

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

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**REPLY 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 these Reply Comments in response to the Further Notice of Proposed Rulemaking (FNPRM) issued by the Federal Communications Commission (FCC or Commission) in this docket on December 29, 2000, in conjunction with issuance of FCC 00-249. California timely filed Comments on February 14, 2001.

Approximately forty parties submitted comments in response to the *FNPRM*. The CPUC is not able to respond to all of those sets of comments, but rather responds here to some parties' positions on a few of the eleven issues raised in the *FNPRM*.

**I. SERVICE-SPECIFIC OR TECHNOLOGY-SPECIFIC  
OVERLAYS**

In the *FNPRM*, the FCC sought comment on a proposal for so-called "transitional overlays", which would allow non-LNP-capable carriers to obtain NXX codes in an overlay for a period before the overlay is opened to all services. In our Comments, California expressed disinterest in the transitional overlay at this time, but acknowledged

that other states may find this type of area code plan to be appealing. At the same time, the CPUC declined to comment on any of the specific provisions of the transitional overlay proposal. Here we respond to some of the specific recommendations of other parties. Our silence on other provisions should not be taken either as support or opposition to those provisions.

Some parties argue that the FCC should allow a transitional overlay only where number pooling has been implemented in the existing area code. California supports this recommendation.<sup>1</sup> We note also some parties' recommendation that "upon implementation of a transitional overlay, all jeopardy rationing procedures should terminate". (WorldCom Comm., p. 3; see also ALTS' Comm., p. 5.) Were California to implement a transitional overlay, the issue of rationing in the existing area code would be irrelevant. Under our rules, all LNP-capable carriers must obtain numbers from the pool in a pooling NPA, and we do not ration 1,000-blocks in our pools. Thus, were a transitional overlay implemented under our rules, all LNP-capable carriers would continue to obtain numbers from the pool in the existing NPA, while all non-LNP-capable carriers would obtain whole NXX codes in the new, overlay NPA. Rationing in the existing area code would simply not be an issue. We anticipate that the same would be true in any NPA in the top 100 MSAs where both pooling and a transitional overlay might be implemented.

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<sup>1</sup> See BellSouth's Comm., pp.4, 9; WorldCom's Comm., p. 4; CTIA's Comm., p. 7.

Presently, in the four area codes in California where pooling is in progress, the pools have been fed almost entirely by on-going carrier donations.<sup>2</sup> This in turn prompts our concern about another restriction proposed by WorldCom and BellSouth, that transitional overlays be of limited duration. As a practical matter the restriction could easily force a state to “relieve” an area code in which pooling is working well and sustaining the NPA. This would be so because it appears WorldCom and BellSouth are proposing a deadline by which the new NPA must be opened, whether or not the existing NPA has sufficient NXX codes to sustain a pool for much longer.<sup>3</sup> The purpose of implementing relief in this scenario would be that the FCC finds repugnant the possibility of maintaining separate area codes for non-LNP-capable carriers. This possibility indicates to California that if the price of establishing a transitional overlay is to force “relief” when it is not necessary, the price would be too high.

## **II. THE RATE CENTER PROBLEM**

PCIA advocates vigorous implementation of rate center consolidation.<sup>4</sup> In support of its argument, PCIA cites the 310 area code in Los Angeles, which presently contains 16 rate centers, and notes that “the distance between all but one of the rate centers, as measured by their LERG coordinates, is substantially less than 30 miles”.<sup>5</sup> True enough. But as the CPUC has noted before, the two ILECs providing service in the 310 area code,

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<sup>2</sup> The CPUC has not ordered these donations; carriers simply continue to contribute unneeded blocks to these pools. In the 909 NPA, we have opened two prefixes to feed the pool, and in the 310, one prefix. In the other two pools, 415 and 714, no prefixes have been opened since the pools began.

<sup>3</sup> WorldCom Comm., p. 3; BellSouth Comm., p. 7.

