

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of the California Public Utilities	)	CC Docket No. 99-200
Commission for Authority to Implement	)	DA 02-2845
Technology-Specific Overlays	)	

To: Wireline Competition Bureau

**OPPOSITION OF VERIZON WIRELESS**

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## SUMMARY

Verizon Wireless strongly opposes the California Public Utilities Commission's ("CPUC") petition for authority to implement technology specific overlays ("TSOs") in the 909 and 310 Number Plan Areas ("NPAs"). The CPUC proposal seeks to "takeback" telephone numbers from wireless customers and impose a permanent dialing disparity in parts of Los Angeles and Riverside counties, impacting up to three million wireless customers and their carriers. The FCC had, in the past, imposed a blanket prohibition on TSOs precisely to avoid the type of discrimination posed by takebacks and a permanent dialing disparity. The *Third Numbering Resource Optimization Order* ("*Third NRO Order*") opened the door only narrowly to "specialized overlays," with strict conditions and guidance regarding the types of proposals likely to pass scrutiny. The FCC has repeatedly denied other state Commission petitions for permanent waivers from the ten-digit dialing rule. In summary, the CPUC's petition must be denied for the following reasons:

- The CPUC petition has not met the legal standards delineated in the FCC's *Third NRO Order* and is contrary to court precedent regarding agency waivers;
- The CPUC petition offers no justification for wireless takebacks and does not address the FCC's requirements for proposing takebacks;
- The request for a permanent ten-digit dialing waiver presents arguments previously rejected by the FCC as insufficient for such relief;
- Opening up additional NPAs to serve only a subset of the industry would not obviate the ultimate need for new NPAs to serve landline customers who are presently served by the 310 and 909 NPAs. It would only put wireless carriers at a competitive disadvantage and harm customers by forcing them to have different NPAs for their wireless and wireline phones;
- TSOs undermine the effectiveness of wireless participation in thousands block number pooling.

- TSOs are also inconsistent with promoting wireless to wireline competition, which the CPUC supported during the CMRS local number portability proceeding;
- The two-year transition period to an all services overlay is unsupported and arbitrary, especially given the amount of time that will be necessary to reprogram wireless handsets for such a large number of customers.

Instead of granting the CPUC petition, the FCC should immediately deny the request for authority and order the NANPA to implement an all-services overlay. The FCC must take such action to avoid complete exhaust of the 909 and 310 NPAs. The CPUC has failed to fulfill its obligation to implement area code relief when and where necessary.

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Verizon Wireless opposes the California Public Utilities Commission’s request for authority to implement two TSOs encompassing the geographic areas of the 310/323/213/562 and 909/714/949 NPAs.<sup>1</sup> The CPUC’s petition is clearly defective because it fails to meet the evidentiary requirements for justifying TSOs. Worse, the petition seeks to impose the most harmful aspects of TSOs, takebacks and permanent dialing disparity, but fails to come close to meeting the Commission’s high standard for doing so.<sup>2</sup> Given the imminent need for relief in the 310 and 909 NPAs, the FCC should deny the CPUC’s petition and order the North American Numbering Plan Administrator (“NANPA”) to immediately implement all-services overlays in the 310 and 909 NPAs.<sup>3</sup>

If granted, the CPUC’s petition would represent a significant step backwards in the FCC’s jurisprudence regarding TSOs, running directly counter to the FCC’s long-held

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<sup>1</sup> See *Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment* (filed September 27, 2002).

<sup>2</sup> *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252 (2001) (“*Third NRO Order*”) at ¶ 80.

<sup>3</sup> See NPA Exhaust Report submitted by NANPA to the NANC November 19, 2002, [www.nanc-chair.org](http://www.nanc-chair.org).

principles of non-discrimination in numbering administration.<sup>4</sup> Over industry objections, the FCC lifted the ban against TSOs, but nevertheless erected a high burden for requests, especially those proposing takebacks and a permanent ten-digit dialing disparity.<sup>5</sup> The CPUC's proposal is noteworthy because it is consistent with the banned TSOs dating back to the *Ameritech Order*, instead of the more limited specialized overlays envisioned by the recent *Third NRO Order*. The CPUC proposes to force millions of wireless customers in the 310 and 909 NPAs to endure number changes and permanent dialing disparities.<sup>6</sup> The CPUC petition fails to show how burdening these customers is justified, and therefore must be denied.

