

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.

NSD File No. L-99-928

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

CC Docket No. 96-98

**REPLY OF THE CALIFORNIA PUBLIC UTILITIES  
COMMISSION AND 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) this Reply to Comments on the Petition for Delegation of Additional Authority Pertaining to Area Code Relief and to NXX Code Conservation Measures. The CPUC filed its Petition for Delegation of Additional Authority on April 26, 1999. The Common Carrier Bureau issued its Public Notice on May 14, 1999, establishing a June 14, 1999 due date for comments.

## **I. ISSUANCE OF THE NPRM DOES NOT OBVIATE THE CPUC'S NEED FOR ADDITIONAL AUTHORITY**

Several commenting parties insist that because the FCC has issued a Notice of Proposed Rulemaking<sup>1</sup> on numbering issues, the states, including California, should simply wait until the FCC issues an order adopting national policies and rules in that docket. In April meetings with FCC staff, the CPUC was informed that the FCC is not likely to issue a final order on the NPRM until April of 2000. If we wait until then to begin implementing number pooling, it will be at least another year after that before we could actually have it in place. That would mean an additional year's delay, which absolutely will not serve the public interest. The CPUC recognizes that a year's delay is not important to the industry, because under FCC policies, state commissions engaged in area code relief planning and implementation must ensure that the industry continues to receive numbers. Thus, the industry has no incentive to support state measures to allocate numbers more efficiently. Waiting for the FCC to resolve the myriad issues in the NPRM thus poses no detriment to the industry. The wait, however, will mean untold additional costs to the California public as we continue to implement new area codes, and are required by national policies to continually approve more area code plans despite the significant surplus of telephone numbers in the state.

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<sup>1</sup> Notice of Proposed Rulemaking, CC Docket 99-200, Released: June 2, 1999.

## II. THE PUBLIC INTEREST IS AT STAKE

The comments and oppositions filed in response to the CPUC's Petition for Additional Authority demonstrate unequivocally that on the issue of number resources allocation, the FCC confronts viewpoints representing two extremely divergent interests – that of the industry and that of the public. The difference in perspective is most plainly demonstrated in the discussion of the CPUC's request to implement 1,000-block number pooling.

The opposing industry commenters<sup>2</sup> almost universally objected to California's request to implement number pooling. The reason was most succinctly stated by Level 3 Communications: "it would be inefficient and burdensome, for example, for carriers to comply with what could possibly become more than 50 different kinds of pooling mechanisms". (Level 3, p.2.) SBC offers a similar observation:

Independent, interim state action could cause industry participants to comply with varied and potentially conflicting and costly state requirements while simultaneously trying to work on developing and implementing federal regulatory policies. (SBC, p. 3.)

The facts are that only five states have requested authority to engage in number pooling before the FCC establishes national standards, and another two states have number pooling trials in progress. Unless the other forty-three states are engaged in secret number pooling trials without FCC authority, the industry might be faced with, at most, seven varieties of number pooling.

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<sup>2</sup> The CPUC notes that AT&T supported a California number pooling trial, with some restrictions, and that the California Cable Television Association (CCTA) neither explicitly supported nor opposed California's request to try number pooling.

In addition, no state petition, including the CPUC's, has set forth a comprehensive plan for number pooling.<sup>3</sup> Thus, the FCC could allow the petitioning states to implement a number pooling trial consistent with either the trial underway in Illinois or the trial in New York. That would reduce the number of variations to only two. Although we cannot speak for other states, the CPUC would happily agree to copy either the New York or Illinois model<sup>4</sup>, if doing so would enable California to implement pooling sooner. Further, the FCC could condition a grant of authority to engage in number pooling on a requirement that those pooling approaches be conformed to the FCC's rules adopted next year in the NPRM.

In the CPUC's view, however, the industry is making a more fundamental argument in its opposition to state implementation of number pooling. In essence, the industry is saying that it should not be required to incur costs associated with implementing varieties of number pooling in different states. Rather, the FCC should adopt national number pooling policies, which will take longer to design and to implement. The net result is financial savings to the industry, because it will not have to spend money conforming to more than one number pooling model.

At the same time, however, the public is incurring escalating costs associated with the creation of more and more area codes. Every time a new area code is added, whether by split or by overlay, the public must incur direct and indirect costs, as well as

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<sup>3</sup> In our Petition, we explained that we had been unable to obtain industry cooperation in developing a plan. (See CPUC Petition, p. 10.)