<sup>4</sup> PCIA Comm., pp. 4-6.

<sup>5</sup> Id at 5.

Pacific Bell and Verizon, have asserted to the CPUC that no two of those 16 rate centers could be consolidated without changing customers' local calling scopes and thus affecting the ILECs toll revenues. The ILECs further insist that they must be made whole for those toll revenues. Further, the CPUC has implemented 1,000-block number pooling in the 310 area code. Since doing so more than a year ago, the Pooling Administrator has opened only three NXX codes: two were to provide Local Routing Numbers (LRNs) for carriers although one of those LRNs subsequently was returned. The third code was opened to provide service to one customer in need of a full NXX code. The 310 pool has been sustained by continuing block donations, and pooling has saved 173 NXX codes in the 310 NPA as of the end of February, 2001.

The CPUC also acknowledges SBC's position that it cannot support rate center consolidation so long as the FCC continues to require carriers to calculate months-to-exhaust (MTE) on a rate center, rather than a switch, basis. (See SBC's Comm., pp. 4, 5-7.) The CPUC will address SBC's argument infra, in our discussion of a waiver for growth numbering resources.

### **III. LIABILITY OF RELATED CARRIERS**

The CPUC read with great interest SBC's comments in response to the Commission's tentative conclusion that "carriers should, in certain instances, have numbering resources withheld when related carriers are subject to withholding for failure to comply with our mandatory reporting requirements". (*FNPRM*, ¶ 150.) SBC sweepingly asserts that the FCC would "violate basic tenets of American jurisprudence,

would be beyond the Commission's authority, and would violate the Commission's obligations under section 251(e) of the [1996 Federal Telecommunications] Act".

(SBC's Comm., pp. 7-8; see also, CTIA's Comm., pp. 15-17.)

California is sympathetic to the notion that carriers operating on a multi-state or nationwide basis may not bear responsibility for the actions of subsidiaries or affiliates. Consequently, the CPUC supports the approach advocated by WorldCom. (WorldCom Comm., pp. 9-10.) WorldCom recommends that the FCC establish broad rules governing the potential withholding of numbering resources from related carriers for failing to comply with the Commission's mandatory reporting requirements. More specifically, WorldCom correctly notes that any determination as to the potential liability of related carriers would be "highly fact-specific". California agrees with WorldCom's reasoning and proposed approach.

#### **IV. STATE ACCESS TO MANDATORY REPORTING DATA**

The CPUC concurs with those parties urging the Commission to limit state password-protected access to data pertaining only to area codes located in each state gaining access to the data.<sup>6</sup> The CPUC has stated previously that it is interested only in access to confidential carrier-specific data pertaining to area codes in California. Frankly, each state which engages in area code planning and implementation, as well as use of conservation measures pursuant to delegated authority, is stretched thin to perform these tasks. We do not have time to surf the NANPA data base for information we cannot use. Nonetheless, carrier's concerns that such access be limited are legitimate and we

support such a restriction. Should the CPUC determine it needs access to data from another state, the CPUC is prepared to put such a request to the FCC.

## **V. FEES FOR NUMBER RESERVATIONS**

California disagrees with BellSouth's proposal that the FCC "defer to the judgment of individual service providers" in setting fees for reserved numbers.<sup>7</sup>

Assuming the NANC's recommendation of \$.25 per month per reserved number is any indication, the 180-day limit on reserved numbers will be rendered meaningless if carriers are allowed to set a fee that low or lower for reserving numbers indefinitely.

As it is, California is highly suspicious of carriers' compliance with the FCC's reserved number policies, and the comments of both BellSouth and SBC fuel that suspicion. In California, a carrier recently requested an NXX code outside the lottery in a particular NPA, asserting that it had to obtain the code to meet the needs of a specific large customer. The CPUC granted the request, only to learn that another carrier had internally reassigned an entire NXX code to the same large customer in the same rate center in the same NPA. The CPUC is still attempting to determine whether the customer truly needed 20,000 numbers in one rate center, as well as whether all of those numbers are active or being held in reserve, and if reserved, for how long.

