

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

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

Connecticut Department of Public
Utility Control Petition for Rulemaking
to Amend the Commission's Rule
Prohibiting Technology-Specific or
Service-Specific Area Code Overlays

RM No.9528

Massachusetts Department of
Telecommunications and Energy
Petition for Waiver to Implement a
Technology-Specific Overlay in the
508, 617, 781, and 978 Area Codes

NSD File No. L-99-17

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

NSD File No. L-99-36

**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 Federal Communications Commission

(FCC or Commission) these Comments on the FCC's Notice of Proposed Rulemaking (NPRM), released June 2, 1999.

The NPRM is extremely large in scope, and the CPUC, like many parties, cannot now respond to every question. Indeed, the CPUC simply is not equipped to respond to some of the requests for technical data. Consequently, the CPUC focuses its comments on the issues most vital to California. At the same time, the staff of the CPUC has worked with staffs from a number of other state commissions to develop a fairly comprehensive outline of state responses to the myriad issues contained in the NPRM. That outline is attached to these Comments. While the outline contains a caveat requested by a number of states, California endorses the positions set forth in the outline. Where our views differ from those in the outline, we have noted the difference and addressed the issue separately in these Comments.

I. INTRODUCTION

The FCC is at a critical juncture. Numbering resources in the United States are being depleted at an alarming rate. As the FCC notes in the NPRM, unless corrective actions are taken, the North American Numbering Plan is facing exhaust sometime within the next decade. (NPRM, ¶ 5.) The reasons for the number drain are many: introduction of new services and technologies, population and economic growth, expanded competitive opportunities, especially in the provision of local exchange service, and consumer demand for more access lines. Yet, underlying all of these is an archaic, outmoded, arcane number allocation system which has severely compounded the demand

for numbers by compelling requesting carriers to accept vastly more numbers than they can use.

The inefficient way in which numbers are allocated has resulted in further, astounding inefficiencies in the way numbers are used. The Commission itself notes that utilization estimates range from 5.7% to 52.6% depending on the industry segment.¹ (NPRM, ¶ 21.) Because carriers need a separate NXX code in every rate center, they request and obtain, to the extent possible within the context of code rationing, one or more NXX codes in each rate center where they wish to do business.

Despite the inefficient allocation system, industry response to the rate at which they are drawing numbers has been to insist vehemently, repeatedly, and consistently that the “solution” to the numbering crisis throughout the nation is for state commissions to give out more numbers faster, and to consolidate rate centers. The incalculable cost to consumers of enduring repeated area code relief is absolutely not of concern to the industry. Indeed, at a panel of industry presentations on numbering issues at a recent NARUC meeting in San Francisco, not one panelist even once mentioned the impact of numbering issues on the public. Carriers evince a “public-be-damned” attitude; as long as they obtain the numbers they want, nothing else matters.

The CPUC does not say this casually. Our staff participates routinely in area code planning meetings and conference calls. At a meeting in September, a CPUC staff member raised an issue pertaining to the need for intercept messages to inform customers

¹ The ILECs in California consistently contend that their utilization rates are in the 85 to 87% range.

about area code changes. The immediate, and predominant, response from the industry was, “this will cost money”.² Indeed, in filings before the FCC responding to state challenges to the Pennsylvania Order and state petitions for delegation of additional authority, carriers argue that addressing state concerns about the escalating public cost of area code relief would require them to spend money to adapt to different state conservation approaches.

Because they are focused on their companies’ profit margins, the industry collectively is disinterested in solutions to the national numbering crisis that will cost more than they are currently paying. The numbering “problem”, as carriers perceive it, is that state commissions are not implementing timely relief. In contrast, the numbering “problem”, as the public sees it, is that too many area codes are being created too quickly. The public is being asked to shoulder the financial burden and the gross inconvenience of learning new area codes and of changing business cards, stationery, and advertising. In the case of an overlay, the public must adapt to dialing the area code plus the seven-digit number. Plus, they must now be aware that the new neighbor across the street is in a different area code. The public must pay additional costs for directory assistance or to obtain directories for areas outside their home NPA. All of this is occurring at dizzying speed, thus requiring the public to adopt change at a pace that is extremely difficult to manage.

² In fairness, industry participants also asserted that intercept messages should conform to national standards, and agreed to participate in a joint effort with CPUC staff to find a solution to the problem our staff identified.

The FCC in the recent past has adopted numbering policies intended to foster the development of competition, particularly in the local exchange market. Unfortunately, as time has passed, those policies have hamstrung state commissions in their attempts to curtail the costs and inconvenience imposed upon the public by repeated area code changes. Those same policies have allowed carriers to obtain enormous quantities of numbers, many, many of which are unused. The Commission has the opportunity in this NPRM to adopt policies which will prevent the public from incurring indefinitely the increasing costs associated with area code relief. The Commission can establish a regulatory structure which asserts much greater public control over public numbering resources.

Further, the FCC can use this opportunity to delegate additional jurisdiction over numbering issues to the states. As FCC Chairman Kennard noted at a recent NARUC meeting in San Francisco, area code relief involves “very emotional and very local issues”. Indeed, the CPUC is one of many state commissions under tremendous public pressure to “do something” about the numbering problem. We have a more direct and intimate understanding of local circumstances and of public reaction to area code relief. Consequently, it behooves the Commission to involve state commissions more directly in monitoring and controlling the flow of public numbering resources.

Finally, above all else, we urge the FCC to recognize that the phenomenal and rising costs of the numbering crisis are being borne first by the public and second by the

industry. The Commission has the chance to reverse that situation, and the public interest demands that the FCC do so.

II. SOME OF THE NPRM'S PROPOSALS WOULD NOT PROTECT THE PUBLIC INTEREST

The CPUC is gravely concerned about three specific issues discussed in the NPRM: rate center consolidation, number pooling, and carrier choice of conservation measures. The FCC appears to consider rate center consolidation (RCC) as the primary option for resolving the current numbering crisis. “We believe that rate center consolidation should be implemented to the greatest extent possible, and we seek comment on what actions this Commission should take to promote rate center consolidation”. (NPRM, ¶ 116, emphasis added.) While highlighting the advantages of RCC, the FCC barely mentions the prospect of rate adjustments that may be required when rate centers are consolidated in a manner that reduces incumbent local exchange carrier (ILEC) toll revenues. “[W]here local calling scopes must be modified in connection with rate center consolidation, carrier revenue may decrease, because a larger percentage of revenue may be derived from basic local service and a smaller percentage from toll service.” (Id. at ¶ 114.) Put another way, when an ILEC loses toll revenue because rate centers are consolidated, thus converting some toll calls to local calls, the ILEC may – most certainly will – seek recovery of that lost toll revenue via increased monthly rates for basic exchange service.

In California, we have approximately 800 rate centers. While the CPUC in 1990 expanded the local calling area in 1990 from eight to twelve miles, we still have a

uniform, statewide, relatively small local calling area. We believe that consolidating a significant number of these 800 rate centers in California poses the potential for profound, direct, and permanent rate impacts on customers. Yet, we are troubled to see that the FCC does not seek, nor does it suggest as appropriate, a cost-benefit analysis of RCC. Rather, the Commission has concluded – without characterizing its statements as “tentative conclusions” – that “rate center consolidation should be implemented to the greatest extent possible”. (NPRM, ¶ 116.)

The Commission clarifies that states have full authority to implement RCC, noting that “rate centers are inextricably linked with local call rating and routing issues, which fall within the traditional jurisdiction of state public utility commissions . . .”.³ (Id. at ¶ 117.) Yet, the FCC goes on to suggest that, even though RCC is a matter of state jurisdiction, perhaps the states need a nudge to get moving on RCC: “should we grant states the authority to implement pooling only after they have undertaken rate center consolidation in the area in question?”⁴ (Id. at ¶ 120.)

In contrast, the Commission takes a very different approach to number pooling. There, the FCC states “[w]e believe that carriers should be required to participate in

³ The CPUC appreciates this clarification. In our PFR of the Pennsylvania Order (filed November 6, 1998) we asked the FCC to clarify that states have authority to consolidate rate centers. (See CPUC PFR, pp. 21-22.)