<sup>4</sup> The CPUC recognizes there may be some regional differences that might require minor modifications to the New York or Illinois model if either is implemented in California.

inconvenience. While the costs are likely incalculable, they are very real. In California, those costs are being imposed at a faster rate than in the rest of the country, simply because of the geographic and demographic size of the state.

The industry, almost without exception, simply will not acknowledge these costs to the public. When an industry member does admit that the public is suffering the inconvenience and associated costs of repeated area code relief, the inevitable next comment is that the answer is national numbering solutions. According to the industry, the public should simply wait for those solutions, which will save the industry the expense of implementing multiple solutions.<sup>5</sup> In the meantime, the industry unwaveringly insists that the only appropriate role for state commissions is to keep handing out numbers:

It is precisely the reluctance to implement timely area code relief and the belief that numbering policies should be used to promote other objectives that contributed to the depth and severity of the numbering shortages in California. (SBC, p. 3.)

The Commission also needs to ensure that the CPUC continues its progress towards eliminating California numbering shortages while the Commission puts in place national optimization policies, which, as the Commission made clear in the *Pennsylvania Number Order*, requires that the CPUC continue to focus its efforts primarily on providing sufficient and timely area code relief. (SBC, pp. 3-4.)

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<sup>5</sup> Again, we acknowledge the fact that AT&T supports a California number pooling trial, with some restrictions. Also, we note MCI's support of a number pooling trial in Florida.

The industry's position, thus, is that the numbering resource "problem" is a shortage of numbers, created by state commissions which drag their feet in implementing area code relief. If the states simply implement relief fast enough, the industry argues, there would be sufficient numbers for all industry participants.

The public perspective on this situation is quite different. To the public the numbering resource "problem" is that state commissions are creating too many area codes too quickly, and the public cannot keep up with the changes. Given that the public sees the proliferation of area codes as something to be avoided, it is not immediately apparent how continuing to create new area codes can alleviate this concern. Further, in California, a significant segment of the public is now aware that numbers are allocated to carriers in blocks of 10,000, regardless of how many numbers the carrier needs or uses. Thus, from the public perspective, the number "shortage" is completely artificial, and the need to create new area codes is thus spurious.

In the middle of all this chaos are the state commissions, which face a conundrum. To satisfy the industry, we must create more area codes, which, in turn, fuels the public perception that ever more area codes are "the problem". In addition, the state's ability to respond to public concerns is impaired by FCC policies, which, intentionally or not, favor the industry perspective. This was amply illustrated in the FCC's determination in the Pennsylvania Order to prohibit states from engaging in mandatory number pooling trials. Instead, the states were emphatically and unequivocally told to keep their noses to the grindstone by churning out area code relief plans and by not engaging in wasteful

attempts at “slowing” the need for relief. The FCC’s leaning towards solutions which protect the industry from incurring costs, while suggesting solutions that will impose on the public increased and untold direct costs, has carried forward into the recently-released NPRM. The CPUC will submit comments on the NPRM, and will address these issues further.<sup>6</sup>

The CPUC believes the FCC has not intended to suggest that the public interest should take a back seat to the push for competition. But, its numbering policies to date, and some of the proposals in the NPRM, certainly favor the industry, which already has tremendous control over the allocation of public numbering resources. The CPUC urges the FCC to act boldly to place the public interest first by allowing California to engage in a mandatory number pooling trial, as well as by granting the CPUC’s other requests for delegation of additional authority. The public interest in California demands that the CPUC be able to implement appropriate number conservation measures to protect this valuable public resource.

Finally, all stakeholders would benefit if the Commission were to grant California’s request for authority to implement a mandatory number pooling trial. The existing trials in Illinois and New York have provided valuable information to the industry and the Commission about how pooling should be implemented. However,

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<sup>6</sup> For example, in the NPRM, the FCC places considerable emphasis on rate center consolidation, a conservation measure which poses the prospect of real, extensive, direct and permanent rate increases for residential customers. In contrast, the potential need for recovery of costs associated with implementing number pooling would be temporary and likely far lower on a per-customer basis than the rate changes that would be caused by rate center consolidation.

conducting a pooling trial in California will provide invaluable additional information. It is generally agreed that pooling will produce the most benefit in new NPAs where few NXX codes are currently assigned. California adds more NPAs per year than any other state in the country, thus providing more opportunities to assess the benefits of pooling than any other state can. Trials could commence in several new NPAs within a relatively short time frame.