#### **I. THE CPUC PETITION FAILS TO MEET THE FCC'S STANDARDS**

The FCC set forth eight criteria for state commissions seeking delegated authority to implement TSOs.<sup>7</sup> The CPUC's petition only minimally addresses the criteria and provides insufficient basis to justify a grant of authority to burden wireless customers and carriers with takebacks of wireless telephone numbers and a permanent dialing disparity in two of the most populous NPAs in California.

In addressing the criteria in the *Third NRO Order*, any state seeking to impose a TSO must demonstrate that the benefits will outweigh the costs and that the proposed TSO

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<sup>4</sup> See *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1996) (“*Ameritech Order*”); see also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd. 19392 (1996). Moreover, Congress requires that numbers be made available on an equitable basis. See 47 U.S.C. § 251(e).

<sup>5</sup> *Third NRO Order* at ¶¶ 80-94.

<sup>6</sup> CPUC Petition at 2, 7-12.

<sup>7</sup> They are: (1) the technologies or services to be included in the proposed specialized overlay (“SO,” the collective term for service-specific and technology specific overlays); (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include takebacks; (6) whether there will be 10-digit dialing in the SO and the underlying area code(s); (7) whether the SO and

would be superior to implementation of an all-services overlay.<sup>8</sup> When the FCC removed the blanket prohibition against TSOs, it opened the door for states to use this tool only in limited circumstances where the proposals are tailored to minimize costs and burdens on wireless customers and carriers and where a substantial conservation benefit can be achieved.<sup>9</sup> The CPUC has failed to adequately address a number of critical issues identified in the *Third NRO Order*, and has failed to meet its burden to justify its request.

**A. The CPUC Has Not Justified the Need For Wireless Takebacks**

The California Commission is proposing to take back numbers assigned to existing wireless customers in the 909 and 310 NPAs for the elusive purpose of postponing the effects of relief on wireline customers. Given the timing and burden associated with accomplishing wireless number takebacks, this proposal cannot be – and has not been – justified. The FCC required states proposing to use takebacks to include a strong showing that the consumer and industry costs associated with takebacks are outweighed by the optimization benefits of the takebacks.<sup>10</sup> Conclusory claims are not enough. State commissions are required to specifically demonstrate that the negative effects of takebacks will be mitigated by the benefits in the particular geography by showing, for example, that: “(1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure; (2) the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers.”<sup>11</sup>

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underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place. *Third NRO Order* at ¶ 81.

<sup>8</sup> *Third NRO Order* at ¶¶ 80-81.

<sup>9</sup> *See Third NRO Order* at ¶¶ 80-94.

<sup>10</sup> *Third NRO Order* at ¶ 90.

<sup>11</sup> *Third NRO Order* at ¶ 90.

The CPUC's petition must be denied because it did not present any evidence to satisfy any of these FCC criteria regarding takebacks. These fatal insufficiencies in its petition are compounded by the attempt to obfuscate the issues. The CPUC petition wrongly asserts that the FCC has not defined takebacks and/or that three-digit NPA number changes are not takebacks.<sup>12</sup> In fact, the FCC has defined takebacks. In a previous *Order*, the FCC defined takebacks during a discussion of geographic splits:

Many parties are concerned about how the effects an NPA split has on wireless customers, however. The process will not be transparent to the wireless customer, as it is to the wireline customer. Instead, because of the means by which wireless telephone calls are transmitted, wireless customers must have their telephones reprogrammed to surrender the old number and receive a new number in the new NPA. We call this type of change necessitated by a NPA geographic split a 'wireless number takeback.'<sup>13</sup>

While three-digit number changes may be more palatable than ten-digit number changes, the handset nevertheless must be reprogrammed and the assignment of the corresponding number in another NPA is a takeback, as defined by the FCC. The CPUC petition requires takebacks that would unnecessarily burden millions of wireless customers. Even if only three digits of the NPA are changed, millions of wireless customers in the 909 and 310 NPAs will still need to change their stationery, signage, business cards and inform family and associates.

Takebacks also pose burdens to telematics customers and their providers. The FCC indicated that takebacks from non-geographically sensitive services might be feasible.<sup>14</sup> As OnStar and Verizon Wireless have informed the FCC since the release of the text of the *Third NRO Order*, telematics providers *do* use geographically based numbers allocated to

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<sup>12</sup> CPUC petition at 7.