⁴ This statement alone indicates the need for a further NPRM just to address what standards would be used to determine when a state has “undertaken” RCC. For example, what does “undertaken” mean? That the state has opened a docket addressing RCC? The state has reduced its total number of rate centers by half, a third or three-quarters? The consolidation has been ordered, or implemented? In addition, what is the “area in question”? Has the FCC unintentionally prejudged the outcome of the NPRM on pooling issues by suggesting here that pooling can only occur in certain areas, where RCC has been implemented, but not statewide, or nationwide?

pooling in areas where the benefits of pooling outweigh the associated costs”.⁵ (NPRM, ¶ 138.) Thus, the FCC posits that the costs to carriers of implementing number pooling are a significant factor in determining whether it is worthwhile to implement number pooling. At the same time, the Commission apparently did not consider either the costs of consolidating rate centers or the resulting rate impacts on end users to be legitimate subjects for comment in the NPRM. Nor does the FCC seem to consider the societal costs of area code relief or North American Numbering Plan (NANP) expansion to be important factors in evaluating the efficacy of number pooling.

In addition, the FCC proposes that individual carriers be given the “choice” of what conservation methods the carrier considers most appropriate for its needs.⁶ “Here, we seek comment on whether we should simply establish thresholds for efficient use of numbering resources, but leave the choice of method for achieving these thresholds to individual carriers.” (NPRM, ¶ 216.) The net effect of the RCC, number pooling, and carrier choice proposals, from the CPUC’s perspective is that the FCC is considering a regulatory scheme in which the states’ ability to implement number pooling could be held hostage to a federal requirement that rate center consolidation be accomplished first.

⁵ What costs does the FCC have in mind here? Is the FCC willing to consider the virtually incalculable costs to the public of undergoing constant area code changes? Or the costs of NANP expansion, which will result in lieu of conservation efforts such as mandatory number pooling? Is the FCC only interested in direct costs to carriers? The CPUC believes fervently that many of the public costs associated with frequent area code relief, i.e., the external costs, will be avoided when number pooling dramatically slows the drain on numbers and the commensurate need for new area codes. These avoided external costs must be included in any cost-benefit analysis.

⁶ The CPUC sees this recommendation as particularly flawed, and addresses the proposal in more depth later in these Comments.

As we have noted in previous filings with the Commission, we anticipate that RCC could take up to eighteen months, and perhaps longer, to accomplish on a statewide basis. The industry has yet to provide the CPUC with any specific recommendations as to which rate centers could be consolidated. The industry has not, for example, proposed a plan to reduce the number of rate centers in California from 800 to 400, or to 200, or to 600. Nor has the industry offered any proposals on how such consolidation would be accomplished and how customers would be affected. Rather, the industry has simply asked the CPUC, via letter, that we resolve associated revenue issues before the industry will develop detailed recommendations or propose specific technical solutions associated with RCC.⁷ We do not know how we can resolve the revenue issues when we have no proposal with associated revenue impacts to evaluate. Further, we would violate state law if we were to approve rate adjustments without determining that the rates adopted are reasonable.⁸ Thus, we find ourselves in a “Catch-22” as far as moving forward on RCC.

Rate center consolidation will mean direct, substantial and permanent basic rate increases for many customers, unless the ILECs forgo their claim that it should be revenue neutral. Further, requiring that states implement RCC before number pooling severely limits a state commission’s discretion to determine whether RCC is appropriate or manageable based on its specific circumstances. At the same time, the FCC proposes broad discretion for carriers, which would be able to “pick and choose” the conservation

⁷ A copy of the industry letter is appended to these Comments as Attachment 2.

⁸ See Public Utilities Code § 451: “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.” (Emphasis added.)

methods, if any, they might want to pursue to meet their utilization thresholds. Carriers, thus, would have considerably more discretion than state commissions.

In the CPUC's view, the FCC has it backwards. State commissions, not industry players, represent the public interest in the management of number resources.⁹ The FCC itself acknowledges that numbers are a public resource, but then proposes to continue to allow greater private sector control, rather than public control, over how this resource is used and managed.¹⁰ California fully supports adoption of FCC rules which would govern number pooling. And, we support conversion of industry guidelines to federal rules which would govern carriers and state commissions. But, we also believe that state commissions, not carriers, should have some degree of flexibility in applying those federal rules to ensure that the public interest in the public's resource is effectively protected. Thus, we urge the FCC to reject carrier choice and to adopt a set of rules pertaining to numbering management and allocation which carriers and state commissions must follow. At the same time, the CPUC urges the Commission to allow state commissions, but not carriers, some flexibility to deviate from the rules when the state commission determines that the public interest would not be served by strict compliance with the rule in question.

⁹ The CPUC recognizes that the FCC also, of course, is charged to represent the public interest.

¹⁰ "We agree that numbers are a public resource. . .". (NPRM, ¶ 229.) Also, "[w]e seek comment on whether a license-type arrangement would be consistent with our long-held view that numbers are a public resource". (Id.)

III. ADMINISTRATIVE MEASURES

A. Definitions of Categories of Number Use

1. Administrative Numbers

The CPUC concurs with the recommendations and comments on the definition of “administrative numbers” set forth in the state outline. California also proposes, however, that a provision prohibiting companies from reallocating these numbers to customers at a later date be added to the definition. (NPRM, ¶ 41.) This prohibition would discourage companies from stockpiling administrative numbers for future reallocation. We also recommend that the FCC adopt specific regulations to discourage and prohibit indiscriminate allocation, indiscriminate use, or irresponsible use by carriers of numbers in this category.

2. Assigned Numbers

Similarly, the CPUC agrees with the states’ recommendation on assigned numbers, contained in the state outline, regarding the need for specific limits on the amount of time customer orders can be “pending”. (NPRM, ¶ 43.) At the same time, California recommends that the FCC clearly distinguish between “assigned numbers” and “reserved numbers”, to ensure that carriers cannot take advantage of definitional ambiguities to treat more numbers as “reserved”.

3. Dealer Numbering Pool

The CPUC believes that the definition of a dealer numbering pool should specify that these sets of numbers are categorized as part of a service provider’s inventory of unassigned numbers. If the Commission decides not to add this component to the

definition of “dealer numbering pool”, then we urge the FCC to give states the flexibility and authority to limit the quantity of numbers carriers may place in dealer numbering pools. Finally, we urge the FCC to amend the definition of “dealer numbering pool” to clarify that numbers allocated to dealer pools cannot be excluded from reclamation and number pooling efforts.

4. Reserved Numbers

California agrees with the state outline that the FCC should establish a narrow definition of “reserved numbers” at the national level. We also recommend, however, that the Commission delegate to the states authority to adopt narrower definitions and to impose tighter restrictions on the use of reserved numbers in order to meet local needs and to support conservation efforts. Allowing the states to more strictly define “reserved numbers” will not impair the national numbering system in any manner, but will allow states with intense competition for public numbering resources to more closely monitor the way in which those resources are used.

5. Categorization of Reserved Numbers

The CPUC disagrees with the definition of “reserved number” proposed by MCI WorldCom. (NPRM, ¶ 48.) MCI’s definition will facilitate the stockpiling and continued inefficient use of numbers. Instead, California agrees generally with the amendments proposed in the state outline. We also recommend that the FCC delegate additional authority to state commissions to impose additional rules regarding numbers held in reserved blocks, if the customer awarded the block fails to activate those numbers in a specific time frame.

6. Time Limits on Reserved Status

We generally agree with the position set forth in the state outline on the need for specific timelines for reserved numbers and blocks of numbers. We also share the states' concern that fees for numbers could impede competition and be passed onto end users. In addition, we feel that the question of charging fees for "reserved numbers" is subsumed into the broader issue of whether carriers should be required to pay some type of fee(s) for access to numbering resources. We recommend that the FCC address the question of charging for reserved numbers in conjunction with the broader pricing option proposals in the NPRM. Our discussion of that broader topic is in § V of these Comments.

B. Verification of Need for Numbers

The CPUC concurs with the positions set forth in the attached state outline regarding verification of the need for numbers. California wishes, however, to underscore our fervent belief in the importance of verifying the need for numbers, as well as the actual use of numbers, which we will address later in these Comments.