However, the value of pooling in mature NPAs and the ability of pooling to extend the life of those NPAs by more efficiently using the embedded base of numbers is of crucial importance in delaying the dizzying pace at which new area codes are added here and forestalling complete exhaust of the entire North American Numbering Plan. The embedded base of NPAs in California, 26 NPAs at present, provides the Commission and the industry with a large laboratory within which to assess pooling's impact upon NPAs at various levels of NXX utilization. As noted previously, the CPUC initially intends to conduct pooling trials in new NPAs, but such trials could subsequently be expanded to existing NPAs. The situation in California, as the epicenter of the national numbering crisis, demonstrates that California is uniquely positioned to provide useful pooling trials. Simply put, if pooling can be made to work in California, it will work anywhere.

### **III. THE CPUC'S REQUEST FOR AUTHORITY TO IMPLEMENT A NUMBER POOLING TRIAL**

California's request for authority to undertake a mandatory, 1,000-block number pooling trial drew special attention from several commenters. Most industry commenters

opposed our request, while every filing state supported it. We recognize that these states all share California's intense frustration over our inability to respond effectively to the number crises we face. One carrier, however, supported such a number pooling trial with some conditions. Without question, the CPUC's highest priority, among the additional authority requested, is approval to implement a mandatory number pooling trial.

#### **A. AT&T's Number Pooling Trial Proposal**

We welcome the support from AT&T for its recognition that "substantial gains in numbering optimization potentially can be achieved through properly implemented interim pooling measures". (AT&T, p.3.) AT&T proposes several principles which we address here.

First, AT&T recommends that the FCC require a state commission to submit "reasonably detailed proposal", which would be "subject to an abbreviated public comment cycle". (AT&T, p. 4.) The Commission would then, under AT&T's proposal, commit to act on the state plan within 90 days. The CPUC does not object to submitting a more detailed proposal to the FCC. Indeed, in our Petition, we stated that "[w]e would be prepared to submit a [number pooling] plan to the Common Carrier Bureau for review prior to implementation". (CPUC Petition for Additional Authority, p. 10.) We fail to see, however, what real purpose would be served by requiring a public comment period followed by further FCC action. That would only add to the delay in California's efforts to embark on a mandatory number pooling trial. We propose instead to model our trial on one of the two trials already underway in Illinois and New York, with review by the

Common Carrier Bureau. . We would further be willing to incorporate modifications the CCB recommends after its review.

AT&T's second recommendation is that a state trial "adhere to the technical standards established for the Illinois 847 NPA pooling trial to the extent possible". (AT&T, p. 7.) We do not object to this requirement. We express no preference at this time for either the New York or Illinois model; we are prepared to follow whichever model the FCC requires.<sup>7</sup>

AT&T next proposes that a state number pooling trial should comply with the requirements of the Pennsylvania Order, specifically that the trial be conducted in a non-discriminatory manner. (AT&T, p. 7.) We do not object to this proposal, although we envision undertaking a trial in a new NPA rather than in an existing one where relief planning is underway and implementation will occur in the near future.

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<sup>7</sup> We are generally aware that the industry favors the Illinois trial.

Next, AT&T proposes that “participation in any interim pooling measures should be mandatory for all LNP-capable carriers operating within an affected NPA, without regard for utilization levels they have achieved or other metrics”. (AT&T, pp. 7-8.) We do not object to this proposal.

Finally, AT&T proposes that “cost recovery for interim pooling methods should be deferred until the conclusion of the NRO NPRM, at which time the Commission will have developed a cost recovery methodology”. (AT&T, p. 8.) AT&T further suggests that carriers should track their costs until a cost recovery mechanism is established. The CPUC does not object to this proposal, as we envision that having to establish a cost recovery mechanism prior to implementing a number pooling trial will further delay the trial. In addition, this approach would be consistent with the manner in which the CPUC addressed ILEC requests for recovery of costs associated with implementing local exchange competition.