<sup>13</sup> *In the Matter of Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration of Second Report and Memorandum Opinion and Order, 14 FCC Rcd. 17964 at ¶ 53.

<sup>14</sup> *Third NRO Order* at ¶82.

them from wireless carriers.<sup>15</sup> Customers of telematics providers will face similar, and in some cases greater, challenges for reprogramming the devices within vehicles with new telephone numbers.

CTIA already showed why these and other defects in the petition warranted dismissal.<sup>16</sup> It serves no interests – the FCC, carriers, or the people of California – to further consider the CPUC’s TSO proposal.

**B. A Permanent Waiver From the Ten-Digit Dialing Requirement Unfairly Burdens the Wireless Industry and Is Not Supported by the Petition**

The FCC stated in the *Third NRO Order*:

Mandatory ten-digit dialing, we believe, minimizes anti-competitive effects due to dialing disparities, which, in turn, avoids customer confusion. We, nevertheless, will not require ten-digit dialing with SOs at this time, at least not until we are better able to determine whether a temporary waiver of the ten-digit dialing requirement in any way increases the use and effectiveness of SOs. **We emphasize that, although temporary waivers might be warranted, it is not likely that requests for permanent waiver of the ten-digit dialing requirement, especially after a transitional SO is expanded to include all services, will be granted.** State commissions seeking a waiver of the ten-digit dialing requirement should clearly indicate when any requested waiver would terminate.”<sup>17</sup>

The CPUC petition seeks a *permanent* waiver of the ten-digit dialing rule despite the FCC’s pronouncement in the *Third NRO Order* and other precedent that permanent ten-digit dialing waivers are not in the public interest.

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<sup>15</sup> See *Ex Parte Letter* from William L. Ball, OnStar, to William F. Caton, Acting FCC Secretary, CC Docket No. 99-200, dated February 14, 2002. See *Opposition of Verizon Wireless*, CC Docket No. 99-200, NSD File No. L-02-03, dated June 14, 2002. The non-geographically based numbers used by telematics providers are typically 500 numbers.

<sup>16</sup> See *Ex Parte Letter* from Michael F. Altschul, Senior Vice President for Policy and Administration and General Counsel, Cellular Telecommunications and Internet Association, to William Maher, Chief, Wireline Competition Bureau, and Thomas Sugrue, Chief, Wireless Telecommunications Bureau, CC Docket Nos. 99-200 and 96-98, dated October 2, 2002.

<sup>17</sup> *Third NRO Order* at ¶ 92 (Emphasis added).

The CPUC claims that ten-digit dialing would not be necessary in either the TSOs or the underlying area codes.<sup>18</sup> Acknowledging that the FCC's rule was borne out of concerns about local dialing disparity, the CPUC argues that: (1) no dialing disparity between wireless carriers in the affected codes would exist since all of them would be required to draw numbers from the new area codes and would have equal access to numbers; (2) the benefits of the TSOs outweigh any dialing disparity and competitive concerns that may arise because the numbers vacated by wireless customers will provide ample supply to meet the forecasted needs of wireline customers; (3) a wireless customer in the SO can dial seven digits across a larger geographic area than they can today; and (4) new and existing wireless carriers have acquired sufficient number holdings in the 909 and 310 NPAs and can retain numbers served from contaminated blocks in pooling.<sup>19</sup>

The FCC has previously addressed and rejected these same arguments in decisions denying other state PUCs' requests for permanent waivers from mandatory ten-digit dialing.<sup>20</sup> Regarding the CPUC's comments about existence of a dialing disparity (and the need to prevent disparities in order to protect competition), the FCC has stated:

The purpose of mandatory ten-digit dialing is to ensure that competition is not deterred as a result of dialing disparity. Absent mandatory ten-digit dialing, local dialing disparity will occur because existing telephone users who remain in the old area code will be able to dial seven-digits to call others with numbers in the old area code, while new users, with the overlay code, must dial ten-digits to reach a telephone user in the old code.<sup>21</sup>

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<sup>18</sup> CPUC Petition at 9.

<sup>19</sup> CPUC Petition at 10-12.

<sup>20</sup> See *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. §52.19 for Area Code 412 Relief*, 12 FCC Rcd. 3783 (1997) ("Pennsylvania Waiver Order"); *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. §52.19(c)(3)(II)*, 13 FCC Rcd. 13491 (1998) ("New York Waiver Order"); and *The Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii)*, 17 FCC Rcd. 4536 (2002).

