

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 March 31, 2000. The CPUC is commenting here on only three issues: the appropriate utilization threshold, cost recovery for number pooling, and deferral of pooling for covered Commercial Mobile Radio Service (CMRS) providers.

I. UTILIZATION THRESHOLD

Several carriers object to the FCC's methodology for calculating a carrier's utilization.¹ Asserting that "15 percent of more of all numbers might be classified as intermediate, administrative, aging, or reserved in some areas", SBC argues that

¹ Arguably, objections to the utilization threshold calculation methodology properly belong in a petition for reconsideration. Indeed, some parties may raise the issue there. Since the FCC has not yet set the utilization threshold itself, however, and the methodology will affect the results, California believes it reasonable for parties to question the methodology in reply comments.

utilization “under the *NRO Order* will **not** be reflective of the actual use of numbers”. (SBC Comm., p. 8, original emphasis.) Consequently, SBC claims, the FCC “needs to set a lower [utilization] threshold”. (*Id.*) Similarly, Sprint argues that by adopting a methodology which considers “in the fill rate numerator only numbers actually assigned to customers”, the FCC “must necessarily establish a lower, overall fill rate”. (Sprint Comm., p. 5.)

In the NRO Order, the FCC stated that utilization “in a given geographic area (NPA or rate center) should be calculated by dividing all *assigned numbers* (numerator) by total numbering resources assigned to that carrier in the appropriate geographic region (denominator), and multiplying the result by 100.” (NRO Order, ¶ 109.) California appreciates both carrier concerns about this particular approach and the FCC’s objective in adopting it. On the one hand, the CPUC recognizes that including all number categories other than assigned number in the denominator will encourage carriers to minimize the quantity of numbers reserved, aging, used for administrative purposes, or in intermediate categories. At the same time, California has chosen a different approach to calculating utilization in the 310 NPA.² In Decision (D.) 00-03-054, the CPUC’s order establishing sequential numbering rules and a fill rate for the 310 NPA, we directed carriers to calculate the mandated 75% fill rate as follows in several ordering paragraphs:

3. In computing the fill rate, carriers must account for all number resources that they hold, including numbers for customers served by a reseller or provided to dealer pools.

² To date, the CPUC has not expanded application of a utilization threshold beyond NPAs where pooling is occurring or will be occurring, though we have taken comments from parties on a proposal to do so. Presently, pooling is occurring in the 310 NPA, and is scheduled to begin in the 415 NPA in July, 2000.

4. Carriers may include “reserved” numbers as being utilized only for a six-month period. Any numbers reserved beyond a six-month period must be counted as unassigned for purposes of computing fill rates.
5. In computing the fill rate, carriers may also include administrative numbers, aging numbers, and assigned numbers.
6. In defining what constitutes reserved, administrative, aging and assigned numbers, the same definitions previously adopted in the number utilization study for the 310 NPA shall be used [parenthetical omitted].
7. To compute the fill rate in each rate center, carriers may add up all the assigned aging, administrative and reserved (up to the six-month limit) numbers that they hold in the rate center and divide that sum, by the total quantity of telephone numbers that they hold in the rate center.

Thus, in calculating the fill rate in each rate center, the CPUC allowed carriers to include administrative, aging, reserved and assigned numbers in the numerator. This approach was similar to that advocated by USTA in its comments on the FNPRM: “In order to relate back to the basis on which information was provided for the record, the numerator should include Assigned, Administrative, Intermediate, Reserved, and Aging numbers”.³ (USTA Comm., p. 4.) If the FCC is persuaded by parties’ comments to revise the utilization methodology, the CPUC would not object to including in the numerator administrative, reserved, and aging numbers in addition to assigned numbers, consistent with our own conclusion in CPUC D.00-03-054. Whether or not the FCC decides to

³ The CPUC did not allow carriers to include intermediate numbers in the numerator because the intermediate category had not been identified by the FCC when we issued our order. We cannot speculate at this time whether we would today include those numbers in the numerator, as that issue has not come before the CPUC, though we agree with Sprint that intermediate numbers are not “available for assignment to customers”. (Sprint Comm., p. 6.)

adjust the utilization methodology, however, the CPUC would continue to support a utilization threshold range of 70% - 80%, or in the alternative, a fixed threshold of 75%.⁴

California disagrees with SBC's contention that "measuring utilization in any geographic area that is larger than the area in which numbers are used creates distortions and requires a lower utilization rate". (SBC Comm., p. 9.) Many carriers have argued to the CPUC that utilization should be calculated on a switch basis, as SBC seems to be arguing in its comments. NXX codes are assigned on a rate center basis, not by switch. Allowing carriers to calculate utilization on a switch basis, rather than a rate center basis, will cause the very utilization distortions to which SBC refers, not the other way around.