The CPUC concurs with the FCC's tentative conclusion that all users of numbering resources should be mandated to supply forecast and utilization data to the North American Numbering Plan Administrator (NANPA). (NPRM, ¶ 73.) We also agree that the Commission should "establish a more extensive, detailed and uniform reporting mechanism that will improve numbering utilization and forecasting on a nationwide basis". (Id.) While the state outline recommends that forecast and utilization data be reported at the NXX level, the CPUC believes the data would be vastly more

useful and more accurate if it were reported at the 1,000-block level. We urge the Commission to establish reporting requirements at the 1,000-block level.

Further, California wishes to emphasize that no carriers should be exempt from reporting requirements, which should be uniform for all carriers in all industry segments. A carrier's status as a new entrant or a wireless service provider might affect how the forecast or utilization data is interpreted or applied. But those factors should not allow for lesser reporting requirements for one or another industry segment. Effective monitoring and enforcement can only be achieved if regulators have a complete picture of what numbers are in use, not in use, reserved, or forecast to be needed.

The CPUC supports the FCC's tentative conclusion that carriers "should report utilization and forecast data on a quarterly basis here, rather than the current annual reporting. It has been California's experience that annual reporting of information is woefully inaccurate as new carriers enter the market quarterly, and business plans can change on a monthly basis. Again, we believe that reporting requirements should be uniform for all carriers, and oppose FCC rules differentiating between carriers in high-growth-rate NPAs and low-growth rate NPAs. The growth rate in the respective NPA can be taken into account in evaluating the meaning of the data collected, but it should not dictate the frequency of data reporting. Besides, distinguishing "high-growth rate" and "low-growth rate" NPAs for reporting purposes could be arbitrary, and, if the

distinction is mandated by the FCC, may not reflect different conditions in different states.¹¹

The CPUC believes that carriers should report utilization and forecast data to the NANPA, but that state commissions should have access to any and all such data. We appreciate carrier concerns about the need to maintain confidentiality of the data. In California, CPUC employees are prohibited both by state law and by our own General Order 66-C from disclosing outside the CPUC information which is provided on a confidential basis to this agency.¹² Therefore, the confidentiality of forecast and utilization data collected by the NANPA or another party and submitted to the CPUC would be fully protected.

Finally, the CPUC concurs with those commenters who have observed that the COCUS is an inaccurate means of reporting forecast data. California supports both 1) reporting requirements in addition to the COCUS, for now, and 2) replacing the COCUS with a more accurate forecasting measure. California understands that the NANC is currently evaluating alternative forecasting tools.

¹¹ For example, a high-growth rate NPA in Montana could be a very low-growth rate NPA in California.

¹² See California Public Utilities Code § 583:

“No information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection . . . shall be open to public inspection or made public except on order of the commission or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”

If the NANPA collects utilization and forecast data and provides it to the CPUC, our employees would still be bound by the provisions of P.U. Code § 583, as the NANPA would be acting as an agent of the utilities for purposes of submitting the data to this agency.

C. Audits

The CPUC has little to add to the state outline on the subject of audits. We do wish to express our strong opposition to a potential FCC mandate that state commissions perform audits. State commissions may not have the resources to perform audits of the scope and scale the FCC proposes in the NPRM. We can assert categorically that while the CPUC can perform utilization studies, we do not have adequate staff resources to conduct numbering audits. If the FCC orders states to perform audits, we would have to seek a budget augmentation to obtain the resources and that is always a highly problematic and unpredictable process.

We believe audits should be conducted by an independent third party either on a regional or nationwide basis. Certainly, the NANPA has access to data that would assist an auditor in performing this function. But the CPUC is mindful that the current Requirements Document does not include auditing as a NANPA function. Thus, were the NANPA to perform auditing functions, the issue of compensation would need to be resolved. We do not oppose, instead, use of a bidding process to secure the services of another party to fill the role of independent auditor.

D. Enforcement

The CPUC concurs with the positions set forth in the state outline regarding the division of enforcement responsibilities between the FCC, state commissions and the NANPA. California believes the FCC should establish rules regarding allocation of number resources, but should delegate to states wishing to carry out enforcement activities the authority to do so. In saying this, we urge the FCC to be clear and explicit

in any delegation of authority to the states, so that carriers cannot exploit vague language to game the process by running from one agency to another. Further, in this regard, the FCC should be very clear and explicit if it chooses to delegate additional authority to the NANPA. The FCC should determine whether state commissions, in addition to the NANPA, should have this authority or whether only state commissions should have this authority.

For example, currently, only the NANPA has authority to ask that a carrier return NXX codes which the carrier was assigned but has not opened in the time-frame allowed by industry guidelines. As the FCC notes, the NANPA has been reticent to exercise that authority, presumably because the NANPA has no other jurisdiction over carriers.

(NPRM, ¶ 95.) The NANPA cannot revoke a carrier's license, nor refuse to allow an offending carrier access to future numbering resources if the carrier refuses a NANPA request for return of codes. For these reasons, the CPUC believes it to be far more practical to authorize states to enforce FCC numbering rules. At the same time, however, the CPUC urges the FCC to allow states some flexibility in enforcement activities. States should be able to evaluate each case separately, and determine whether the carrier has acted in error or with deliberation. The punishment should fit the crime, assuming there is a crime.

Finally, the CPUC recommends that the FCC authorize state commissions to engage in numbering administration on a case-by-case basis, and only upon the request of the particular state commission. California, at present, has no interest in taking on

number administration functions, nor does it have the resources to do so. Our staff has a good working relationship with the NANPA, and numbering administration in California works as best it can in light of the constraints imposed by federal rules and industry guidelines. At some point in the future, however, the CPUC might consider it to be in the public interest to have this agency perform some numbering administration functions. In that event, we would expect to seek such authority from the FCC, pursuant to whatever process the Commission establishes in its order on the instant NPRM.

E. Reclamation of NXX Blocks

The CPUC has nothing to add here to the position set forth in the state outline.

F. Cost Elements and Cost Recovery

We have the following observation to add to the positions in the state outline.

We note that in California, negligible residential local exchange competition has developed to date. Despite the presence of over 100 competitive carriers authorized to provide local exchange service in this state, upwards of ninety-five percent of residential customers in California cannot chose a local exchange provider other than the ILEC. At the same time, we are generally aware that some measure of competition exists in California for business local exchange service. Given that the vast majority of residential customers in California do not yet have any competitive alternatives for local exchange service, imposing the costs of implementing RCC could mean that those customers would be making payments permanently to facilitate competition that, to date, is primarily benefiting business customers. In contrast, the costs of number pooling will be much lower per customer and for a fixed period of time, particularly if they are assessed, as the

FCC proposes, via a federal recovery mechanism. (See NPRM, ¶¶ 193-196.) The comparable recovery charge for local number portability was initially fifty cents per customer, recently reduced by thirty percent, and will cease after five years. Number pooling costs also should be temporary as the majority of number pooling costs will be incurred to set up the pooling administration infrastructure.

G. Carrier Choice of Numbering Optimization Strategy

The CPUC agrees with the position set forth in the state outline opposing carrier choice of numbering optimization strategies. (NPRM, ¶ 216.) California believes the FCC has struggled to develop proposals intended to lengthen the life of the NANP, and to ensure that public numbering resources are used as efficiently as possible. Yet, no proposal in the NPRM more belies that intent, nor poses more potential to thwart all other state and federal efforts to control the drain of numbers in the United States today.

In particular, while we agree that setting a utilization threshold for carriers is a good idea, allowing carriers to choose the means by which they achieve that threshold is a very bad idea. The weakness of this proposal is enhanced by the FCC's failure to even suggest a means of verifying carrier claims that they have met the utilization thresholds the FCC might set. Thus, it appears that the FCC is proposing to invite carriers to assert that they have met utilization thresholds and therefore, they need not conserve numbers. As the state outline notes, this is, indeed, tantamount to doing nothing at all.