<sup>21</sup> *New York Waiver Order* at ¶ 6.

Similarly, the CPUC's conclusions that the benefits of TSOs outweigh any dialing disparity and competitive concerns are not supported by facts and are at odds with the FCC's competitive concerns for new entrants, specifically wireless carriers. The FCC stated:

We note that the Commission's competitive concerns regarding dialing disparities are not solely limited to potential competitive inequality between incumbent LEC and CLECs currently competing in a market. We also must consider the effects of dialing disparities on future competitors, including wireless carriers, which might seek to enter the market to compete for customers in New York City."<sup>22</sup>

Carriers' access to NXXs in the existing area code is insufficient justification to waive the ten-digit dialing requirement.<sup>23</sup> The CPUC makes no new arguments that have not already been rejected by the FCC.

Given the FCC's repeated denials of requests from other states for permanent waivers from ten-digit dialing for all-services overlays, there is no justification to authorize a permanent waiver in California (first for the TSO and then for the all services overlay). The FCC's precedent and relevant court decisions governing agency waivers impose a high hurdle for requests to waive the ten-digit dialing requirement.<sup>24</sup> The CPUC has not provided good cause to show why ten-digit dialing should not be required in California, when it has been required in New York City and Chicago. Approving the CPUC's request for a permanent waiver on the sparse analysis and justification provided would: (1) remove all meaning from the FCC's current requirement of ten-digit dialing in all other contexts

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<sup>22</sup> *New York Waiver Order* at ¶ 13.

<sup>23</sup> *Id.* The FCC rejected arguments by the New York Commission that competitive providers and newer entrants had equitable access to numbering resources sufficient to justify a permanent ten-digit dialing waiver. *New York Waiver Order* at ¶¶ 6-7. Similarly, the FCC rejected an argument by the Pennsylvania Commission that local dialing disparity would not occur in the Pittsburgh overlay because 260 NXXs would be available to CLECs and other providers in the 412 NPA. This fact did not demonstrate special circumstances justifying a waiver of the ten-digit dialing rule. *Pennsylvania Waiver Order* at ¶ 21.

<sup>24</sup> *See New York Waiver Order; Pennsylvania Waiver Order; See Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. F.C.C.*, 418 F.2d at 1153, 1159 (D.C. Cir. 1969).

where overlays are contemplated,<sup>25</sup> and (2) invite a rash of similarly unsubstantiated requests.

The FCC may waive its rules if there is good cause shown and if “special circumstances” warrant a deviation from the general rule, and such a deviation will serve the public interest.”<sup>26</sup> Examples of special circumstances include hardship imposed by the rule’s enforcement, equity, or more effective implementation of overall policy on an individual basis.<sup>27</sup> Absent special circumstances, a waiver of the ten-digit dialing requirement would undermine the pro-competitive national policies embodied in the 1996 Act and that underpin the ten-digit dialing rule for all-services overlays.<sup>28</sup> The CPUC has not demonstrated good cause or special circumstances warranting an unprecedented permanent waiver of the ten-digit dialing rule.

Moreover, the CPUC’s petition has not sustained an argument for even a *temporary* waiver, particularly given the FCC’s recent findings regarding the necessity of promoting wireless to wireline competition.<sup>29</sup> Under the California Commission’s proposal, CMRS carriers also will face a dialing disparity *vis a vis* local exchange carriers, which runs afoul of the FCC’s stated pro-competitive policies. Increasing wireless to wireline competition was one of the main justifications for retaining the CMRS local number portability obligation, which the CPUC supported.<sup>30</sup> The CPUC cannot have it both ways.

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<sup>25</sup> The FCC has recognized that its discretion to waive rules for good cause “does not contemplate than an agency must or should tolerate evisceration of a rule by waivers.” *Pennsylvania Waiver Order* at ¶ 14, citing *WAIT Radio*, 418 F.2d at 1153.

<sup>26</sup> See *Northeast Cellular Telephone Co.*, 897 F.2d at 1164 and *WAIT Radio*, 418 F.2d at 1159.

<sup>27</sup> See *WAIT Radio*, 418 F.2d at 1159.

<sup>28</sup> See *Pennsylvania Waiver Order* at ¶ 16.