So far as the CPUC can discern, the claim that utilization should be determined on a switch basis is simply another means for carriers to game the system. A carrier can claim that a fill rate has been met because numbers the carrier allotted to one switch in a rate center have been used while abundant numbers are available to the carrier in one or more other switches in the same rate center. If a carrier exhausts the numbers it has allotted to one switch, the carrier can either assign numbers from another switch, or port numbers from one switch to another. When CPUC staff informally proposed that carriers port numbers from one switch to another, the carriers responded that doing so would constitute unassigned number porting, a practice they claim they cannot employ because of an FCC prohibition.

The CPUC notes that in the NPRM, the FCC asked for comments on "whether we should allow carriers to port unassigned numbers among themselves". (NPRM, ¶ 142,

⁴ See CPUC's Comm., pp. 2-5.

emphasis added.) We do not read this language to prohibit a carrier from porting unassigned numbers within its own network. Indeed, we have heard anecdotally that some carriers are doing so today. And, on conference calls of the State Coordinating Group, representatives from other states have reported that incumbent local exchange carriers operating in their states admit to porting unassigned numbers within their own networks.

In other words, how carriers choose to allot numbers among different switches within a rate center is a carrier management issue.⁵ It is not a matter for the FCC to take into account in evaluating utilization.

II. COST RECOVERY

A. The CPUC Has Taken Initial Steps to Adopt a Cost Recovery Methodology

Several carriers asserted in their comments that the states have failed to address the issue of cost recovery. “[A]lthough individual states have been delegated authority to implement federally required pooling, no state that has or will soon implement pooling trials has made any effort to address cost recovery”. (Comm. of United States Telecom Association [USTA], p. 9; see also, SBC Comm., p. 3, Fn. 8, “No state commission has

⁵ Thus, we also dispute USTA’s request that the FCC “affirm its conclusion to base utilization thresholds on each switch in a rate center”. (USTA Comm., p. 5.) Curiously, USTA does not cite any language in the NRO Order which supports that “conclusion”. In ¶ 105, the FCC stated explicitly its intent to use “rate-center based utilization” because it “more accurately reflects how numbering resources are assigned”. The CPUC supports that conclusion.

yet initiated cost recovery proceedings”.) On June 6, 2000, the CPUC released a draft order addressing the question of which carriers should bear the costs associated with implementing number pooling. The order is on the CPUC’s July 6, 2000 agenda. Once the CPUC has acted on that decision, it can move on to address the question of how the costs should be recovered. Thus, while California has not resolved the question of intrastate number pooling cost recovery, we have taken the first step.

Thus, it is not entirely correct that no state has “made any effort to address cost recovery”. We would also point out that the first pooling trial in California, in the 310 NPA, only began operation on March 18, 2000, a bit less than three months ago. The CPUC has every intention of addressing and resolving number pooling cost recovery issues this year.⁶

Nor is it correct, as Sprint states, that “because area code changes were not [between 1984 and 1994] occurring with any regularity, costs associated with area code relief were never calculated into price cap rates”. (Sprint Comm., p. 16.) In California, as part of the CPUC’s New Regulatory Framework proceeding (I.87-11-033), the CPUC adopted a “start-up revenue requirement” in 1990 for Pacific Bell, the California Code Administrator until 1998. That revenue requirement most certainly did include costs for area code planning and relief. Certainly, while those costs increased with the introduction

⁶ The CPUC notes the position of the New York Public Service Commission, i.e., that “there is no need for a [number pooling] cost recovery mechanism” because pooling costs incremental to the costs of deploying local number portability technology “should be considered ordinary costs of doing business not entitled to special recovery”. (Comm. of NYPSC, p. 2.) Because of its pending consideration of pooling costs, California cannot comment on the NYPSC proposal.

of multiple area codes per year in 1996 and 1997, in that same time frame, Pacific experienced substantial annual growth in its number of access lines, with a commensurate increase in revenues. Once Pacific ceased to act as Code Administrator, with the transition to Lockheed Martin in 1998, Pacific did not propose to reduce its annual NRF revenue requirement to reflect that it no longer incurs costs associated with its code administration responsibilities. Nor has the CPUC sought to compel Pacific to do so.