We can point to a most compelling illustration of the plan's shortcomings. As noted in the previous section of these Comments, the ILECs assert vehemently that they

have achieved 80 to 85 percent utilization of their numbering resources.¹³ Suppose the FCC adopts a utilization threshold of 80 to 85 percent, as proposed by the states, and then allows carriers to choose how to meet that threshold. Based on their utilization claims, the ILECs could simply assert that they have already met that threshold and need not participate in or implement any conservation measures. Certainly, the ILECs utilization claims could be verified by audits. The CPUC acknowledges the NPRM's proposals for numbering audits, which California supports. But it will take some time to establish an audit process for all carriers nationwide. In the meantime, by virtue of claiming to have met a mandated utilization threshold, a "carrier choice" option would allow the ILECs not to engage in conservation activities while they continue to control large, unaudited supplies of numbers. In essence, then, the FCC's efforts to achieve greater efficiency in use of numbers would achieve very little, if anything.

More particularly, if the ILECs elect not to participate in number pooling, that effort will achieve more limited results. (NPRM, ¶ 218.) Again, we appreciate the ILECs' assertion that they have few numbers to donate to pooling endeavors.¹⁴ But, if ILECs claim high utilization rates, and then choose not to participate in pooling, as they have done in California since issuance of the Pennsylvania Order, California believes number pooling is doomed to fail as a number conservation measure. As noted previously in these Comments, the NANC/NRO Report posited that 1,000-block pooling

¹³ The CPUC is not trying to "pick on" the ILECs, but no other industry segment claims to have such high utilization rates.

¹⁴ A cursory review of NXX code assignments in the 310 NPA, however, demonstrates that the ILECs hold between 50 percent and two-thirds of all NXX codes in each rate center. Until we have obtained utilization data, we cannot agree with the ILECs' contention that they have no blocks of numbers to share.

can be implemented more quickly than any other conservation measure. Should states be foreclosed, de facto, from pursuing this option because the ILECs will not participate, we will lose a golden opportunity to prevent premature exhaust of existing and future NPAs, and thus, premature exhaust of the NANP.

Further, under a carrier choice scheme, the burden would be placed on state commissions to prove that a particular carrier is not meeting its utilization threshold. Thus, a carrier asserting that it has already met its utilization threshold would require the state commission to conduct an audit to determine the veracity of the carrier's assertion. The CPUC believes that, instead, access to number resources should be based on need, and carriers should have to demonstrate their need for the resources. A "carrier choice" scheme, in contrast, would not require a showing of need.

Similarly, the CPUC does not see how carriers can "choose" to participate in rate center consolidation. Either all carriers participate in the state commission's efforts to consolidate rate centers, or the effort may as well not occur. In California, despite our decision to allow CLECs to establish their own rate centers, virtually all CLECs opted instead to match the ILECs' rate centers.¹⁵ If some of them decide not to participate in rate center consolidation, the process of consolidating rate centers will be undermined.

All in all, the CPUC believes that carrier choice is a recipe for disaster. It will allow carriers to continue to draw numbers in whatever quantities they deem appropriate for their business purposes, with no true accountability until, and if, their number

¹⁵ We did require that CLECs notify us of their intention to establish rate centers inconsistent with the ILECs' rate centers. To date, only one carrier has notified us that it wanted to create independent rate centers.

holdings are audited. In the meantime, the NANP will draw closer and closer to exhaust, and ultimately, the public will be required to pay billions of dollars to expand the NANP. California urges the FCC in the strongest possible terms to reject carrier choice.

IV. OTHER NUMBERING OPTIMIZATION SOLUTIONS

A. Rate Center Consolidation

Because rate centers are “inextricably linked with local call rating and routing issues, which fall within the traditional jurisdiction of state public utility commissions”, the CPUC believes the FCC should let the states decide whether to consolidate rate centers and how to accomplish that goal. (See NPRM at ¶ 117.) California can suggest no incentives the FCC can, or should, impose to encourage ILECs to voluntarily combine rate centers. (Id. at ¶ 118.) The key component of rate center consolidation in California will be the question of whether ILECs should be reimbursed for lost toll revenues, and if so, for how much. These will be very difficult questions to answer, and will require a preliminary assessment of the technical considerations associated with RCC. We have no information at present from the industry to assist us in making that preliminary assessment.

Further, we believe that introduction of intraLATA dialing parity will make the ILECs more likely, not less likely, to hold firm on any request for a revenue neutral RCC process. (NPRM, ¶ 118.) IntraLATA dialing parity allows competitors to more easily lure toll customers away from the ILECs, thus reducing the ILECs’ intralata toll revenues. The prospect of losing additional intralata toll revenues through RCC is a prospect we believe most ILECs will not relish. In addition, the opportunity to recoup through

adjustments to basic exchange rates any lost toll revenues resulting from RCC may prompt ILECs to inflate their estimates of reduced intralata toll revenues to include competitive losses spurred by intraLATA dialing parity.

Rate center location dictates both the scope of a customer's local calling area and the charges assessed per toll call. In California, we have 800 rate centers, each of which governs a relatively small, uniform, twelve-mile local calling area. For this reason, we cannot envision a way to migrate to larger calling areas without eliminating at least some toll routes. (NPRM, ¶ 118.) Unless the ILECs chose to sacrifice that lost intralata toll revenue, a revenue-neutral RCC process will mandate collecting the lost toll revenue from one or more other services, the most likely candidate being basic exchange service.

As noted earlier in these comments, because RCC is fundamentally a state issue, we strongly urge the FCC not to mandate state action on RCC before a state can implement number pooling. In the NANC Report provided to the FCC last October, the Number Resources Optimization Working Group stated that 1,000-block number pooling could be implemented within nineteen months from date of a regulatory order.¹⁶ We estimate that the process of consolidating rate centers, from start to finish, and depending on how many rate centers we try to eliminate, would take eighteen months to resolve the technical and revenue issues, plus another year to implement the changes mandated by a CPUC decision. It would make no sense for the FCC to require states to postpone action

¹⁶ See Public Notice, DA 98-2265, Released: November 6, 1998, p. 4.

on 1,000-block pooling, which could be implemented more quickly than RCC, in order to “undertake” RCC, a very contentious and time-consuming measure.

None of this is intended to suggest that the CPUC is unwilling to pursue RCC. Indeed, a preliminary review of NXX code assignments in the 310 NPA suggests that, contrary to assertions by the ILECs, some of those rate centers may be ripe for consolidation. We intend to explore this option. We remain concerned, however, about the potential implications for the 911 system and hope that the industry is able to resolve soon the technical problems that have arisen in some areas where rate centers have been consolidated.

B. Mandatory Ten-Digit Dialing

The CPUC has opened a docket to evaluate our statewide area code policy. In that docket we are considering whether to establish an area code policy which favors splits, favors overlays, or continues our policy of evaluating area code relief plans strictly on a case-by-case basis, with no preferred outcome. In the context of that docket, we are also addressing the question of whether the CPUC should establish a statewide 1+10-digit dialing pattern. We concur with the position set forth in the state outline that a determination of whether to impose a dialing pattern which includes both the area code and the customer’s seven-digit number is best left to the states.

Recently, the California telecommunications industry initiated 1+10-digit dialing in the 310 area code in the metropolitan Los Angeles area. The public has not responded positively to the 1+10-digit dialing requirement. Indeed, public upset over imposition of the overlay, and the mandatory 1+10-digit dialing prompted a California Legislator and a

Congressmember, both with districts in the 310 NPA area, to file with the CPUC a petition seeking to modify the decision adopting the overlay plan in that NPA. They were subsequently joined in that effort by the City of Los Angeles, and the speaker of the California Assembly, whose district also includes some of the 310 NPA. We cannot comment on either the status of that petition, or on the status of our Rulemaking on area code policy. We note these facts simply to inform the FCC that public interest in dialing patterns and the form of area code relief runs very high in California. The CPUC believes that affording states more, rather than less, discretion over these matters allows state commissions to respond to local concerns and conditions.