<sup>29</sup> See *Verizon Wireless’s Petition for Partial Forbearance from the CMRS Number Portability Obligation*, Memorandum Opinion and Order, 17 FCC Rcd. 14972 (2002) at ¶¶ 2, 20 (“*VZW LNP Order*”).

<sup>30</sup> *Id.* at ¶13. (citing state PUC comments, including those by the California Public Utilities Commission (at pages 9-10 of the CPUC’s comments)).

A waiver will add to customer confusion, since customers will face different dialing patterns for their wireline and wireless services. By only moving wireless subscribers from the 909 and 310 NPAs into the TSOs, the CPUC's proposal would create a dialing disparity between wireless subscribers in the 909 NPA *vis a vis* those wireless subscribers in the 714 and 949 NPAs (and with all wireline subscribers). Similarly, the same dialing disparity will exist for wireless subscribers in the 310 NPA *vis a vis* wireless subscribers in the 213, 323 and 562 NPAs (and again, with all wireline subscribers).

The CPUC petition indicated that wireless carriers could retain some 310 and 909 numbers if they donated lightly contaminated thousands blocks to the pool in those codes. Thus, under the CPUC's proposal, the few existing wireless customers who happen to be served using numbers from lightly contaminated blocks would be spared the burden of a number change since those blocks would be available for wireline customers, while millions of wireless customers on more fully utilized blocks would be forced to change their numbers to free up numbers for wireline customers.<sup>31</sup> There is no justification for this disparate treatment of wireless consumers, who, in many cases, are also wireline consumers and will be confused about the varying dialing patterns. According to the FCC, “[f]ailure to implement ten-digit dialing will only increase the confusion and inconvenience that would ensue if only certain customers had to dial ten digits.”<sup>32</sup>

The CPUC has not raised any new or persuasive arguments or public interest justification sufficient to meet the legal standard from well-settled FCC precedent for obtaining a waiver, permanent or temporary, from the ten-digit dialing rule. In fact, any

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<sup>31</sup> Few thousands blocks were donated to the Pooling Administrator by wireless carriers because of high utilization in the 310 and 909 NPAs. Carriers have had to manage numbering resources tightly in these NPAs given the length and severity of rationing.

<sup>32</sup> *New York Waiver Order* at ¶ 14.

benefits of the proposed TSOs, including the requested waiver, are far outweighed by the cumulative burdens.

**C. The CPUC's Request is Not Justified Because Wireless Carriers Are Pooling-Capable**

The FCC stated in the *Third NRO Order*, "...if state commissions propose a transitional SO that segregates non-pooling carriers into the SO NPA, they bear the burden of demonstrating why the transition should not occur when wireless participation in pooling commences."<sup>33</sup> The CPUC Petition does not address wireless pooling, except a passing mention in relation to its request for a permanent waiver of the ten-digit dialing requirement.<sup>34</sup> Authorizing implementation of a TSO now is counterproductive to conservation.

In 2000, when wireless carriers were suffering from numbering shortages and pooling capability was still two years away, Verizon Wireless supported the use of transitional, phased-in overlays (without number takebacks) to provide interim numbering relief until wireless carriers could participate in pooling.<sup>35</sup> However, when the Connecticut Commission proposed a TSO last year, Verizon Wireless questioned the need and effectiveness of a TSO because wireless pooling would be available before the TSO could be implemented and the costs and adverse competitive effects associated with

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<sup>33</sup> *Third NRO Order* at ¶ 87.

<sup>34</sup> CPUC Petition at 11. (stating that wireless carriers would retain some 310 and 909 numbers if they donated numbers to the pool in those codes). Verizon Wireless and many other wireless carriers did not donate any thousands blocks from the 310 and 909 NPAs because of their high utilization.

<sup>35</sup> See Letter from Anne E. Hoskins, Verizon Wireless, to Yog R. Varma, Deputy Chief, Common Carrier Bureau, dated November 21, 2000. See Comments of Verizon Wireless, filed February 14, 2001 and Reply Comments of Verizon Wireless, filed March 7, 2001 regarding *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd. 306 (2000).

implementing a TSO outweighed any short-term benefit.<sup>36</sup> Now that wireless carriers have begun to participate in pooling, there is no longer a justification to maintain separate numbering supplies or to disproportionately burden one segment of the industry or its customers.

