

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-99-929

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 CPUC's Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code. The CPUC filed its Petition for Waiver on April 26, 1999.

Opposing wireless carriers assert that an area code dedicated to wireless providers is discriminatory. (Sprint PCS, pp. 1-2; SBC Wireless, pp. 2-6.; Cellular Carriers Association [CCA] of California, p. 9.) Indeed, both Sprint PCS and SBC Wireless further argue that delegation of authority to a state to implement a technology-specific area code would violate the 1996 Federal Telecommunications Act because the FCC has

already determined that technology-specific area codes are, by definition, discriminatory.

(Id.) Yet, that is not quite what the FCC did, as noted in the Notice of Proposed

Rulemaking (NPRM) the FCC recently issued.¹ There, the FCC identified the reasons it

found a particular proposal for a technology-specific overlay to be discriminatory:

Specifically, we were concerned about several facets of Ameritech's area code relief plan: the proposal to continue assigning 708 numbers to wireline carriers but to exclude paging and cellular carriers from such assignments; the proposal to require paging and cellular carriers to take back 708 numbers previously assigned to their subscribers, while wireline carriers would not be required to do so; and the proposal to assign all numbers to paging and cellular carriers exclusively from the existing 312 and the new 630 area codes, while wireline carriers (and perhaps others) would continue to receive 708 numbers. We found that Ameritech's plan would place paging and cellular companies at a distinct competitive disadvantage because their customers would suffer the cost and inconvenience of having to surrender existing numbers and go through the process of reprogramming their equipment, changing over to new numbers, and informing callers of their new numbers. (NPRM, ¶ 256.)

While California has not yet begun to consider how it would configure a technology-specific area code, the CPUC is acutely aware that the FCC frowns on any take back of numbers because of the cost and inconvenience to end-users. We would bear this in mind in crafting a technology-specific area code plan. Further, we envision that any dedicated area code for a particular technology would be implemented prospectively. We would not contemplate moving end-users of that particular technology out of an existing area code into a newly-created NPA dedicated to that technology.

Further, the FCC has elected to re-open the question of whether the ban on technology-specific overlays should continue or be modified. (NPRM, ¶¶ 257-261.) In

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

raising the issue, the FCC does not even suggest that establishing any technology- or service-specific area code would constitute discrimination. Rather, the FCC expresses concerns about competition, but not about the lawfulness of such a prospect:

We continue to believe that service-specific or technology-specific overlays raise serious competitive issues that must be carefully considered for the reasons stated in our prior orders. Nonetheless, in light of the increased urgency of the numbering crisis and the broader issues raised in this proceeding, we believe it is appropriate at least to examine our policies with respect to service-specific and technology-specific overlays, and to consider whether we should modify or lift the restriction on these area code relief methods. (emphasis added).

Certainly, this language in the NPRM is not dispositive of whether the FCC will or will not modify the ban on service- or technology-specific area codes. But it does demonstrate that the Commission does not consider any such ban to be presumptively unlawful under the 1996 Federal Telecommunications Act.

For the most part, parties opposing the CPUC's request for authority to establish a technology-specific or service-specific area code completely ignored California's argument, set forth below. (See SBC Wireless Opp.; AT&T Comm.)

Once number pooling is in effect, and any particular group of carriers is unable to participate because it is not [local number portability] LNP-capable, that group of carriers will still need to obtain NXX codes in order to provide service to their customers. The CPUC has no desire to impede the ability of any carrier to obtain NXX codes in a timely manner. At the same time, if most carriers are participating in pooling in a given NPA, and one group of carriers is not participating, the majority of carriers will be obtaining number in blocks smaller than 10,000, while the carriers who are not LNP-capable will continue to draw NXX codes in blocks of 10,000.