#### **B. MCI Opposes A California Trial While Supporting A Trial In Florida**

The CPUC was especially puzzled by MCI Worldcom’s (MCI’s) response to our request for number pooling authority. In its response to the Petition for Authority to Implement Number Conservation Measures filed by the Florida Public Service Commission (CC Docket 96-98, NSD File No. L-99-33), MCI supported a similar request:

The Commission should authorize the FPSC to conduct a trial of thousand-block pooling that uses the NPAC release 3.0,

when it is ready for testing, and adheres to all national guidelines. Such a trial will be beneficial to the industry as it prepares to implement pooling on a more widespread basis. NPAC release 3.0 will be a critical element in the establishment of pooling as a scalable replacement to the current NXX assignment practice, and that release must be tested before it can be rolled out nationally. Florida is an excellent state in which to conduct such a trial. Florida is a mid-sized market that includes three LNP-capable incumbent local exchange carriers (ILECs), as well as a number of competitive local exchange carriers (CLECs). By conducting this trial, Florida will make a valuable contribution to the Commission's efforts to address premature area code exhaust. (MCI's Comments in response to Florida PSC Petition, p. 7.)

We concur in MCI's support of the Florida request. But we fail to see why Florida can "make a valuable contribution to the Commission's efforts to address premature area code exhaust", but California cannot.<sup>8</sup> In its Comments on the CPUC Petition, MCI made no reference whatsoever to its support of the Florida request. Nor did it identify the factors that led it to conclude that a number pooling trial in Florida would be beneficial but one in California would not. Indeed, in its Comments on the CPUC Petition, MCI went so far as to oppose any state number pooling trial, despite its support of the Florida request:

The Commission should not authorize the CPUC to conduct a mandatory pooling trial outside of the guidelines that the Commission will itself establish. Once the Commission completes its rulemaking, the industry and the states will have a framework within which number conservation measures such as thousand block pooling can be developed and deployed. At that time, the Commission, the industry, and state commissions will be able to work together to see that pooling is tested and deployed as quickly as possible. It is

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<sup>8</sup> Nor did MCI support the requests by New York, Maine, or Massachusetts to request number pooling trials.

simply not feasible for California or any other state to develop pooling on its own outside of that framework. (MCI, p. 7.)

We are not sure what to make of MCI's position. If it is acceptable for Florida to conduct a number pooling trial consistent with the conditions MCI proposed in its Comments on the Florida Petition, then why not other states? Why would multiple state testing of the type MCI envisions for Florida not be valuable as well?

### **C. SBC's Misrepresents The CPUC's Request**

SBC disputed the CPUC's contention that we have not ordered voluntary pooling because carriers will not cooperate. SBC misrepresents our filing, claiming that we stated a need "to order incumbent LECs ("ILECs") to participate", but that "many competitive local exchange carriers ("CLECs") refuse to participate in a number pooling trial unless the ILECs are compelled to participate as well". (SBC, p. 4.) This is a misstatement of the discussion in our Petition:

In its recent Interim Report to the CPUC, the [California Industry] 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 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. (CPUC Petition for Additional Authority, pp. 9-10.)

Thus, what we stated in our Petition is that the ILECs, not the CLECs, have “refused” to participate in a voluntary number pooling trial. The logical conclusion based on the Interim Report of the Task Force is that number pooling in California will not be effective if the CPUC cannot compel the ILECs to participate in a mandatory number pooling program. This fact is one of the underpinnings of our request for additional authority.

Further, SBC distorts our statements regarding our efforts to obtain utilization data. We did state that we have not obtained data up to now because of a lack of resources. By that we meant that we had not obtained statewide or region-wide data. Certainly, we would expect to obtain utilization data prior to undertaking a number pooling trial, as we said in our Petition.<sup>9</sup> Thus, it is not “questionable” whether we have “sufficient resources to conduct a number pooling trial”. We would hardly mislead the FCC into granting us authority we are unable to exercise.

#### **IV. OTHER ISSUES**

##### **A. Request to Respond to Requests from Individual Carriers Seeking to Obtain NXX Codes Outside the Code Rationing Process**

SBC opposes our request to respond to carriers seeking codes outside the monthly NXX lottery. Again, SBC misrepresents our request. We did not suggest that “the CPUC

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<sup>9</sup> See CPUC Petition for Additional Authority, p. 14.

would use additional authority to grant a preference to carriers seeking to provide residential service”. (SBC, p. 7.) In fact, in the relatively brief discussion of this issue in our Petition, we said nothing about preferences for carriers seeking to provide residential service. Nor did we in any way intimate that we would “grant exceptions in favor of certain classes of carriers to the detriment of others”. (Id.) The genesis of SBC’s objections are simply that it does not like the preference in the CPUC lottery for initial codes, and it has argued consistently that this provision violates the Telecommunications Act, FCC guidelines, and every conceivable notion of fairness.<sup>10</sup>

To explain again, carriers have filed requests with the CPUC to obtain codes outside the code rationing process. We have explained that we denied one such request and directed the filing party to raise the issue in CPUC-sponsored lottery workshops. The issue was discussed in three separate workshop sessions, but the industry could not agree on whether the lottery rules should be changed at all, let alone how they might be changed. Thus, the filing party’s only recourse would appear to be the FCC, unless the FCC makes clear that states have authority to resolve such requests, or delegates authority to the NANPA. We note that the NANPA has no real regulatory authority over carriers certificated by state commissions. Thus, it makes more sense to the CPUC that state commissions resolve these questions.