The CPUC's petition requests authority to impose two TSOs for two years from the start of the TSOs,<sup>37</sup> but fails to demonstrate that the TSOs would promote more efficient number utilization and conservation. Industry specific pools would not provide wireless carriers or the NANP with the maximum benefits of pooling. Most of the stranded thousands blocks in the 310 and 909 NPAs were part of the inventories of CLECs and LECs. Now that CMRS carriers are pooling capable, conservation is best achieved by giving wireless carriers access to those numbers

Wireless carriers have endured severe NXX code rationing for over four years in California,<sup>38</sup> which has artificially constrained the ability of non-pooling capable carriers to receive numbers. Wireless carriers have spent millions of dollars to become pooling capable – in support of the federal policy to improve number utilization by sharing thousands blocks of numbers broadly across wireless and wireline carriers and to have equal access to all available sources of numbers. Having achieved pooling capability, wireless carriers are now able to promote conservation by using thousand blocks that have been “stranded” by LECs and CLECs instead of opening new NXX codes. Given that pooling has begun, the time has long passed when a TSO might have made sense.

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<sup>36</sup> See Comments by Verizon Wireless, CC Docket No. 99-200, filed June 14, 2002 and February 26, 2002 regarding the request by the Connecticut Commission to implement a TSO in Connecticut.

<sup>37</sup> CPUC Petition at 1.

<sup>38</sup> NXX code rationing has been in place since jeopardy was declared in 1997 in the 310 NPA and in 1998 in the 909 NPA.

Forcing wireless carriers to pool only among each other is completely inconsistent with the objectives of maximizing numbering efficiency and preserving the NANP. Opening up additional NPAs to serve only a subset of the industry would not obviate the ultimate need for a new NPA to serve landline customers who are presently served by the 310 and 909 NPAs. It would only put wireless carriers at a competitive disadvantage and harm customers by forcing them to have different NPAs for their wireless and wireline phones. Pooling entails sharing an NXX code, at the rate center level, among multiple carriers. By contrast, TSOs entail segregating a subset of carriers into their own exclusive-use NPA. Pooling works best when all pooling capable carriers share number blocks without artificial restrictions like a TSO.

Moreover, the FCC ordered wireless carriers to have the capability of participating in local number portability by November 24, 2003. One of the main justifications for retaining the CMRS LNP obligation was to facilitate wireless to wireline competition.<sup>39</sup> Once the first wireless or wireline customer in the 310 and 909 NPAs elects to port his number to another service, either the FCC must authorize carriers to disallow the customer's port request because of the TSOs or acknowledge that the separation of customers' numbers as a practical matter has ended. There is no reasoned basis for the FCC to approve separate numbering inventories, while at the same time requiring wireless carriers to spend millions of dollars to enable customers to use wireless and wireline numbers interchangeably through LNP.

#### **D. The Two Year Transition Period is Unsupported and Arbitrary**

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<sup>39</sup> *VZW LNP Order* at ¶¶ 2, 20 (citing, *Telephone Number Portability*, First Report and Order and FNPRM, 11 FCC Rcd. 8352 (1996)).

In an effort to demonstrate that the TSOs would not be permanent, the CPUC petition proposes to transition the two TSOs into all-services overlays in two years from the start of the TSOs.<sup>40</sup> The selection of two years is unexplained and arbitrary. It is also infeasible. If take backs are allowed, the industry would need eighteen months, if not more, to reprogram handsets for up to three million wireless subscribers in the 909 and 310 NPA.<sup>41</sup> By the time wireless numbers could be reclaimed for reassignment to wireline users, the TSOs would become an all services overlay – a lot of burden for no benefit.

The 310 and 909 NPAs are home to some of the biggest wireless subscribership populations in the nation. The sheer volume of handsets that must be reprogrammed, along with the fact that reprogramming must be done during the permissive dialing window, makes it improbable that numbers could be recaptured and reassigned quickly. Carriers also cannot get a “headstart” on the reprogramming of new telephone numbers in the handset because they must await completion of changes in the network to accomplish the overlay which are necessary for call-completion to numbers from the new NPAs.

In this case, with a two-year transition period and millions of subscribers’ handsets to reprogram, the all services overlay will begin before reprogramming could be completed for some customers. After inconveniencing and burdening millions of existing wireless customers in major metropolitan areas, the wireline customers would join the overlay

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<sup>40</sup> CPUC Petition at 1.

