

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

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of the California Public Utilities)	
Commission for Authority to Implement)	
Technology-Specific Overlay Area Codes)	

**SPRINT OPPOSITION TO THE CALIFORNIA
SPECIALIZED OVERLAY PETITION**

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Summary

Sprint addresses four points in its opposition to the CPUC Petition to implement discriminatory specialized overlays:

1. The Commission should expeditiously act to deny the CPUC Petition. According to the CPUC, relief for the 310 and 909 area codes is “greatly needed” because the area codes will exhaust “within one year.” Sprint joins in the CPUC request that the FCC act expeditiously on its Petition. Expedited treatment is necessary because there is little likelihood that the CPUC will adopt needed area code relief as long as its specialized overlay petition remains pending. In accordance with its delegated authority, the CPUC is obligated to implement area code relief in a timely manner. The CPUC should discharge this obligation by implementing a non-discriminatory relief plan. Expedited treatment is also appropriate because, as demonstrated below, the CPUC Petition does not satisfy the SO criteria that the Commission has established.

2. The CPUC proposal does not meet the requirements that the Commission has established, including:

- It has not been demonstrated that specialized overlays would be superior to all-services overlays;
- It has not been demonstrated that the benefits of its proposed specialized overlays would exceed their costs;
- No justification is proffered for the proposed “take back” of wireless numbers;
- The discriminatory dialing proposal would contravene the Act’s dialing parity requirement;
- The proposed specialized overlays are not transitional, as a practical matter; and
- The proposal also fails to meet the requirement that the existing NPAs not exhaust within one year.

3. The CPUC proposal would contravene Section 251(e) of the Act. Congress has directed the Commission in Section 251(e) to make telephone numbers available “on an equitable basis.” Prohibiting mobile carriers from obtaining numbers from an incumbent area code contravenes the statutory directive that numbers be made available on an equitable basis. The CPUC proposal shifts the burden of area code relief from all carriers and their customers to a select group of carriers and their customers – the very type of discrimination that Congress has prohibited in Section 251(e).

4. The CPUC proposal is unworkable and cannot be reconciled with LNP deployment. The CPUC proposal also rests on the assumption that regulators can segregate landline and wireless customers into different area codes. This assumption will not be valid once wireless LNP is implemented less than one year from now, because a wireless customer can obtain a LEC telephone number simply by subscribing to LEC service and then porting the number to his mobile handset.

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**SPRINT OPPOSITION TO THE CALIFORNIA
SPECIALIZED OVERLAY APPLICATION**

Sprint Corporation opposes the Petition filed by the California Public Utilities Commission (“CPUC”) seeking authority to implement two technology-specific overlay (“specialized overlay” or “SO”) area codes in California (the “Petition”).¹ The Petition fails to meet the criteria that the Commission has established for approval of a specialized overlay because:

1. There is no demonstration that a specialized overlay would be superior to an all-services overlay;
2. The required cost/benefit analysis is not included;
3. The proposal includes a discriminatory take-back provision despite the Commission’s ruling that discriminatory take-backs would “adversely affect competition;”
4. The proposal seeks to impose a permanent waiver of the ten-digit dialing requirement, in contravention of the Communications Act;
5. The proposed specialized overlays are not transitional, in accordance with the Commission’s requirements; and
6. The existing area codes are not eligible for specialized overlays because they are scheduled to exhaust within one year.

¹ See *Public Notice*, Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission for Authority to Implement Technology-Specific Overlays, CC Docket No. 99-200, DA 02-2845 (Oct. 24, 2002). See also California Public Utilities Commission, Petition for Authority to Implement Technology-Specific Overlay Area Codes and Request for Expedited Treatment, CC Docket Nos. 96-98 and 99-00 (Sept. 27, 2002)(“CPUC SO Petition”).

Sprint does join in the CPUC request that the Commission act expeditiously on the Petition because the two area codes that are the subject of the Petition face imminent exhaust.