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<sup>10</sup> We adopted a weighting factor for initial codes after the industry was unable to reach consensus on how to treat initial versus growth codes. We resolved the issue at the request of the industry. Pacific Bell has been unhappy with the result ever since. It has attempted to persuade the industry to revise the lottery rules, to no avail. So, SBC seeks to paint the CPUC as the villain in this dispute amongst the various sectors of the telecommunications industry in California.

According to SBC, the NANC has recommended to the FCC that the NANPA “be given authority to grant ... exceptions [to the lottery], rather than state commissions”. (SBC, p. 7, citing to NANC meeting minutes of “November 18-19”, presumably in 1998.) If the NANC has made such a recommendation to the FCC, the CPUC is completely unaware of it, and has not to date had the opportunity to comment on the recommendation. Finally, SBC wants “[t]o ensure that any exceptions [to the lottery] are granted on a competitively-neutral basis”. Again, SBC believes the CPUC has favored new entrants and thus is incapable of acting in a competitively-neutral manner. We would note here that the issue of whether we have behaved in a competitively-neutral manner depends on one’s perspective. Other carriers in California view the fairness of our lottery rules quite differently from SBC.<sup>11</sup>

#### **B. CCTA’s Support of Unassigned Number Porting**

In its Comments, the CCTA notes that the CPUC’s Petition to the FCC “is silent” on the issue of Unassigned Number Porting (UNP). California will consider any conservation measure that promises to provide relief from the escalating need to introduce area codes. We have expressed in several filings before the Commission, however, that a number of questions about how UNP would be deployed must be answered. For that reason, and that reason alone, we declined to seek a delegation of additional authority at this time to undertake a UNP trial.

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<sup>11</sup> We acknowledge the fact that CCTA supports the concept that states must weigh whether individual exceptions are necessary.

### **C. SBC's Suggestion That the CPUC Should Expedite Relief Contradicts the Position Taken in Previous Filings**

In the conclusion to its Comments on the CPUC's Petition, SBC challenges the California relief planning process.

The CPUC also should explore options to expedite area code relief to ensure a sufficient supply of numbering resources in the future, since its current statutory requirements mandate three years of planning before implementing area code relief. (SBC, p. 9.)

By statute, our relief planning process must begin 27 months, not three years, before the NPA in question is expected to exhaust. Further, in its Opposition to our Petition for Reconsideration of the Pennsylvania Order, filed earlier this year, SBC made a very different argument:

There is no reason why the California PUC cannot start relief planning early, in order to ensure that relief is implemented (as proposed in the industry guidelines) before jeopardy occurs. (SBC Opposition to CPUC PFR, p. 4, fn. 13.)

Here, SBC proposes that we expedite our relief planning process. It would appear that SBC is recommending that we retreat from the statutory changes developed by the industry last year, in a process that included Pacific Bell participation, and which lengthened the planning process from 24 to 27 months. We are confused by this proposal, since SBC (and other parties) previously advocated that we follow industry guidelines, which call for a five-year planning process. Which should we do – lengthen the planning process, as SBC proposed previously, or shorten it, as SBC proposes now?

## V. CONCLUSION

For the reasons stated, the CPUC urges the FCC to grant it the additional authority requested to implement number conservation measures. We recognize that no easy or quick solutions are available to the FCC or the states in grappling with nationwide numbering chaos. But we are convinced that we can begin to make headway if we can undertake a mandatory number pooling trial and implement the other conservation measures set forth in our Petition. We also ask that the Commission act as quickly as possible on our Petition so that if we receive additional authority, we can get started promptly.

Respectfully submitted,

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

By: /s/ HELEN M. MICKIEWICZ

Helen M. Mickiewicz

Attorneys for the  
Public Utilities Commission  
State of California

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

June 28, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document entitled  
**“REPLY 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 28<sup>th</sup> day of June, 1999.

/s/ HELEN M. MICKIEWICZ

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HELEN M. MICKIEWICZ