As for D-digit expansion, we addressed this issue in our comments on the NANC/NRO Report,

[T]he use of a 1 or 0 as the D-digit in an NXX code raises questions about how these NXXs would integrate into intrastate dialing patterns, particularly with regard to access to operators, toll dialing, and inter-NPA calling. Given these implementation concerns, the CPUC believes that states may be better positioned than the FCC to evaluate whether it is advantageous to employ D-digit NXX codes based on their numbering needs. (CPUC's Comments, filed January 15, 1999, p. 10.)

Consequently, we concur with the position set forth in the state outline that the FCC should not move forward with this option at this time. Too many implementation issues remain to be resolved for use of the D-digit to afford any real relief now or in the near future.

C. Overview of Pooling

The CPUC recommends a regulatory approach to pooling which consists of three elements. First, California believes that the Commission should order nationwide ubiquitous deployment of LNP LRN technology in order to provide the infrastructure needed to support number conservation. Second, we urge the FCC to delegate to state commissions authority to order implementation of pooling, including 1,000-block pooling, ITN pooling, and UNP. States are better able to determine where within their borders pooling will provide benefits, and to establish a practical schedule for implementation. Finally, the CPUC believes that when number pooling is ordered all carriers operating within those NPAs must be required to participate in pooling or the benefits of pooling will be radically reduced. Carriers not currently LNP-capable must implement it in order to be able to participate in pooling, or should be placed in a separate, non-pooled NPA.

Below we comment more specifically on aspects of pooling.

D. Number Pooling Implementation Issues

The CPUC generally supports the states' outline with respect to number pooling issues, but offers the following additional comments.

Thousand-block number pooling is the CPUC's highest priority for finding a long-term solution to the numbering crisis we face in California today. We are mindful that implementing 1,000-block pooling will take some time, and may not be accomplished in time to forestall the need for relief in some of the NPAs in California currently in jeopardy. At the same time, we believe that once 1,000-block pooling is established, it

will dramatically slow the pace at which numbering resources are dispensed to carriers. For this reason, we consider pooling to be a much higher priority than rate center consolidation. First, RCC poses the very real potential for substantial, permanent, direct costs to consumers through rate re-balancing. This is not similarly true for number pooling. In addition, we estimate that without full cooperation from the telecommunications industry in California, including willingness by all parties to compromise, a proceeding to establish the approach for significantly reducing the number of California rate centers will take eighteen months. It would be a fact-intensive process, likely requiring hearings. After we establish the means to accomplish the goal, it would likely take another year to actually consolidate the rate centers and to adjust customer billings, including the changes necessary to the carriers' billing software. Number pooling can be implemented more quickly, as noted in the NANC/NRO Report.

Plus, all of the media attention in California shed on the inefficiencies of the current number allocation system has generated considerable public support for number pooling, whereas we do not anticipate similar public support for raising basic exchange rates to compensate carriers for lost toll revenues. Finally, we note that the last rate re-balancing proceeding for Pacific Bell and GTE California lasted several years and was extremely contentious.

For all of these reasons, the CPUC fully supports aggressive action by the FCC to set up a 1,000-block number pooling process. We further believe that all carriers, irrespective of their utilization thresholds or industry segment, should be required to

participate in pooling. (NPRM, ¶ 138.) California concurs with the position set forth in the state outline that cost/benefit analyses are unnecessary, as the NANC, NANPA, and other groups have already assessed the costs and benefits of number pooling.¹⁷

If, however, the FCC determines that cost/benefit analyses are needed before number pooling can be ordered, such analyses should include 1) the avoided costs of expanding the NANP¹⁸, and 2) the costs to the public if pooling is not implemented. Specific carrier costs associated with setting up number pooling must be weighed against the external costs to the public of undergoing repeated area code relief and possible need to expand the NANP. This should not be a one-way street, with only carrier costs at issue while public costs are irrelevant. The costs of implementing pooling should be relatively small, inasmuch as the majority of the costs to deploy the network infrastructure to support both LNP and pooling already are being borne by the public directly.

Finally, if the FCC declines to delegate pooling authority to the states, but chooses to order it nationally, we have a few comments on how that should be done. California is aware that two states, New York and Illinois, have number pooling trials in progress. We would not object to using the approach developed in either of those states as the model for a national number pooling program.¹⁹ The CPUC does believe, however, that it may prove impractical to try to implement number pooling nationwide on the same date. This

¹⁷ We note again, here, that the FCC has not proposed any cost/benefit analysis for rate center consolidation.

¹⁸ The FCC includes in the NPRM an estimated cost range of \$50 to \$150 billion to expand the NANP. (NPRM, ¶ 34.)

¹⁹ We are generally aware that the industry prefers the Illinois approach.

would necessarily delay implementing number pooling in some regions to accommodate those areas where states or carriers are not ready. Plus, the planning period for a simultaneous nationwide roll out would be longer in order to ensure that it all works at once. We recommend, instead, that the FCC consider a phased rollout of pooling, perhaps beginning at a minimum with the NPAs that serve the top 100 MSAs, though we oppose limiting pooling to only those MSAs.

E. Individual Telephone Number (ITN) Pooling and Unassigned Number Porting (UNP)

The CPUC concurs with the position in the state outline that the FCC should not abandon ITN and UNP. (NPRM, ¶ 141.) In addition, we believe that the Commission should establish a specific deadline by which carriers should be ready to implement ITN, including the configuration of any necessary databases. The CPUC recommends that the FCC set a deadline of three years from the date that 1,000-block pooling is fully in place for ITN to be implemented. This three-year period will give carriers adequate time to resolve any unforeseen issues associated with 1,000-block pooling and to augment their systems for ITN. If individual states and carriers in those states, however, are ready to implement ITN prior to an FCC-mandated deadline, the Commission should authorize those states to order ITN earlier.

We agree with the state recommendation that the FCC should delegate to state commissions authority to determine when and where UNP is appropriate, as well as authority to order carriers to participate in UNP programs. (See NPRM, ¶ 142.) State commissions are much more attuned to local needs than is the FCC. Accordingly, states

should have authority to resolve any call routing, E-911 or other problems associated with implementing UNP. Depending on local conditions and circumstances, UNP could be a very effective conservation measure and could encourage carriers to work cooperatively with one another on solutions to the numbering crisis.

F. FCC Authority to Order Deployment of Local Number Portability

Congress gave the FCC plenary jurisdiction over the NANP in the 1996 Federal Telecommunications Act. Pursuant to that jurisdiction, the CPUC believes the Commission also has authority to order deployment of LNP in all areas of the nation for the purpose of implementing number pooling. Plainly, the FCC has already ordered deployment of LNP premised on the authority granted by the 1996 Act, and has issued orders pertaining to conservation measures pursuant to that same authority. Therefore, the CPUC does not see why the FCC could not order deployment of LNP as the essential component of a critical conservation measure – number pooling.

We further believe that the FCC can and should delegate some of that authority to the states. (NPRM, ¶ 145.) Section 251(e)(2) of the 1996 Act grants exclusive jurisdiction over the NANP to the FCC, but also states that “[n]othing in this paragraph shall preclude the commission from delegating to State commissions or other entities all or any portion of such jurisdiction”. (Emphasis added). Thus, if the FCC concludes that it possesses the authority to order deployment of LNP in order to facilitate implementation of number pooling, the FCC also may delegate that authority to the states.

Congress established no limitation on authority over the NANP which the FCC could delegate to the states.

Further, given the high costs to the public of implementing repeated area code relief plans and the projected cost estimates of expanding the NANP, the CPUC believes the current numbering crisis in the U.S. demands that the FCC order LNP implementation throughout the nation in preparation for number pooling.²⁰ Recent petitions that several states, including California, have filed before the FCC underscore the need to implement number conservation measures.

In particular, state requests for authority demonstrate that number pooling is needed by states with only one area code, such as Maine, and by states with so many area codes we can barely keep track of the number, such as California. The majority of California's 25 area codes are in jeopardy and are being rationed. While California has several of the top 100 MSAs, many of the areas slotted for relief are outside of the top 100 MSAs but still would benefit from conservation measures, including 1,000-block pooling. This is also true for states without any of the top 100 MSAs. Without deployment of LNP in all areas, California (and other states) would be precluded from exploring whether number pooling could alleviate the crises in many rural areas where numbers are in demand.