I. THE COMMISSION SHOULD ACT EXPEDITIOUSLY ON THE CPUC PETITION AND THE CPUC SHOULD IMPLEMENT AREA CODE RELIEF

The CPUC asks the Commission to afford “expedited treatment” to its Petition as the two area codes involved in the request, the 310 and 909 Numbering Plan Areas (“NPAs”), are “nearing exhaust.”² Sprint agrees with the need for expedited decision because, as the CPUC recognizes, “[a]rea code relief is greatly needed in the 310 and 909 NPAs because they are forecasted to exhaust within one year.”³ Expedited treatment is necessary because there is little likelihood that the CPUC will adopt needed area code relief as long as its Petition remains pending. Expedited treatment is also appropriate because, as demonstrated below, the Petition does not satisfy the criteria that the Commission has established for approval of a specialized overlay.

The Commission has informed the CPUC that under “no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources.”⁴ Furthermore, under its delegated authority, the CPUC is required to fulfill its obligation to implement area code relief in a timely manner.⁵ Now is not the time to implement a discriminatory relief plan that would be subject to judicial challenge. The time for relief is now, and the CPUC should expeditiously adopt relief plans for the 310 and 909 NPAs using one of the proven non-discriminatory methods available to it.

² CPUC SO Petition at 1.

³ *Id.* at 4.

⁴ *California Delegation Order*, 14 FCC Rcd 17486, 17490 ¶ 9 (1999).

⁵ *Id.*

NANPA reports that as of October 1, 2002, only eight NXX codes remain available for assignment in the 310 NPA, which covers west Los Angeles.⁶ The CPUC acknowledges that the 310 NPA will exhaust “within one year,”⁷ although NANPA’s most current forecast is that 310 NPA will exhaust in the next six months.⁸ The situation in the 909 NPA is also dire (except that NANPA reports that there are 13 remaining NXX codes).⁹ The CPUC again acknowledges that the 909 NPA will exhaust “within one year,”¹⁰ although NANPA’s most current forecast is that 909 NPA will exhaust in the next six months.¹¹

Area code relief is needed even assuming the best of circumstances – namely, the 310 and 909 NPAs exhaust in one year and not sooner (*e.g.*, within six months). Customers in the affected NPAs deserve a four month transition (or permissive dialing) time to adjust to the relief plan and any changes in dialing requirements. Carriers need a minimum of four months to implement the relief plans adopted – meaning that carriers must begin implementing the relief plans no later than February 2003 (and preferably earlier). This leaves less than three months (late November 2002 through February 2003) for the development and adoption of relief plans for the 310 and 909 NPAs. There is barely enough time to implement area code relief in the 310 and

⁶ See www.nanpa.com – Central Office Codes/Download Assignment Records and NANPA Code Administration (November 18, 2002). There are additional NXX codes, *e.g.* 911, 555, that NANPA classifies as unavailable.

⁷ CPUC SO Petition at 4.

⁸ See NANPA, 2002 NRUF and NPA Exhaust Analysis (June 5, 2002). See also NANPA, Status of Active or Suspended NPA Relief Projects (Nov. 4, 2002).

⁹ See www.nanpa.com – Central Office Codes/Download Assignment Records and NANPA Code Administration (November 18, 2002). Again, some additional unassigned or undesignated NXX codes are classified as unavailable by NANPA.

¹⁰ CPUC SO Petition at 4.

¹¹ See NANPA, 2002 NPA Exhaust Analysis (Oct. 31, 2002). See also NANPA, Status of Active or Suspended NPA Relief Projects (Nov. 4, 2002).

909 NPAs; if the Commission does not expeditiously address the Petition, the likelihood of total exhaust becomes very real.