<sup>41</sup> Several states have supported lengthy extended permissive periods. The New York Commission ordered a split of the 716 NPA (716/585), granting a regular nine-month permissive dialing period and a 3-year extended permissive period through 11/15/2004 for all wireless NXXs (36 months total for wireless). In the 516/631 split in New York, the New York Commission granted wireless NXXs an extended permissive of 19 months beyond the regular 5 months of permissive dialing (total 24 months). Similarly, the Wisconsin Commission split the 414 NPA (414/262), granting a regular six-month permissive dialing period, but allowing all wireless NXXs an additional 2-year extended permissive period (30 months total). The Louisiana Commission split the 504 NPA (504/985), granting a regular eight-month permissive dialing period with wireless extended permissive period of an additional year (20 months total). See [www.NANPA.com](http://www.NANPA.com).

almost immediately. Worse, any reclaimed numbers taken from existing Verizon Wireless customers over the next two years could be reassigned back to Verizon Wireless through pooling once the TSOs transition to an all services overlay.

Given that the CPUC cannot, consistent with FCC and federal court precedent, justify a permanent ten-digit dialing waiver, the industry will have to begin to re-educate all subscribers about ten-digit dialing during the “transitional” period when customers are dialing differently for wireless and wireline service. Such flip-flopping in dialing patterns and area code assignments surely will confuse customers. The CPUC presents no rationale for the two-year transition period and provides no analysis of the practical implications of its plan on the millions of wireless subscribers that will be affected.

## **II. RELIEF IS NEEDED IN CALIFORNIA IN THE FORM OF AN ALL-SERVICES OVERLAY**

The CPUC has avoided area code relief through aggressive rationing, reclamation and pooling, but the time has come for conventional area code relief, not TSOs.<sup>42</sup> The FCC stated in the *Third NRO Order*, “We believe that, to optimize their value, SOs should not be implemented when the underlying NPA has a projected life span of less than one year.”<sup>43</sup> The 909 and 310 NPAs are in desperate need of relief. According to the most recent report given by the North American Numbering Plan Administrator (“NANPA”) during the November 19, 2002 North American Numbering Council (“NANC”) meeting, the 310 and

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<sup>42</sup> The CPUC’s own Audit Reports supported the need for area code relief in the 909 and 310 NPAs. For example, The 310 Audit Report, submitted February 16, 2001 concluded, “Based on the audit findings, TD reaches three conclusions. First, carriers did not deliberately misreport their TN utilization data for the *March 310 Report*. Second, the audit authenticates the utilization data that carriers submitted for the *March 310 Report* except for the recommended TN adjustments as pointed out in this report. Third, the additional TNs found are not sufficient to extend the life of the 310 area code.” 310 Audit Report in R.95-04-043 at 5 (2001).

<sup>43</sup> *Third NRO Order* at ¶ 85.

909 NPAs will exhaust in less than one year.<sup>44</sup> Even with strict rationing of codes to artificially extend relief by severely restricting demand (e.g., two codes in the lottery every other month for the 310 NPA – which now excludes wireless carriers), these codes are projected to exhaust by the second quarter of 2003, six to nine months from the date of this filing. The CPUC petition concedes that the 310 and the 909 NPAs are nearing exhaust.<sup>45</sup> This latest CPUC petition is a thinly veiled attempt to postpone full area code relief when it is critically needed. Further, the CPUC has not explained how the proposed SO is superior to implementation of an all-services overlay as required by the FCC's *Third NRO Order*.<sup>46</sup>

From a NANP conservation standpoint, the CPUC's TSO proposal would consume two additional NPAs and provide no additional benefit over and above all-services overlays covering the same geographic areas. The high demand for numbers in California negates any benefit from a TSO since there will not be a real savings of numbers that would lead to more efficient use of numbering resources. The TSO proposals merely move the demand among different industry groups and customers with no overall conservation benefit. Conservation can benefit most from pooling among all types of carriers after implementation of an all-services overlay. The CPUC stated that the two TSOs would provide greater life span for the 909 and 310 NPAs.<sup>47</sup> Injecting a few extra years into these almost exhausted codes by relocating customers to new codes is not superior to an all-services overlay and will not lead to more efficient number utilization overall. The same quantity of numbers will be used under both scenarios. The new codes will have

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<sup>44</sup> See NPA Exhaust Report submitted by NANPA to the NANC November 19, 2002, [www.nanc-chair.org](http://www.nanc-chair.org).

<sup>45</sup> CPUC petition at 1.