The wireless service providers are quick to claim that mandatory number pooling will constitute a form of discrimination because it will be a number conservation measure in which only LNP-capable carriers can participate. Yet, the wireless providers have elected not to implement LNP, and even obtained a multi-year extension of time from the FCC for implementing LNP. At the same time, Sprint PCS argues that “allocating numbers in blocks of 1,000 makes sense for those carriers choosing to use numbers on a landline rate center model However, allocating numbers in blocks of 1,000 makes no sense for the CMRS industry, because CMRS providers do not utilize the landline rate center paradigm”. (Sprint PCS Opp., p. 7.) Thus, Sprint PCS simply has illustrated the point – if CMRS providers use their numbers more efficiently, but by their failure to implement LNP, are required to draw numbers in 10,000 blocks, it is all the more reasonable for those carriers to be assigned to separate area codes. The wireless carriers have set themselves apart by their business decision not to implement LNP, yet they insist on being treated the same as all other carriers. See Comments of Cities of Burbank and Glendale, California at p. 4 (“The wireless carrier should not be heard to object to the imposition of pooling arrangements, nor should they be heard to object to the imposition of service-specific area codes just for them. They have positioned themselves to be incapable of pooling by virtue of their success in obtaining an exemption from LNP implementation requirements.”) The Pennsylvania Office of Consumer Advocates (OCA) captured this concept in its Comments on the CPUC’s petition:

Accordingly, it would seem appropriate that – even as wireless carriers cannot contribute any portion of the NPA-NXX codes through pooling in

order to avoid additional area codes – they should be required to take NPA-NXX codes from a separate NPA. The OCA recognizes and accepts the fact that wireless carriers will not be able to use LNP based pooling for many years to come. However, states should then be able to segregate wireless demand into a separate area code as a result. (PA OCA Comm. p. 10.)

Sprint PCS also asserts, without justification, that “the CPUC believes that the public interest would be harmed if CMRS providers do not participate in number pooling under the further assumption that CMRS providers are not currently using their numbers efficiently”. (Sprint PCS Opp., p. 7.) In fact, California made no such representation in its Petition, as the CPUC has made no findings regarding the relative efficiencies of different industry segments in number use.

Finally, several opposing parties insisted that the CPUC should not be granted the discretion to implement a service- or technology-specific area code because we have not implemented rate center consolidation. (CCA of California, pp. 6-8; AirTouch, pp. 4-5.) While we believe that full discussion of rate center consolidation belongs in comments on the NPRM, we are compelled to respond to the commenters suggestions here.

CCA of California suggests blithely that “rate center consolidation is not technically infeasible for anyone and has proven to be a real solution”.² (CCA of California, p. 7.) CCA follows up with the proposition that California could accomplish rate center consolidation in no time at all: “States which have implemented rate center consolidation have been able to do so within a time frame of three to six months”. CCA

² It is not immediately apparent to the CPUC why a technology-specific or service-specific area code would be “technically infeasible”, if that is what CCA of California suggests. A number of other nations have successfully established area codes dedicated to wireless service, among them Japan, Australia, Canada, and England. As far as the CPUC is aware, the

does not identify the state experiences it has in mind. In its Comments, AirTouch offers similar industry expectations for rate center consolidation in California:

This rate-center-based inefficiency can be addressed through rate center consolidation. This may be done together with rate re-balancing to minimize the rate impact on ILEC revenues. While this poses implementation issues, it can be accomplished quickly – in far less time than the 19 months or so required to establish and implement 1000-block pooling. The benefits of rate center consolidation can be substantial. If the 800 rate centers [in California] were reduced to 200, for example, a CLEC would need to occupy only one-fourth as many numbers to have a presence in every rate center statewide; if the 800 rate centers were only reduced to 400, a CLEC would need only half as many numbers as now. (AirTouch, p. 4 (emphasis added).

To put it bluntly, we are not sure which solar system these commenters are orbiting in, but it is not this one. AirTouch glosses over, while CCA does not even mention, the issue of rate re-balancing. The two largest ILECs, Pacific Bell and GTE California, have made abundantly clear to CPUC staff that they will explore rate center consolidation only if they are fully compensated for lost toll revenues. Thus, consolidating 800 rate centers into 200 in a state with a uniform 12-mile local calling area would have profound and permanent rate implications for residential local exchange customers, who to date, have realized virtually no benefits from local exchange competition.³ If all parties agreed on which 600 rate centers were to be eliminated, how much revenue needs to be made up, how that revenue should be recovered, and most important, technically how rate center consolidation should be implemented, we still would have great difficulty achieving this goal in three to six months without

³wireless industries in those nations are flourishing, despite the use of dedicated area codes.