It is unlikely that the necessary all-services relief for the 310 and 909 NPAs will be adopted while the Petition remains pending, even though the CPUC acknowledges that NPA relief is “greatly needed in the 310 and 909 NPAs.”¹² The CPUC recognizes that the purpose of the Petition is to avoid implementing a geographic split.¹³ Thus, the longer the Commission takes to act on the Petition, it becomes more likely that the 310 and 909 NPAs will exhaust before relief plans can be implemented. Sprint therefore urges the Commission to give this matter its highest priority. The Petition should be denied and the CPUC should implement area code relief.

II. THE CPUC PROPOSAL DOES NOT MEET THE REQUIREMENTS ESTABLISHED IN THE *THIRD NRO ORDER*

A. There is No Demonstration That Specialized Overlays Would Be Superior to All-Services Overlays

The Commission established in its *Third NRO Order* the gatekeeping requirements that a state commission must satisfy in seeking authority to implement a specialized overlay. First, a state commission must demonstrate how “the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay.”¹⁴ The Petition makes no attempt to show how the optimization benefits of its proposed specialized overlays would be superior to an all-services overlay. This omission is understandable because a specialized overlay, like all other area code relief plans, does not improve the efficiency in the manner

¹² CPUC SO Petition at 4.

¹³ *Id.* at 14 (“We urge the FCC to act on this petition sooner rather than later, so that we can avoid having to split the 310 and 909 area codes.”).

¹⁴ *Third NRO Order*, 17 FCC Rcd 252, 288 ¶ 81 (2001), *appeal pending*, *Sprint v. FCC*, No. 02-1129 (filed April 15, 2002).

in which carriers are assigned numbers. When area code relief is necessary, the most effective solution is an all-services overlay because it provides numbering resources to all carriers.

As a starting point, a specialized overlay – like any other form of NPA relief – does not (and *cannot by definition*) constitute number conservation (*a.k.a.*, “optimization”). The purpose of number conservation is to improve the efficiency with which carriers use the numbers *already assigned to them* so as “to prolong the life of the North American Numbering Plan (NANP)”:

Because the estimated cost of expanding the NANP is enormous, and the time to effect such an expansion is estimated to be on the order of ten years, the need to extend the life of the current NANP through effective conservation and efficient utilization of numbering resources is apparent and immediate. * * * By maximizing efficient use of numbers within area codes, we reduce the need to introduce new area codes, which can help prevent premature exhaust of the existing NANP.¹⁵

Specialized overlays, the Commission has correctly noted, are simply “another form of area code relief.”¹⁶ The introduction of a new area code, including a specialized overlay, does not enable any carrier to use more efficiently the numbers assigned to it, and specialized overlays are not appropriately classified as a number conservation measure. Indeed, the purpose of number conservation is to avoid unnecessary NPA relief (so as to conserve the supply of unused and available NPA codes).

Specialized overlays are also inherently inefficient compared to traditional forms of area code relief, whether all-services overlays or geographic splits. This is because with traditional relief methods, nearly eight million new numbers become available to all carriers providing service in the geographic area covered by the new NPA, whereas with specialized overlays, these

¹⁵ *NRO NPRM*, 14 FCC Rcd 10322, 10324 ¶ 5, 10423 ¶ 241 (1999). See also *First NRO Order*, 15 FCC Rcd 7574, 7577 ¶ 1 (2000) (We must “ensure that the limited numbering resources of the NANP are used efficiently, to protect customers from the expense and inconvenience that result from the implementation of new area codes, some of which can be avoided if numbering resources are used more efficiently, and to forestall the enormous expense that would be incurred in expanding the NANP.”)

eight million new numbers would instead be available only to a subset of all carriers. Specialized overlays thus increase the probability that scarce numbers will be stranded, as the Commission has previously recognized:

[T]echnology-specific or service-specific overlays that cover the same geographic scope as pre-existing NPAs might decrease, rather than increase, the efficiency with which numbering resources are used. These circumscribed service-specific overlays would provide wireless carriers serving the area with many more NXX codes than they need, which would, at the same time, be unavailable to wireline carriers that need them.¹⁷

In this regard, the NANP Administrator has explained that technology-and service-specific overlays “will almost certainly lead to waste of valuable numbering resources,”¹⁸ and for this reason, it has “long opposed service-specific code assignments.”¹⁹

The Petition does not attempt to demonstrate that the proposed specialized overlays would provide superior number optimization benefits compared to all-services overlays. If anything, because of their inefficiency, specialized overlays have the potential to lead to “an acceleration of NANP exhaust,”²⁰ thereby undermining the Commission’s entire optimization effort.