<sup>46</sup> *Third NRO Order* at ¶ 81.

<sup>47</sup> CPUC Petition at 12.

maximum life expectancy if an all-services overlay is implemented and pooling can commence between all industry segments.

Given the burdens of TSOs, an all-services overlay is the superior option for relief. A TSO will require up to three million wireless subscribers in the 909 and 310 NPAs to undergo forced number changes, have their handsets reprogrammed, change their stationery, business cards, and inform family and associates about the number change, and endure dialing disparities and confusion. Further, an all-services overlay has two clear advantages over a geographic split: (1) an overlay can be implemented in as little as ten months and requires less time to implement than a geographic split and (2) avoids the need to number change existing subscribers in the 909 and 310 NPAs. All- services overlays have been implemented successfully in a number of populous states with large metropolitan areas including New York, Pennsylvania, New Jersey, Texas, Florida, Colorado, Maryland, Oregon and Massachusetts. Customers adapted quickly and readily to ubiquitous ten-digit dialing. Unlike California's TSO proposal or a geographic split, no customers were forced to give back their numbers or endure the costs and burdens of number changes.

The FCC should deny the CPUC's petition and reaffirm the CPUC's responsibility under the FCC's existing NRO Orders to provide conventional area code relief when and where needed. VZW has had to make three applications for emergency codes in the 909 NPA during the past eighteen months to avoid running out of numbers. VZW has also been forced to justify its need for numbers based on its utilization in adjacent NPAs, which were not the subject of its request for numbers. Carriers should not have to resort to emergency requests in order to get numbers to serve customers, nor should they be denied numbers in a particular rate center because they have numbers in other rate centers outside customers'

local dialing scope. The ability to serve customers from certain rate centers, especially given local versus toll dialing patterns, is a competitive issue. The FCC has required that consumers not be denied their choice of technology or service provider due to a lack of numbering resources.<sup>48</sup>

To this end, the FCC delegated authority to requesting states to enable them to engage in selected number conservation initiatives, but steadfastly maintained the need for states to engage in timely area code relief. The FCC firmly stated its position:

The grants of authority herein are not intended to allow state commissions to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief. Although we are giving the state commissions tools that may help to prolong the lives of existing codes, the state commissions continue to bear the obligation of implementing area code relief when necessary, and we expect the state commissions to fulfill this obligation in a timely manner. Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources. For consumers to benefit from the competition envisioned by the 1996 Act, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible. If the state commissions do not fulfill these obligations in a timely manner, we may be compelled to reconsider the authority being delegated to the states herein.<sup>49</sup>

The CPUC has not acted consistent with its grant of delegated authority, delaying relief even after its own audit reports confirmed the need for relief.<sup>50</sup> Given the urgency of need for numbering relief in 310 and 909, the FCC should require NANPA to implement an overlay immediately. The public interest will be best served if the FCC denies the CPUC's

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<sup>48</sup> *In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Petitions for Delegated Authority to Implement Number Conservation Measures of Arizona, Colorado, Georgia, Indiana, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington*, Order, CC Docket Nos. 99-200 & 96-98, 15 FCC Rcd. 23,371 (2000) ("State Delegation Order"), at ¶ 11. *See Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574 (2000) ("NRO Order") at ¶ 7.

<sup>49</sup> *NRO Order* at ¶ 7.

<sup>50</sup> *See infra* footnote 43.

request for authority to implement TSOs and instead orders NANPA to implement all-services overlay immediately to relieve the 909 and 310 NPAs.

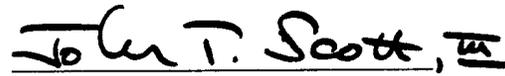
### III. CONCLUSION

For the reasons explained above, the Commission should deny the CPUC's request for authority to implement two TSOs in California and order NANPA to implement all-services overlays.

Respectfully submitted,

VERIZON WIRELESS

By:

Handwritten signature of John T. Scott, III in black ink.

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November 25, 2002

### Certificate of Service

I hereby certify that on this 25<sup>th</sup> day of November a copy of the foregoing “Opposition of Verizon Wireless” in CC Docket 99-200 was sent by e-mail to the following party:

Qualex International  
[qualexint@aol.com](mailto:qualexint@aol.com)

A handwritten signature in black ink that reads "Sarah E. Weisman". The signature is written in a cursive style and is underlined.

Sarah E. Weisman