B. Use of the LNP Surcharge

California also notes the position of Sprint that the most efficient means of recovering interstate number pooling costs would be to “increase slightly the LNP end user charge already in place”. (Sprint Comm., p. 18.) Should the FCC determine that carriers may legitimately recover interstate number pooling costs, the CPUC agrees with Sprint that the “simplest way” to do so is via the current LNP surcharge, either by increasing the amount, or by extending the life of that surcharge.

C. Cost Savings Associated with Thousands-Block Pooling

The CPUC notes carrier comments regarding the costs of pooling versus the costs of frequent area code changes. The CPUC cannot offer cost estimates. But, California notes the shrill indignation of carriers such as Sprint, who assume that the only costs the FCC can and should consider are those incurred by the industry. “The Commission provides no basis in fact for its assumption that implementing number pooling somehow ‘saves’ the LEC industry significant expense by postponing an area code exhaust situation”. (Sprint Comm., p. 16.) Granted, carriers are not well positioned to assess or quantify costs to the public of incurring repeated area code changes. Nonetheless,

carriers assume that only costs they incur should be considered in evaluating the desirability of widely deploying number pooling versus continually adding new area codes. As the CPUC and other states have asserted many times, costs to the public must be considered.

Further, California disputes in principle Sprint's contention that extending the life of an area code with pooling or other conservation measures offers no cost savings to carriers. In California, carrier representatives are paid by their employers to participate in area code relief planning. When a new area code is introduced, carriers must pay their employees to upgrade switches and other facilities to accommodate the new NPA.

Pursuant to § 7931 of the California Public Utilities Code, carriers must send several notices to customers, informing them of impending area code changes, including detailed information about affected prefixes and geographic boundaries. All of these activities would not occur if area code relief planning does not occur, and if new area codes are not introduced. Finally, and from the carrier perspective, perhaps most important, carriers contribute financially to support the activities the North American Numbering Plan Administrator (NANPA). To the extent that the NANPA's time and resources are not devoted to area code relief planning and implementation, carriers realize costs savings.

In addition, the FCC must consider more than the costs to the public of frequent area code "relief", and costs to the carriers of implementing number pooling. The Commission must also take into account the costs the entire U.S. economy will bear when the North American Numbering Plan (NANP) must be expanded. Deferring those costs

as long as possible so that the transition to an expanded NANP can be carefully planned and executed in everyone's interest.

III. DEFERRAL OF POOLING FOR CMRS PROVIDERS

The CPUC continues to believe that CMRS providers should not be accorded additional time beyond November, 2002 to implement number pooling. As argued in our May 19th comments, CMRS providers have had ample notice of the need to pool promptly upon completed deployment of local number portability (LNP) technology. In addition, the cost of further delay means that covered CMRS providers will continue to draw numbers in whole NXX codes while other carriers are restricted to blocks of 1,000. This arguably is not a competitively neutral construct, and affords CMRS providers an advantage in a time when they are working hard to compete with wireline service providers.

The CPUC absolutely opposes the "nine-month transition period" SBC proposes. (SBC Comm., p. 13.) The only basis for SBC's proposal is that "[t]his would be the same as the transition period permitted for wireline networks after the selection of the national number pooling administrator". (*Id.*) SBC's argument completely ignores that many states will have implemented number pooling by the time the national pooling administrator is selected and the national rollout begins. In addition, SBC identifies no real technical impediment to immediate CMRS participation in pooling. It merely conjectures that "[n]umber pooling likely would require additional, substantial changes to wireless carriers' operation support systems [OSS], such as number administration databases, in addition to those required to implement LNP. (*Id.*) Again, covered CMRS

providers will have sufficient time and opportunity to design those changes to OSS and number administration databases into their deployment of LNP.

Nonetheless, should the FCC determine that some transition period for covered CMRS providers to implement number pooling would be appropriate, California urges the FCC to minimize that period. While California does not endorse any transition period, the CPUC notes that Sprint proposes a more moderate and reasonable three or four month's transition time. (Sprint Comm., p. 13.)

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IV. CONCLUSION

California offers for the Commission's consideration these reply comments on the Further Notice of Proposed Rulemaking.

Respectfully submitted,

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June 9, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document entitled “**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**” upon all known parties of record by mailing, by first-class mail, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 9th day of June, 2000.

/s/ HELEN M. MICKIEWICZ

HELEN M. MICKIEWICZ