B. The Petition Does Not Include a Cost-Benefits Analysis

The Commission has further ruled that a state commission seeking authority to implement a specialized overlay must also “demonstrate that the benefits will outweigh the costs of implementing the SO.”²¹ The Petition does not include any cost-benefits analysis.

¹⁶ *Third NRO Order*, 17 FCC Rcd at 288 ¶ 80.

¹⁷ *NRO NPRM*, 14 FCC Rcd 10322, 10432 ¶ 259 (1999).

¹⁸ Letter from Ronald R. Conners, NANPA, Director, to Geraldine A. Matisse, Chief, Network Services Division (March 21, 1996).

¹⁹ *Ameritech Numbering Order*, 10 FCC Rcd 4596, 4609 ¶ 31 (1995) (quoting NANPA).

²⁰ *Third NRO Order*, 17 FCC Rcd at 288 ¶ 80.

²¹ *Third NRO Order*, 17 FCC Rcd at 288 ¶ 80.

Many of the costs of an all-services overlay (*e.g.*, network translations, customer education) would also be incurred with a specialized overlay. However, the CPUC proposal has significant costs that would not be incurred with an all-services overlay – namely, the costs to wireless customers and carriers of undergoing telephone number changes. Under the proposal, wireless customers in the 310 and 909 NPAs will be required to change their telephone numbers. When a Sprint wireless customer changes their telephone number, they must call into customer service to have the new telephone number programmed into the handset. With an all-services overlay, in contrast, no existing customer is required to change their telephone number. The Petition contains no explanation why the costs of area code relief should not be borne equally by all users of telephone numbers (both wireless and wireline customers).

In addition, while an all-services overlay is technology/service neutral, a specialized overlay would distort competition between LECs and CMRS providers. As the Commission has recognized:

[P]lacing services and technologies in SOs could have an adverse impact on the affected customers and service providers. For example, consumers may be dissuaded from signing up for wireless service if they do not have access to numbers in the “incumbent” area code.²²

In another example of the disparate impact upon wireless consumers, the CPUC proposal would require that mobile customers, but not LEC customers, change their numbers. Mobile customers would be required to dial 10 or 11 digits to call LEC customers and would likely end up dialing 10 or 11 digits far more often than LEC customers.²³ LEC customers would continue dialing

²² *Id.*

²³ CMRS carriers generally design their networks so mobile customers need only dial 10 digits to make a call to another NPA. LECs ordinarily design their networks to require 11 digits (1+10) for toll calls and 10 digits for local calls. In California, however, ILECs require their customers to dial 11 digits for all calls to another NPA, including local calls. To simplify the analysis in the text, Sprint hereinafter references 11 digits even though in certain circumstances customers need only dial 10 digits.

seven digits to reach their neighbors at their landline phone, but would be required to dial 11 digits to reach the same neighbors at their mobile handset. These differences are significant and would distort consumer decisions in whether to purchase or use mobile services.

The costs of specialized overlays impose significant burdens – both in terms of competitive parity and impacts upon wireless customers. The CPUC has provided no analysis that its proposal provides benefits that outweigh those costs. This conclusion cannot be reached where the underlying NPA is precipitously close to total exhaust, because in that circumstance, an all-services overlay is less costly than a specialized overlay – in terms of both customer burden and competitive disparity.