The FCC could conclude it has authority to order deployment of LNP throughout the U.S. but still decline to do so. In that event, the CPUC urges the Commission to

²⁰ California notes that the two major ILECs in this state have reported to us that they have deployed LNP throughout their service territories.

delegate authority to the states to order LNP deployment in conjunction with implementation of other code conservation measures, that state commissions wish to implement in response to local conditions. Finally, the CPUC finds it curious that the Commission only refers to implementation of LNP in association with 1,000-block pooling but not with respect to other forms of pooling, such as ITN and UNP. To be clear, our comments regarding deployment of LNP for purposes of implementing pooling are not limited to 1,000-block pooling but apply to ITN and UNP as well.

G. State Authority Over Number Pooling

California generally agrees with the positions in the state outline regarding authority of state commissions over number pooling. (NPRM, ¶¶ 146-148.) At the same time, the CPUC wishes to emphasize again that the questions framed should not be limited to 1,000-block pooling, but should apply to all forms of pooling. If states give up the right to decide when and where pooling should be implemented, that right should not then be given to individual carriers, which are business entities geared towards protecting their business interests and the interests of their shareholders. They will not make decisions with the goal of protecting the public interest or public numbering resources. Therefore, the FCC should act in the public interest and determine whether pooling is warranted in those states whose commissions chose not to decide.

Further we believe that states need the flexibility to respond to local conditions as they evaluate where and when to implement number pooling. (NPRM, ¶ 149.) Rigid FCC criteria for how, when, and where states can implement number pooling would remove that flexibility.

For example, using the number of competitor, or of CMRS and paging providers as national criteria for whether LNP is deployed in conjunction with implementing number pooling would be inappropriate and would appear to be a state-specific matter. Again, we believe that states would be uniquely positioned to weigh local circumstances in choosing which conservation measures to deploy. California notes that CMRS and paging companies draw a significant number of NXX codes in California NPAs.²¹ Rather than the number of users, the sheer number of CMRS and paging providers should be the basis for requiring nationwide LNP deployment. In some areas of the country, CMRS providers are the sole or primary provider of local telephone service. Such cases support the request by California and Massachusetts to establish NPAs dedicated to a specific service or technology, especially if these providers are not LNP-capable.

We also generally concur with the position in the state outline recommending that states be allowed to opt in or out of a nationwide pooling mechanism on a rate-center-by-rate-center basis. (NPRM, ¶ 154.) In addition, we believe that restricting number pooling, even initially, to the top 100 MSAs ignores the fact that NPA and MSA boundaries do not necessarily coincide. Such a restriction could mean that states cannot implement number pooling in NPAs that include both areas within and outside of those MSAs. This, in turn, will likely mean imposing further unnecessary costs associated with repeated relief on an already overburdened public.

²¹ For example, wireless carriers collectively hold upwards of 150 NXX codes in the 310 NPA.

H. Non-LNP Capable Carriers

The CPUC generally agrees with the position set forth in the state outline that once CMRS carriers are LNP-capable, they should be required to participate in 1,000-block pooling. (NPRM, ¶¶ 160-161.) As noted previously, CMRS providers and paging companies draw a significant number of NXX codes in California NPAs, and thus, it is desirable to include these providers in number pooling efforts.²² The wireless carriers' claims of higher utilization rates may prove to be true but have yet to be verified. Without LNP capability, we reiterate our need for authority to consider establishing service- or technology-specific area codes to avoid premature exhaust of pooled NPAs. If 1,000-block pooling requirements are extended to these carriers, California cannot identify any rationale for allowing pooling requirements to be limited to specific NPAs or to the 100 largest MSAs for CMRS and paging carriers. In California, CMRS and paging providers hold NXX codes in a variety of NPAs, which include areas both within and outside of the top 100 MSAs.²³

The CPUC agrees with the state recommendation that all LNP-capable rate centers should presumptively be included in pooling if required by the relevant state commission. (NPRM, ¶ 170.) In addition, we reiterate that if the FCC declines to order deployment of LNP throughout the U.S., it should delegate authority to the states to order LNP

²² This would be true even if we were granted authority to establish a service- or technology-specific area code, and created such an NPA dedicated to a wireless services.

²³ It is entirely possible that wireless providers hold NXX codes in every NPA in California, but we have not yet determined if this is the case.

deployment in conjunction with implementation of conservation measures the states adopt.

I. Administration

1. Contamination Thresholds

The CPUC generally agrees with the state recommendation that the same initial contamination threshold should apply to all industry segments. (NPRM, ¶ 189.)

California also believes, however, that states should be given the flexibility to change the threshold depending on the particular circumstances in each state. For example, new entrants may have lower utilization rates than established carriers. It would not advance the development of competition if these carriers were required to donate a significantly higher percentage of their limited number resources than would be the case for incumbents.

2. Sequential Number Assignment

California concurs generally with the states position on sequential number assignment. Should the FCC decide, however not to adopt any rules regarding sequential numbering requirements for all carriers nationwide, the FCC should delegate to state commissions authority to order sequential number practices to respond to individual state needs. Any arguments by carriers that sequential number practices would impair a nationally cohesive numbering system are nonsense. Individual state requirements pertaining to sequential numbering will not impede the flow of telecommunications traffic, or affect a carrier's ability to complete calls. Such requirements only improve efficient utilization of numbering resources.

Rather, carriers have indicated to us that they want some flexibility to deviate from sequential number assignment in order to respond to requests from business customers for large blocks of numbers. We are prepared, and believe most states are, to consider some compromise that would both address our concerns that large quantities of numbers not be stranded by inefficient assignment practices, and industry desires to respond to customer demands. Therefore, the FCC should allow states to adopt such rules if the FCC chooses not to do so.

V. PRICING OPTIONS

The CPUC does not specifically endorse the state outline on the question of whether the FCC should establish a pricing mechanism for carrier access to public numbering resources. Indeed, we have mixed views on the FCC's proposals. California fully appreciates the perspective that numbers might be used more efficiently if the user must pay for the use of the resource. Along those lines, therefore, we agree generally with the Commission that the status of numbers as a public resource "is not necessarily an argument against requiring payment for their use, much as payments are required for other public resources". (NPRM, ¶ 229.) We also agree that if the FCC decides to establish a pricing mechanism for numbering resources, such a system would need to be phased in over time and should not be introduced on a flash-cut basis. (Id., ¶¶ 226, 238.)

We acknowledge the axiom of economic theory that if someone must pay for something, he/she will value that item more highly than if the item is obtained for free.

Whether that axiom can be reasonably applied to public numbering resources, however, may be problematic, as noted in the comments below.

A. The FCC's Legal Authority to Create a Pricing Mechanism

The Commission asks first whether it possesses the legal authority to establish a pricing mechanism for numbering resources pursuant to § 251(e)(2) of the 1996 Federal Telecommunications Act. Section 251(e)(2) provides for the costs of numbering administration and of local number portability to be borne by all carriers on a competitively-neutral basis. (NPRM, ¶ 228.) The CPUC believes that it is questionable whether § 251(e)(2) can be interpreted to encompass creation of a pricing mechanism for the use of numbers. Section 251(e)(2) reads as follows:

The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

Frankly, we are not sure what Congress meant by the term “numbering administration arrangements”. But, we think the more reasonable reading of § 251(e)(2) limits its applicability to recovery of direct administrative costs related to overseeing the allocation of numbers and management of the national numbering system. Further, we are not sure that Congress envisioned a direct carrier charge for numbers as a competitively-neutral means of recovering those administrative costs. Certainly, establishing a market-based pricing scheme for numbering resources would extend beyond recovery of direct administrative costs since, presumably, a market-based mechanism would be intended to

match prices to demand and not to costs. An administrative-cost based scheme might pass § 251(e)(2) muster, but carriers likely would challenge such a scheme.

The FCC may be able to rely on other authority to establish a pricing mechanism for numbering resources, though the CPUC cannot recommend an alternate source for such authority. Thus, if the FCC determines that a policy of charging carriers for use of public numbering resources is appropriate, in the CPUC's view, the FCC should seek express statutory authority to do so.

