dispensed in blocks of 10,000 numbers, is inefficient and an indefensible drain on public numbering resources. *Petition*, p.5-6.
2. **Problems with Various Number Conservation Solutions.** The CPUC volunteers that it has taken steps to investigate various number conservation solutions, such as rate center consolidation and number pooling. *Petition*, p.3, 6B7. However, there are certain hurdles that prevent it from going further with these endeavors. Specifically, for rate center consolidation, the two largest ILECs in California have advised the CPUC that there are no rate centers which can easily be consolidated. *Id.* at p.3. While this issue may be revisited, the CPUC notes that other states have experienced certain problems with handling 911 calls after implementing rate center consolidation. Accordingly, the CPUC finds that rate center consolidation is not a panacea of our numbering crises. Similarly, the CPUC notes its frustration with number pooling in light of the fact that non-LNP capable carriers are not truly able to participate. *Id.* at p.5.
3. **Rapid Deployment of Area Codes in California.** Later this year, California will open its 26<sup>th</sup> area code and projects opening another 15 area codes by the end of 2002, assuming no additional number conservation measures. *Petition*, at p.2. California, therefore, is deploying new area codes at a very rapid rate.
4. **Public Ire.** In the words of the CPUC, the introduction of new area codes in California has resulted in public ire. *Petition*, p.3.

While California may be experiencing more drastic numbering problems than other States, none of the issues raised by the CPUC are unique to California. As evidenced by the scope and breadth of the *NPRM*, this Commission clearly recognizes that these are national problems. Indeed, each of the CPUC's issues, and others, are raised in the *NPRM*:

1. Current Number Allocation System Is Inefficient. The FCC wholeheartedly admits that one of the major drivers of number exhaustion is the lack of discipline in the process by which numbering resources are administered and allocated. *NPRM*, at ¶ 36. In order to address this national problem, the FCC proposes a uniform set of definitions of terms, proposed verification methods based on carrier need, reporting and record keeping requirements, audit requirements, enforcement measures, policies concerning reclamation of unused NXX blocks, and cost elements and cost recovery. *Id.* at ¶¶ 36B104. The problems raised by the CPUC, therefore, are not unique to California.
2. Problems with Various Number Conservation Solutions. Like number allocation issues, the FCC considers number conservation measures to be a national issue. The *NPRM* examines various number conservation solutions, including: (1) rate center consolidation; (2) mandatory ten-digit dialing for all telephone calls; (3) number pooling;<sup>12</sup> and (4) the option of permitting carriers to choose the solution that best suits their particular circumstances. *Id.* at ¶¶ 105B224. In fact, the CPUC concedes that number pooling is a national problem for which the AFCC hopefully will establish national guidelines. *Petition*, p.6.
3. Rapid Deployment of Area Codes. While California clearly has an area code deployment problem, it is not alone. Like all of the other issues raised, this is a national problem which calls for a national solution. In fact, the problem of rapid area code deployment is so vast that some projections expect the North American Numbering Plan (NANP) *as a whole* to exhaust within 10 years. *NPRM*, at ¶ 5. In light of the magnitude of this problem and the efforts required to fix it, the *NPRM* specifically calls for national standards to avoid, or at least delay, exhaustion of the NANP and the need to expand the NANP. *Id.* at ¶ 6.
4. Public Ire. California is not alone in experiencing public distress with the deployment of new area codes. As the FCC observed, the goal of [the *NPRM*] is to address the underlying drivers of area code exhaustion *so that consumers are spared the enormous costs and inconveniences* associated with the rapid pace of implementation of new area codes. (emphasis added). *NPRM*, at ¶ 5. Accordingly, one of the primary purposes of the *NPRM* is to permit the FCC to create national standards to minimize the negative impact on consumers. *Id.* at ¶ 6.

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<sup>12</sup>. As part of its discussion regarding number pooling, the FCC specifically raises the issues associated with number pooling in light of the special concerns of non-LNP-capable carriers. See *NPRM*, at ¶¶ 159B176.

IV.

**CONCLUSION**

While Allied has only touched on California=s substantive arguments, it should be clear that a wireless-only ghetto is not a cure-all for problems which have their origin elsewhere. Instead, ultimate solutions can only come from a broad-based, national review of all of the issues raised by the *NPRM*. This review should go forward, with the CPUC=s request being dismissed without prejudice so that it may be revived in light of the results of the *NPRM*.

Respectfully submitted,

**Allied Personal Communications  
Industry Association of California**

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By: \_\_\_\_\_

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