C. The Proposed “Take-Back” of Wireless Numbers is Not Justified

The Commission has recognized that the take-back of telephone numbers imposes “significant cost and inconvenience to those customers and their service providers that are required to relinquish their existing numbers and use numbering resources in the SO NPA.”²⁴ It has further recognized that number take-backs, when applied to only a portion of the industry, have anticompetitive effects:

In a technology-specific overlay context, “take-backs” would exclusively affect customers of the particular technologies for which the overlay is established. We agree with commenters that these costs would be significant, would impose a disparate impact on customers of the services affected by the “take-back,” and would thus adversely affect competition.²⁵

The Commission has therefore declared that it does “not favor take-backs as a matter of policy” and that it would “likely oppose technology-specific overlays that would include take-backs of

²⁴ *Third NRO Order*, 17 FCC Rcd at 291 ¶ 88,

²⁵ *Second NRO Order*, 16 FCC Rcd 306, 363 ¶ 134 (2000).

numbers that are geographically sensitive.”²⁶ The telephone numbers utilized by mobile customers are geographically sensitive, as Sprint has previously explained to the Commission.²⁷

Under the CPUC proposal, mobile customers – but not LEC customers – would be required to change their telephone numbers by having to relinquish their existing 310 or 909 telephone numbers and receiving new telephone numbers with the new area codes.²⁸ The CPUC asserts that its proposal would not constitute a take-back because mobile customers would retain their existing seven-digit telephone number:

The CPUC has understood a “take-back” to mean that the customer holding the number taken back must undergo a seven-digit number change. . . . So far as the CPUC is aware, the FCC has never deemed an area code change necessitated by an NPA split to constitute a “take-back” of numbers.”²⁹

The CPUC’s position is not supported by prior Commission decisions. The Commission has explicitly recognized that a take-back occurs even when a customer is required to change only his area code:

[W]e find that state commissions may “take-back” or “grandfather” Type 2 wireless numbers when an area code undergoes a geographic split.³⁰

Importantly, the CPUC proposal would force an involuntary telephone number change upon wireless customers and the impact on customers is the same, regardless of whether the customer retains the last seven digits of his or her number. The customer must still notify friends, family

²⁶ *Third NRO Order*, 17 FCC Rcd at 292 ¶ 90.

²⁷ *See, e.g.*, Sprint Opposition, Docket No. 99-200, at 10-12 (Feb. 26, 2002).

²⁸ The CPUC acknowledges that it would not require existing facsimile and modem customers, which are more likely to be wireline customers, to change their telephone numbers. *See* CPUC SO Petition at 2.

²⁹ *Id.* at 7-8.

³⁰ *Third Local Competition Reconsideration Order*, 14 FCC Rcd 17964, 17968 ¶ 3 (1999). *See also Second Local Competition Order*, 11 FCC Rcd 19392, 19528 ¶ 308 (1996)(“We do not take action here to prevent the Texas Commission from taking back some wireless numbers in the course of introducing a geographic split plan.”). There is, therefore, no basis to the CPUC argument that state commissions cannot require wireless customers to change their area code when implementing a geographic split relief plan. *See* CPUC SO Petition at 8.

and business associates of the new telephone number because callers would be required to change their dialing patterns in order to reach the wireless customer.

Additionally, wireless customers bear a special burden in that their handsets must be re-programmed with the new number, a burden not faced by LEC customers. For Sprint's wireless customers, the customer must call in to the carrier's customer service center so the handset can be reprogrammed over-the-air. The number change is not automatic – the customer is required to take some affirmative action to implement it. It is for these reasons that the FCC has recognized that in the context of wireless specialized overlays, the costs of take-backs would be particularly significant.³¹

The number take backs associated with implementation of geographic split relief plans is an indispensable component of this form of NPA relief and constitutes the major downside of this relief method. But as the Commission has recognized, with a split, the burden of area code relief is shared by all carriers and customers equally: "Requiring approximately half of the wireless customers and wireline customers to change telephone numbers in a geographic split is an equitable distribution of burdens."³² Here, the CPUC proposes that mobile carriers and customers alone bear the entire cost and burden of relief – a facially discriminatory proposition.