B. The Scope of the License May Be Indeterminate

Based on the FCC's suggestion that a "license-type arrangement" would be the mechanism through which carriers would obtain access to numbering resources, the CPUC suspects the FCC considers numbers to be analogous to the electromagnetic spectrum. Several years ago, the FCC auctioned off licenses for Personal Communications Services (PCS). Each license authorized the licensee to use a defined portion of the electromagnetic spectrum to provide PCS to the licensee's customers.²⁴ When a PCS licensee recruits a customer and provides service, the licensee continues to hold the spectrum used to provide the service. If the customer changes from one PCS telephone to another, the licensee still holds the spectrum. And, if the customer changes carriers, the carrier retains the right to use the spectrum, as the customer cannot take the spectrum used to provide PCS service from one carrier to another.

²⁴ Similarly, other portions the electromagnetic spectrum are licensed to broadcast licensees who use those portions for their respective radio and television stations.

In contrast, once assigned a telephone number, a customer possesses the ability to take, or port, the number from one carrier to another within the customer's exchange.²⁵ This means that once a carrier obtains numbering resources, neither the carrier nor the FCC can assume that the carrier will retain control over those resources after specific numbers are assigned to end users. Thus, if a carrier is required to pay a license fee to use numbers, the carrier would be paying for the right to obtain and distribute the resource, but would not be guaranteed indefinite use of all numbers obtained.

This is not to say, however, that it would be impossible to design an appropriate pricing policy. Rather, the policy must reflect the fact that the resource can migrate from the licensee to another carrier. Moreover, we thought that the great expense incurred in the financing of LNP sought to give the end user a quasi-right to a telephone number. Thus, the selling of numbers could create a second right, by the carrier assigned the number initially, to the same item – the personal telephone number.²⁶ Assuming these questions can be resolved, one potential pricing structure would be an annual license fee based on the quantity of numbers each carrier controls, whether in use, not in use, reserved, or otherwise assigned to the carrier. Under this scheme, if a customer is assigned a number by Billy Bob Local Telephone Company, then takes that assigned

²⁵ While this is not true for all wireline customers, or for wireless customers in the U.S. today, eventually we anticipate that all carriers will implement LNP.

²⁶ As a legal matter, it is not clear what rights the carrier, as assignee, and the end user, not a successor but also an assignee, would have to the same telephone number.

number to Sierra Sue Telephone Services, only one of those carriers would pay the license fee for access to that number in a given year.²⁷

C. Effect of a Pricing Scheme on Smaller Entrants

The FCC itself notes that implementing a pricing mechanism for numbering resources raises special concerns for new entrants.

Another consideration in determining whether to establish prices for numbers is that the added cost and administrative burden to carriers may inhibit competitive entry if it imposes a disproportionate burden on new entrants. (NPRM, ¶ 230.)

The CPUC does not believe that merely imposing any pricing mechanism would necessarily disadvantage new entrants, even smaller, less well-financed new entrants. The ability of new entrants to compete for numbering resources would depend on how the pricing mechanism is structured, and how much carriers would have to pay for each number or each block of numbers. A smaller competitor may be unable to buy numbers in the same quantity as a larger competitor, but the smaller carrier could well have fewer customers and a commensurate need for fewer numbers initially than a larger, more-established carrier. At the same time, if the price is set too high, the FCC may inadvertently create a barrier to competitive entry. On the other hand, if the price is set too low, then the purpose of charging for access to numbering resources may be defeated. This again suggests that an annual license fee based on the quantity of numbers would be more appropriate than an initial charge for obtaining numbers.

²⁷ Again, this does raise the question of exactly what rights the carrier's license conveys, since the number can travel from carrier to carrier with the customer.

D. Scope of Administrative Costs

A key component of a pricing mechanism for numbering resources would be the cost of setting up and maintaining the scheme. The CPUC is concerned that if the FCC pursues this option, the costs could easily spin out of control, thus undercutting the purpose and effect of establishing a pricing mechanism because the administrative costs could exceed the benefit gleaned from charging for the use of numbers. The Commission will need to determine with some degree of specificity the scope and reasonableness of the administrative and management costs at the outset. The CPUC is not equipped to offer any estimates, but believes that the administrative costs should include those associated with distributing the numbers, monitoring utilization, collecting the license fees, and enforcing the pricing scheme, i.e., going after carriers who do not pay their fees.²⁸

E. Treatment of the ILECs' Embedded Supply of Numbers

Without question, the ILECs possess a large embedded supply of numbers.²⁹ Many wireless providers also have large supplies of numbers. In the CPUC's view, establishing a competitively-neutral pricing mechanism would require that the ILECs, as well as all carriers currently holding numbers, also pay a license fee for the numbers they already possess at the time the pricing mechanism is put into place.

²⁸ Again, since establishing a pricing mechanism for recovery of numbering administration costs would, in turn, create new costs to be recovered, it is not certain that these new costs fall within the of numbering administration costs for which Congress authorized competitively-neutral recovery.

²⁹ The CPUC is aware of the ILECs' claim that their utilization rate is in the 80 to 85 percent range. To date, we have performed no utilization studies to confirm or dispute this claim. The issue here, however, is not whether the numbers in the ILECs' possession are in use or not in use, but rather, that the numbers have been assigned to the ILECs.

The significant size of the ILECs' embedded number supply inevitably will raise the question of whether they can recover from their ratepayers any license fees they may have to pay under a future FCC-approved pricing scheme. Some states have adopted a form of price-cap regulation for ILECs, while others have not. In California, the largest four ILECs are subject to price-cap regulation, while the remaining sixteen, all small companies, are still under cost-of-service regulation. The CPUC is not urging the FCC to resolve state costing and pricing issues, but is alerting the FCC to the difficulties which may arise in the cost treatment of license fees for number resources currently controlled by ILECs.

F. A Third Alternative Would Combine Elements of the Market-Based and Administratively Determined Options

The CPUC does not have specific, detailed comments on either the administratively determined or market-based pricing proposals, primarily because California has not addressed a pricing policy for numbering resources. As a consequence, we cannot explicitly endorse either approach.

We do suggest, however, that the Commission also consider a third option which would combine elements of the two proposals. For example, the FCC could establish the base license fee, or price per number or block of numbers. The Commission could then allow states to apply a market-based component on top of the base fee or price.³⁰ The FCC could create a range for the market-based component and allow state commissions to select the appropriate component within that range. The range would need to be broad

³⁰ Again, this assumes the FCC obtains express authority to establish a market-based pricing scheme.

enough to reflect the vast differences in costs of doing business in different parts of the country.

This market-based element could be applied in any extremely competitive market, such as in NPAs in the Los Angeles, San Francisco, Chicago, Miami, or New York metropolitan areas. Or, the market-based component could be invoked only when an NPA has gone into jeopardy. In either situation, the state commission would determine whether and when to apply the market-based component, as well as the level of the market-based price element. Similarly, if the state commission determines that little competition exists for numbering resources, for example, in rural or slow-growth regions, only the administrative-cost based license fee would apply.

This approach would allow the FCC to establish a baseline pricing mechanism to recover administrative costs, but would also provide for a pricing mechanism to reflect conditions of supply and demand in specific NPAs.

VI. AREA CODE RELIEF

A. Geographic Splits Versus Overlays

The CPUC generally agrees with the positions set forth in the state outline on splits and overlays. California believes that states are uniquely positioned to evaluate the best relief plan on a case-by-case basis, and therefore, the determination of appropriate relief should be left to state commissions. Further, we are strongly persuaded by recent events nationally, in other states, and in California that as regulators, we confront a more fundamental question than whether splits or overlays are superior. The question involves whether states need to implement relief plans at all, or whether we simply need to use the

numbering resources already allocated in a more efficient manner. The CPUC believes that the FCC, state commissions, and the industry all need to work together to re-examine the practices fueling the need for relief, and the manner in which relief planning is initiated.