⁴In contrast, we envision that the costs associated with implementing thousand-block pooling could be recovered by a

jeopardizing due process. Given the scope of such an undertaking in California, which would essentially pit short term industry interests against the longer term public interest, the CPUC does not see how this could realistically be achieved in less than 18 months.

At a meeting on June 9, 1999 of the California Number Pooling Task Force, which also is addressing number conservation measures, the industry representatives agreed that they would not address technical issues pertaining to rate center consolidation until the CPUC resolves the associated revenue issues. Thus, the industry has declined even to suggest a means of implementing rate center consolidation or to develop proposals on any of the associated technical issues. This puts the CPUC in the position of trying to determine the costs associated with rate center consolidation when we have no input yet from the industry on how it could or should be done. Without that information, it is extraordinarily difficult to determine whether rate re-balancing is in order, or the extent of any possible rate re-balancing, should it occur. Without full cooperation from all industry segments, as well as consumer groups, it would be impossible to consolidate 800 rate centers into 200, or indeed to consolidate any rate centers at all, in three to six months.

At the California industry Statewide Area Code Planning Meeting, held June 10, 1999, Lockheed Martin representatives distributed a five-page document entitled "Issues and Concerns in the Implementation of Overlays for NPA Relief".⁴ On the second page

⁴ temporary mechanism, similar to how the costs of LNP are being recovered.

⁴ Because the CPUC's scanner is not functioning, the CPUC has appended the document to the hard copy version of this Reply as an attachment.

of that document, under the heading “Rate Area or Rate Center Consolidation”, the following paragraph appears:

In cases where a state elects to implement a consolidation of rate areas (a/k/a rate centers) in order to conserve numbering resources, the combined effects of an overlay and the consolidation of rate areas can cause concerns for technical issues. As rate areas are consolidated, the extent of local calling area is typically expanded. These new rate areas can expand beyond typical jurisdictional boundaries (cities, counties, 911 authority boards, etc.). After the rate areas have been consolidated, there is a major concern that arises. The expansion of rate areas and the introduction of an overlay can cause 911 functions to perform inconsistently. As telephone numbers become less geographic (i.e., when the NPA-NXX does not correspond to a relatively small defined location any longer) as will be the case with the combination of an overlay and a rate area consolidation, the 911 system integrity may suffer unless detailed planning occurs ahead of time. (emphasis added).

The FCC mentions similar concerns in the NPRM, asking for comment “on how to ensure that rate center consolidation does not adversely impact 911 systems, in particular the default routing of 911 calls”. (NPRM, ¶ 121.) It seems to the CPUC that concerns about how well the 911 system will function when rate centers are consolidated, especially as we are beginning to implement overlays in California, must be fully resolved before we implement rate center consolidation. Otherwise, the public’s health and safety could be directly at risk. We are aware that the industry is working on these issues, but they are not yet resolved.

The point here is that rate center consolidation is a separate and distinct issue from consideration of service- or technology-specific area codes. Even if all associated issues were resolved tomorrow, and the CPUC immediately consolidated rate centers, the need to explore service- or technology-specific area codes would still exist. By choice,

wireless providers would still have not implemented LNP, and by extension, would still not be able to participate in number pooling. Thus, the issue of whether or not the CPUC consolidates rate centers is not relevant to the CPUC's request for waiver.

In the NPRM the FCC has expressed its intent to address there the larger question of whether technology-specific or service-specific area codes could help alleviate the pressing demand for numbers which is driving the need for more area codes. While the CPUC renews its request for consideration of its Petition for Waiver, California recognizes that the FCC may choose to defer ruling on our Petition until it has resolved the larger question in the NPRM. In that event, California considers it all the more

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imperative that the FCC grant California's companion Petition for Delegation of Authority to Implement Number Conservation Measures, which we address in a separate Reply.

Respectfully submitted,

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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 28th day of June, 1999.

/s/ HELEN M. MICKIEWICZ

HELEN M. MICKIEWICZ