D. The Discriminatory Dialing Proposal Contravenes the Act's Dialing Parity Requirement

A permanent waiver of the ten-digit dialing requirement would contravene the dialing parity requirement contained in the Communications Act. The CPUC proposal would create ongoing discrimination, in the form of disparate dialing arrangements, which would continue for the indefinite future. While the Commission has under certain circumstances granted temporary

³¹ See *Third NRO Order*, 17 FCC Rcd at 291 ¶ 88.

³² *Second Local Competition Order*, 11 FCC Rcd 19528 ¶ 308.

waivers of the ten-digit dialing requirement,³³ it has consistently denied permanent waiver requests. Sprint submits that the Commission cannot grant the relief the CPUC seeks as a matter of law.

Section 251(b)(3) of the Communications Act imposes on all LECs the “duty to provide dialing parity to competing providers of telephone exchange service.”³⁴ Commission rules implementing this statute provide that a LEC “*shall* permit telephone exchange service customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer’s or the called party’s telecommunications service provider.”³⁵ The Commission has expressly ruled that a LEC’s obligation to provide dialing parity includes the obligation to provide parity to CMRS providers:

We reject USTA’s argument that the section 251(b)(3) dialing parity requirements do not include an obligation to provide dialing parity to CMRS providers. To the extent that a CMRS provider offers telephone exchange service, such a provider is entitled to receive the benefits of local dialing parity.³⁶

Dialing parity currently exists in California. If a person in the 310 NPA calls a neighbor, the caller dials seven digits whether he calls the neighbor at his landline telephone or at his mobile handset. Under the CPUC’s proposal, this same caller would continue to dial seven digits if he calls his neighbor at his landline telephone. However, a call to the neighbor’s mobile handset would instead require the dialing of 11 digits. The arrangement the CPUC proposes does not constitute dialing parity under Section 251(b)(3) of the Communications Act.

³³ In granting this temporary relief, however, the Commission does not appear to have considered the requirements of the dialing parity statute, 47 U.S.C. § 251(b)(3).

³⁴ 47 U.S.C. § 251(b)(3).

³⁵ 47 C.F.R. § 51.207 (emphasis added).

³⁶ *Second Local Competition Order*, 11 FCC Rcd 19392, 19429 ¶ 68 (1996).

LECs are obligated under federal statute to provide dialing parity to wireless carriers. The CPUC therefore asks the Commission to delegate to it the "authority to implement a permanent seven-digit dialing requirements within area codes in the geographic areas covered by the overlays."³⁷ Put another way, the CPUC seeks Commission permission to require LECs to contravene the explicit requirements of the Communications Act.

The Commission possesses the authority to waive application of its rules in specified circumstances, but it does not possess the authority to waive statutory requirements, including Section 251(b)(3). In summary, the Commission cannot grant as a matter of law the CPUC's proposal to implement a discriminatory dialing plan.

E. The Proposed Specialized Overlays Are Not Transitional as a Practical Matter

The Commission has stated that it would more favorably entertain a specialized overlay proposal that is temporary and would convert into an all-services overlay, as opposed to a more permanent specialized overlay.³⁸ In this regard, the CPUC would give the impression that its proposed SOs would transition into all-services overlays in two years. Sprint must respectfully disagree.

The CPUC Petition reflects that the only milestone that occurs in two years is that LECs would become eligible to take numbers from the SO.³⁹ As a practical matter, however, no LEC would volunteer to take numbers from an SO, given that SO numbers would generally require their customers to dial 11 rather than seven digits.

³⁷ CPUC SO Petition at 9,

³⁸ See *Third NRO Order*, 17 FCC Rcd at 289 ¶ 84.