For example, state commissions should not be precluded, as they are currently by the Pennsylvania Order, from making an independent determination that area code relief is or is not needed. If the state commission determines that relief can be forestalled by reclaiming codes, instituting voluntary pooling or applying other conservation measures, the state commission should be authorized to do so. Implementation of relief is costly to the industry and to the public. Already in California, at least four times as many numbers have been allocated as are being used. It would be irresponsible for this agency to continue to approve any and all area code relief plans without determining that relief is truly needed. Yet, pursuant to the Pennsylvania Order, once the industry tells a state commission that relief is necessary, the state commission's role is to approve a relief plan and set an implementation date, but not to question the industry's claim of needed relief.³¹

³¹ See the Pennsylvania Order:

In delegating authority to the state commissions to implement new area codes, we intended that state commissions would use that authority to implement relief when jeopardy has been declared. (¶ 32.)

When an area code is in jeopardy, a decision on area code relief [parenthetical omitted] should occur promptly, and through an orderly process. State commissions, by declining to implement area code relief, should not put carriers in the position of having no numbers and therefore being unable to serve customers. (¶ 38.)

The FCC asks whether it should adopt additional rules and guidelines for implementing splits and/or overlays. (NPRM, ¶¶ 248-249.) The CPUC believes no need exists for additional federal regulation of splits or overlays, other than creation of federal guidelines for implementing service- or technology-specific overlays. (See § IV.C of these Comments.) State commissions are singularly situated to determine the best available relief plan among the alternatives presented based on local geography, local needs, the public interest, and carrier capability. State commissions also have knowledge about the success or difficulty of implementing specific area code relief plans and conservation measures.

B. All-Services Overlays

California generally concurs with the state outline that state commissions should decide whether to implement mandatory 10-digit dialing. (See also § III.B of these Comments.) We would add, however, the following observations.

In a 1996 decision, we concluded that 1+10-digit dialing for overlays was necessary to overcome the competitive disadvantages to new carriers. We have not yet formally revisited this conclusion. At the same time, our only experience in California with 1+10-digit dialing, in the 310 NPA in the Los Angeles metropolitan area, resulted in a firestorm of protest, as noted earlier. (See § IV.B of these Comments.) We welcome the FCC's willingness to reconsider the 10-digit dialing requirement, and look forward to seeing the record developed in this rulemaking.

C. Service-Specific or Technology-Specific Overlays

On April 26, 1999, the CPUC filed with the FCC a Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code. The Common Carrier Bureau has now received three rounds of comments on that petition.³² Here we summarize our position set forth in the Petition, and offer some additional comments.

The CPUC applauds the FCC for its willingness to re-examine its “policies with respect to service-specific and technology-specific overlays, and to consider whether [to] modify or lift the restriction on these area code relief methods”. (NPRM, ¶ 257.) The Commission was prompted to reconsider its ban because of the “increased urgency of the numbering crisis”, as well as “the broader issues raised in this proceeding”. (Id.) The CPUC agrees that the crushing demand for and rapid draining of public numbering resources requires renewed consideration of area codes dedicated to specific technologies or services.

In California, as we have noted in previous pleadings, the public repeatedly and consistently has demanded to know why the CPUC has not established an area code for wireless service, or for faxes and modems. We believe that strong public support for and interest in such area codes exists in California. In addition, the FCC several months ago granted a petition by the Cellular Telecommunications Industry Association (CTIA) to defer until 2002 implementation by wireless carriers of LNP. The FCC itself notes that LNP is necessary for carriers to participate in number pooling, and asks whether it should

³² Comments were due June 14, 1999, replies on June 28, 1999, and a final round, consolidated with all other state petitions for waiver or for delegation of additional authority, on July 16, 1999.

consider creating overlay area codes specifically for carriers that are not LNP-capable. (NPRM, ¶ 260.)

The CPUC's answer to this query is, "yes". The wireless industry argues that wireless carriers use numbers more efficiently than wireline carriers. The CPUC has conducted no utilization studies which would confirm or dispute that claim. Nonetheless, the inability for the next several years of wireless carriers to participate in LNP would allow wireless carriers to continue to draw numbers in blocks of 10,000, while wireline LNP-capable carriers participating in number pooling could draw numbers only in blocks of 1,000. Despite the possibility of this scenario, which plainly would benefit wireless carriers, they continue to insist that a separate area code for wireless services would be discriminatory. As we noted in our June 28th Reply, "[t]he 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". (CPUC's Reply, 6/28/99, p. 4.) In the CPUC's view, failing to make a separate accommodation for non-LNP-capable carriers would lead to discrimination in favor of the wireless industry and against wireline providers.

In addition, the CPUC finds the wireless industry's claim of discrimination lacking in credibility for another reason. In at least three other nations – Japan, Australia, and England – wireless carrier numbers are assigned to a separate number code which plainly designates to the calling party that the number being called is to a wireless device. So far as the CPUC is aware, the wireless industry is flourishing in those nations.

Consequently, in light of public support in California for separate wireless area codes and their successful implementation in other nations, we fail to see how such separate area codes could lead to the demise of the cellular or paging industries in this country. Indeed, while the ban on service- or technology-specific area codes may have been intended to prevent alleged discrimination when the wireless industry was in its more formative stages, the industry is now well-developed and no longer in need of such protection.

Implementation of a technology-specific overlay dedicated to wireless providers would afford a degree of consumer protection in the event that the FCC decides to institute “calling party pays”. (NPRM, ¶ 257.) By placing cellular or PCS numbers in a discrete area code, a caller to a number in that area code would know when dialing that the number being called is to a wireless device, and thus the customer would be on notice that she could be assessed per-minute charges for the call.³³

This scenario, however, would require some public education to inform customers that the discrete area code is dedicated to wireless services, and would work best if all wireless numbers were in one or more discrete area codes. Indeed, we recognize that it is not feasible to overlay a separate NPA over each existing area code, and then dedicate each of those new overlaid NPAs to a particular service or technology. Rather, we believe that the best approach would be to implement an expanded area code dedicated to a particular service or technology over multiple NPAs.³⁴ Again, for this approach to

³³ Certainly, an intercept message is an additional means of informing customers that the call being placed may result in charges to the caller. We are aware that in the Calling Party Pays docket, the FCC is considering a uniform notification standard for CCP calls. (See WT Docket 97-207.)

³⁴ For example, one NPA dedicated to wireless providers could overlay the existing 818, 626, 323, 213, 310, and 562 area

work most effectively, customers of that service or technology would need to move from the existing NPAs covered by the expanded area code into the expanded area code. This would free up the NXX codes assigned to that service in the existing NPAs for reassignment to other carriers.

The CPUC is sensitive, however, to the FCC's reluctance to date to order the reassignment of existing wireless customers to new area codes, thus requiring those customers to change their numbers. Certainly, if a state were to consider implementing this type of expanded NPA, the state commission would need to determine the likely consumer response to a reassignment of numbers to a new area code. Of course, when area codes have split in the past, customers have had to adjust to a number change and they have adapted. It is not immediately apparent to the CPUC why customers of a particular service or technology could not similarly adapt.³⁵ We are mindful that this recommendation goes beyond statements in our June 28th Reply, in which we expressed more deference to the FCC's disapproval of taking back numbers. Since then, as we consider how we might implement a technology- or service-specific overlay, our views have evolved, fueling our more specific comments here.

Finally, the CPUC concurs with the position set forth in the state outline that the FCC should establish general guidelines for service-specific or technology-specific area codes, but delegate to the states the authority to implement such area codes, if the state

codes.

³⁵ Indeed, in California we have exempted wireless customers from having to change area codes when a split occurs. Those customers have retained the NPA associated with the tandem, even if the tandem is in the geographic area assigned to the new area code. Thus, in California, wireless customers thus far have been spared the inconvenience NPA changes

commission believes doing so would serve the public interest. This delegation of authority would be consistent with the authority to plan and implement area code relief which the FCC already has delegated to the states. In essence, the FCC would simply be expanding that authority to include one more relief option.

VII. CONCLUSION

The CPUC appreciates the tremendous effort that led to the NPRM, and further acknowledges the FCC's recognition that the numbering problem in this country has reached crisis proportions. We urge the FCC to create a set of national rules which will govern all states and carriers, but also to accord state commissions some measure of additional authority and flexibility to respond to particular conditions in their states.

Respectfully submitted,

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brought about by splits.

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