SBC notes that it places reserved numbers "within the subscriber's common block", and "[o]nce in the common block, they are assigned to the subscriber and may not

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<sup>6</sup> See ALTS' Comm., pp. 11-12; BellSouth Comm., p. 20.

<sup>7</sup> BellSouth's Comm., pp. iii, 21.

be reassigned unless physically removed”.<sup>8</sup> This means that carriers have a very strong incentive to treat reserved numbers as assigned, once those numbers are in the “subscriber’s common block”, whether those numbers are active or inactive. The only way to verify that a carrier has “assigned” rather than “reserved” numbers is to conduct an audit.

## **VI. ENFORCEMENT**

PCIA opposes the FCC’s tentative conclusion that carriers violating the Commission’s numbering requirements or failing to cooperate with an auditor “should also be denied numbering resources in certain instances”. Specifically, PCIA asserts that “[j]ust as the Commission cannot revoke a license without affording a carrier due process rights, the Commission would be required to afford carriers due process rights in number revocation cases”.

PCIA appears to be confusing the notion of withholding numbers from a carrier prior to their assignment to the carrier with the notion of taking back numbers. The FCC did not tentatively conclude that it should take back numbers from carriers who failed to comply with its rules. Rather, as California reads ¶ 154 in the *FNPRM*, the Commission would consider denying additional resources to a non-compliant carrier. In its next order, the FCC should clarify its intent.

Further, if the CPUC is correct, and the FCC intends to deny a non-compliant carrier access to additional numbering resources, then PCIA’s due process argument fails. Telephone numbers are not an entitlement, and no hearing would be necessary to deny a

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<sup>8</sup> SBC’s Comm., p. 11.

carrier access to numbers for failure to comply with Commission rules. The Commission would need to notify the carrier of the denial, as well as the reasons for it, and create an appeals process.

## **VII. DEVELOPING MARKET-BASED APPROACHES FOR OPTIMIZING NUMBERING RESOURCES**

Many parties commented in strong opposition, yet again, to the Commission's proposal to establish a market-based number allocation system. California continues to agree with those parties who assert that the FCC does not presently possess authority to develop such a scheme.

The CPUC also agrees that the FCC might be well-advised to determine the effectiveness of nationwide number pooling, once deployed, and other conservation measures before embarking on the lengthy process of trying to create a market-based number allocation system. If pooling works nationally as well as it currently is in California, we will have made great strides towards conserving numbering resources and extending the life of the NANP without invoking free-market principles for distributing numbers.

Finally, California continues to believe, as we observed in comments last year, that any monies collected through a market-based number allocation mechanism should be used first to pay for administration of the national numbering system. California disagrees with SBC's assertion that the FCC "apparently considers itself at liberty to use the money for whatever purpose it deems appropriate".<sup>2</sup> While not our first choice, the CPUC has

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<sup>2</sup> SBC's Comm., p. 18.

no objection to the FCC's proposal that funds collected from a market-based number allocation scheme be used to offset universal service surcharges.

### **VIII. WAIVER OF GROWTH NUMBERING RESOURCE REQUIREMENTS**

Many carriers support the FCC's proposal to create a "safety valve" for a carrier seeking to obtain numbers when it has not met the utilization threshold but must meet the needs of a particular customer.<sup>10</sup> The ILECs focus their arguments on their inability to port numbers between multiple switches in a rate center and the difficulty of meeting the utilization threshold for the rate center when utilization rates may vary dramatically from one switch to another. PCIA simply asserts that carriers may need numbers "due to a specific customer request for a large block of number, or a sudden increase in new business that the carrier's existing numbering supplies cannot accommodate".<sup>11</sup>

The CPUC appreciates these concerns. California was the first state to seek and receive from the FCC delegated authority to address carrier request for NXX codes outside the lottery process in California. In the past ten months, we have received and responded to five such requests. We have allowed carriers to obtain seven NXX codes and denied carrier requests for three codes. We do not oppose FCC creation of a safety valve that would allow carriers to seek codes when they have not met the utilization threshold but the NPA is not in a rationing situation. We agree with BellSouth that the

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<sup>10</sup> See SBC's Comm., pp. 28-31; BellSouth's Comm., pp. 31-32; CTIA's Comm., pp. 4-6.