³⁹ See CPUC SO Petition at 7.

The CPUC states that under its proposal, the life of the 310 NPA would be extended “at a minimum, for a period of five years.”⁴⁰ Thus, the CPUC would have the Commission adopt an ongoing discriminatory arrangement that lasts for five years “at a minimum.” Sprint submits that a specialized overlay that would be in existence for a minimum of five years is not a “transitional” overlay as the Commission contemplated in its *Third NRO Order*.

F. The Existing NPAs Will Exhaust Within One Year

The Commission has determined that specialized overlays should not be implemented when the underlying NPA has a projected life span of less than one year.⁴¹ The Commission has correctly recognized that if the need for relief is imminent, it is better to implement full relief rather than pursuing a bifurcated process that will be more confusing and harmful to consumers.

The Petition admits that both the 310 and 909 NPAs will exhaust in less than one year.⁴² While the CPUC indicates that the proposed specialized overlays would extend the lives of these NPAs, this extension will only occur if wireless customers are forced to relinquish their telephone numbers. The Commission’s standard, however, is a bright-line rule: if the NPAs will exhaust in less than one year, a specialized overlay is not appropriate. The Commission should not permit take-backs to extend the life of the NPAs to avoid application of this criterion.

III. THE CPUC PROPOSAL WOULD CONTRAVENE SECTION 251(E) OF THE ACT AND WOULD UNREASONABLY DISCRIMINATE AGAINST MOBILE CARRIERS AND THEIR CUSTOMERS

Congress has directed the Commission in Section 251(e) of the Communications Act to make telephone numbers available “on an equitable basis.”⁴³ Prohibiting mobile carriers from

⁴⁰ *Id.* at 5.

⁴¹ See *Third NRO Order*, 17 FCC Rcd at 285 ¶ 85.

⁴² See CPUC SO Petition at 4.

⁴³ 47 U.S.C. § 251(e)(1) (“The Commission shall . . . make numbers available on an equitable basis.”). See also 47 C.F.R. § 52(a)(2) and (3) (“[T]he administration of telecommunications numbers shall . . . (2)

obtaining numbers from an incumbent area code contravenes the statutory directive that numbers be made available on an equitable basis. For the same reasons that it cannot grant a waiver of the dialing parity statute, the Commission cannot ignore or waive the statutory requirement that numbers be made available “on an equitable basis.”

The CPUC recites three reasons in support of its discriminatory and exclusionary proposal. Since Congress did not empower the Commission to make exceptions to the statutory command that telephone numbers be made available “on an equitable basis,” the straightforward response to the proffered reasons is that they are irrelevant. However, the reasons themselves do not provide support for the proposed specialized overlays.

The Petition first asserts that its proposed specialized overlays would “optimize telephone number usage,” although the Petition never explains how specialized overlays would optimize number usage.⁴⁴ In fact, a specialized overlay does not promote efficient number usage, and this proposal is no exception. Whether a carrier obtains numbers from an incumbent NPA or a new specialized overlay does not change in any way the efficiency with which the carrier utilizes the numbers. Similarly, moving mobile customers from an incumbent NPA to a new specialized overlay does not improve the efficiency with which a wireless carrier utilizes the numbers. Permitting LEC customers to dial only seven digits to reach another LEC customer but requiring them to dial 11 digits to reach a wireless customer has nothing to do with the efficiency with which carriers use their assigned numbers. There is, therefore, no basis to the assertion that the

Not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and (3) Not unduly favor one telecommunications technology over another.”); *id.* at § 52.9(b)(“If the Commission delegates any telecommunications numbering administration functions to any State or other entity pursuant to 47 U.S.C. 251(e)(1), such State or entity shall perform these functions in a manner consistent with this part.”).

⁴⁴ CPUC SO Petition at 5. *See also id.* at 13 (“The purpose of establishing the SOs in California would be . . . to use new numbers as efficiently as possible.”).

proposed specialized overlays would improve the efficiency with which carriers will utilize their assigned numbers.