<sup>11</sup> CTIA Comm., p. 4.

FCC should “make clear that state commissions have authority to hear and decide carrier requests for waiver of the utilization threshold requirement”.<sup>12</sup>

We disagree, however, with the proposal of both SBC and CTIA that the FCC delegate to NANPA authority to review carrier requests to obtain numbers when the carrier has not met the utilization threshold. NANPA absolutely should not be placed in the position of exercising discretionary authority delegated by the FCC.<sup>13</sup> Requiring NANPA to review carrier submissions in support of request for codes when the utilization threshold has not been met inevitably will require NANPA to make a judgment call on the veracity of the data. If NANPA is disinclined to ask questions about the data, then NANPA will automatically grant the request. This would be no more appropriate than for the CPUC to pay a consultant without verifying that the expense claims were legitimate. Numbers are a public resource, and a carrier’s extraordinary need for numbers when the FCC’s rules have not been met must be verified. NANPA should not be the body to determine the legitimacy of the claim; that is the job of the state commission.

Further, we note SBC’s and BellSouth’s assertions regarding their inability to meet a rate center utilization threshold when utilization for specific switches within the rate center may vary considerably. Pacific Bell has raised the same concern in California. We must question this claim in part. In an NPA where pooling has been implemented,

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<sup>12</sup> BellSouth Comm., p. 31.

<sup>13</sup> CTIA Comm., p. 5; SBC’s Comm., pp. 30-31. We note SBC’s proposal to give such authority to the Pooling Administrator in lieu of NANPA. For the same reasons stated above, we oppose a grant of authority to the PA for this purpose.

the carrier holding multiple switches in a particular rate center may use number pooling to meet the utilization threshold for the rate center. Suppose SBC has a 60% utilization threshold in switch A and a 90% utilization threshold in switch B. SBC could donate blocks of number in switch A to the pool, thus raising its utilization in the rate center to meet the threshold. Thus, in a pooling situation, the carrier should be able to meet the rate center utilization threshold.

This scenario would not work in a non-pooling NPA, however, unless the carrier could port numbers from one switch to another within the rate center. The CPUC is aware that the ILECs are awaiting development of software that will enable the porting of numbers between switches in a rate center. Without the capability to port between switches in a rate center, the CPUC does not oppose the prospect of carriers being authorized to seek a waiver of the utilization threshold for that rate center.

Finally, the CPUC disagrees with CTIA's recommendation that the FCC "not attempt to narrowly define or specifically name those events that might trigger the safety valve, but rather should broadly define and interpret 'unforeseeable circumstances' to include any circumstance or event for which a carrier's existing supply of numbers is insufficient".<sup>14</sup> CTIA's recommendation would create a series of exceptions that ultimately would swallow the utilization threshold. Indeed, CTIA contradicts its own proposal by asserting that because "the safety valve measure would only be triggered by unique situations, carriers would still be required to routinely meet the utilization

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<sup>14</sup> CTIA Comm., pp. 4-5.

threshold to obtain additional numbering resources”. We wonder how “any circumstance or event” for which carriers’ numbers are insufficient could constitute, at the same time, “unique situations”. If anything and everything goes, then no claim is unique and carriers would never have to meet the utilization threshold.

The Commission should authorize states to hear carrier requests for waivers from the utilization threshold.

Respectfully submitted,

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