The second justification for proposal is that the specialized overlays “will bring immediate area code relief to the 310 and 909 NPAs by increasing the available number of prefixes in those areas codes.”⁴⁵ This benefit, however, would be realized by implementation of *any* form of area code relief. This argument does not support the proposition that a discriminatory relief method should be used instead of a nondiscriminatory relief method. Besides, the Commission has required states proposing specialized overlays to demonstrate that they would be *superior* to an all-services overlay – a demonstration that is not made in the Petition.

The third and final justification for its discriminatory proposal is to “prolong the lives of the underlying NPAs.”⁴⁶ However, there is no explanation why it is appropriate to protect wire-line customers at the expense of mobile customers. For example, the CPUC never explains why the burden of NPA relief should be borne almost entirely by mobile customers rather than having the burden shared equitably by all users of telephone numbers within the affected area codes. There is also no explanation why mobile customers should be required to dial 11 digits far more often than LEC customers would be required to dial 11 digits, or why LEC customers should be able to continue to dial seven digits in making a local call to another LEC customer but have to dial 11 digits in making a local call to a mobile customer.

The Communications Act is unequivocal in specifying that telephone numbers be made available “on an equitable basis.” But even if the Commission believes that this statutory directive permits specialized overlays, the CPUC has not provided legitimate reasons for its proposal. Discrimination against wireless customers in favor of LEC customers is not a legitimate objec-

⁴⁵ CPUC SO Petition at 12.

tive – and is incompatible with the Commission’s expectation that wireless services compete on equal footing with wireline services. The CPUC proposal does nothing more than shift the burden of area code relief from all carriers and their customers to a select group of carriers and their customers – the very type of discrimination that Congress has prohibited in Section 251(e) of the Act.

IV. THE CPUC PROPOSAL IS UNWORKABLE AND CANNOT BE RECONCILED WITH LNP DEPLOYMENT

The CPUC proposes to segregate most mobile customers from most landline customers.⁴⁷

While LEC customers would continue to obtain numbers in the 310 and 909 NPAs, mobile customers that reside or work in these two areas would instead obtain numbers from new specialized overlays. This segregation proposal is not workable, even if it could be justified, because CMRS carriers are required to implement local number portability (“LNP”) in less than one year – which is likely to occur before the proposed specialized overlays could be implemented.⁴⁸

The Commission imposed an LNP requirement on CMRS carriers to “enhance competition . . . between the wireless and wireline industries.”⁴⁹ With LNP, however, it becomes impossible for regulators to segregate wireless and landline customers into different area codes because LNP enables consumers to “transfer their wireline number to a wireless service provider” and

⁴⁶ CPUC SO Petition at 13.

⁴⁷ The CPUC proposes two exceptions to its CMRS-LEC segregation proposal. First, mobile customers who happen to have a number in a NXX that is being pooled would be relieved of the burden of having to change their number. *See* CPUC SO Petition at 14. This exception ensures that any wireline customer that has been assigned a telephone number from a wireless donated block will not be subject to a telephone number change. Second, existing paging customers would also be exempt from having to change their numbers. *See id.* at 3. The CPUC never explains how the latter proposal is consistent with the regulatory parity directive of the Omnibus Budget Reconciliation Act of 1993.

⁴⁸ *See LNP Forbearance Order*, WT Docket No. 01-184, FCC 02-215 (July 26, 2002).

⁴⁹ *Id.* at ¶ 34.

vice versa.⁵⁰ Thus, even if there was a legitimate reason for discriminating between mobile and landline customers (and there is not), any such attempt is doomed to failure once wireless LNP becomes available.

V. CONCLUSION

For the foregoing reasons, Sprint respectfully requests that the Commission expeditiously deny the CPUC Petition.

Respectfully submitted,

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⁵⁰ *Id.* at ¶ 18.