Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 99-200
Numbering Resource Optimization	)	
	)	CC Docket No. 96-98
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	

COMMENTS OF AT&T WIRELESS SERVICES, INC. ON PETITION OF CALIFORNIA PUBLIC UTILITIES COMMISSION FOR AUTHORITY TO IMPLEMENT TECHNOLOGY-SPECIFIC OVERLAY CODES AND REQUEST FOR EXPEDITED TREATMENT

Pursuant to Public Notice DA 02-2845,[1] AT&T Wireless Services, Inc. ("AWS") submits these comments on the Petition of the California Public Utilities Commission ("CPUC") for authority to implement technology-specific overlay ("TSO") area codes in the 310 and 909 numbering plan areas ("NPAs") in California. For the reasons discussed below, AWS opposes the CPUC petition and urges the Commission to issue a decision denying the petition and requiring the CPUC to implement either an area code split or all-services overlay in these NPAs immediately.[2]

AWS also urges the Commission to expedite its ruling on the petition. The numbering situation in the 310 and 909 NPAs is dire, all the numbers available for assignment in both codes are expected to exhaust in Second Quarter 2003. Without action on the petition, it is unlikely

[1] Public Notice, *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission for Authority to Implement Technology-Specific Overlays,* DA 02-2845, CC Docket No. 99-200 (Oct. 24, 2002) (comments due Nov. 25, 2002; replies due Dec. 10, 2002).

[2] The 310 NPA already has a back-up area code relief plan to implement an all-services overlay. In CPUC Decision (D.) 99-09-067, the CPUC halted implementation of this area code relief plan. Recently on June 14, 2002, the North American Numbering Plan Administrator (NANPA) filed a petition for relief in the 909 NPA, seeking either an

that the CPUC will implement the area code relief that is desperately needed in these areas. Therefore, it is critical that the Commission rule as expeditiously as possible.

I. INTRODUCTION AND SUMMARY

While the Commission has traditionally prohibited TSOs or service overlays ("SOs") implementing a new area code segregating certain technologies or services, as "unreasonably discriminatory" and "unduly inhibit[ing] competition,"[3] the Commission recently decided to reconsider this policy and consider state requests to implement TSOs on a case-by-case basis. However, because of the Commission's remaining concerns regarding the discriminatory impacts of TSOs, the Commission required states to demonstrate that the benefits of its proposed TSO would be "superior to implementation of an all-services overlay"[4] and more generally, that the TSO's benefits outweigh the costs.[5] The Commission also provided the states with guidance about what type of TSO proposals would likely merit its approval.[6]

On September 27, 2002, the CPUC filed a petition asking the Commission for authority to adopt two TSOs in Southern California: one to overlay the 310/323/213/562 area codes and one to overlay the 909/714/949 area codes. Specifically, the CPUC requests authority: (i) to segregate wireless numbers and numbers for certain "transparent" or "non-geographic" telecommunications services in the TSOs; (ii) to take back (change the area codes of) numbers

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overlay or a geographic split.

[3] *Numbering Resource Optimization, Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Telephone Portability,* FCC 01-362, Third Report and Order and Second Order on Reconsideration in CC Docket No.96-98 and CC Docket No.99-200 (rel. Dec. 28, 2001) ("*Third NRO Order*") at para. 68.

[4] *Third NRO Order* at para. 81.

[5] The Commission reiterated in the *Third NRO Order* that area code relief should not be unjustly and unreasonably discriminatory or place burdens on certain technologies or services, unless the benefits outweigh the potential discriminatory effects. *Third NRO Order* at paras. 71-73.

[6] *Third NRO Order* at para. 73. For example, the Commission indicated that it would likely disfavor or oppose TSOs that include take-backs or that proposed a permanent waiver of the 10-digit dialing requirement. See *Third NRO Order* at paras. 90, 92.

of existing wireless customers (excluding paging customers) in the underlying 310 and 909 NPAs; and (iii) to waive permanently 10-digit dialing. The TSOs would transition to an all-services overlay at the end of two years.

The CPUC's proposal is directly at odds with a number of the Commission's guidelines, and includes the very discriminatory and anti-competitive elements that the Commission has stated are disfavored: take-backs of wireless numbers; a request for permanent waiver of 10-digit dialing; and implementation of TSOs within NPAs that are soon to exhaust.[7] Moreover, the petition fails to demonstrate that the benefits of its proposed TSOs outweigh the significant costs and burdens on wireless customers and carriers or that its proposed TSOs would be superior to an all-services overlay.

As discussed below, the costs of the proposed TSOs are considerable. Wireless customers would bear the burden and costs of having to change their phone numbers, having to get their phones re-programmed, notifying all callers of their new numbers, and having to dial 10 digits to make local calls. Wireless carriers would be placed at a competitive disadvantage, because they would be unable to offer numbers to customers in the underlying NPAs to the same extent as wireline carriers. Further, it will be difficult for the Commission to advance its goal of promoting inter-modal competition if wireless carriers are forced to return their numbers and are relegated to their own code.

These costs and burdens would far outweigh any marginal benefits of extending the lives of the 310 and 909 codes for a short period of time so that wireline customers can continue to get numbers from these NPAs for *new* phone activations. Moreover, given wireless participation in pooling and impending porting capability, the TSOs do not make sense from a technical and

[7] *See Third NRO Order* at paras. 85-92.

practical standpoint. AWS urges the Commission to reject the CPUC petition and to order the CPUC to implement traditional area code relief (*e.g.*, an area code split or an all-services overlay) in these NPAs.

II. THE COSTS AND BURDENS OF THE PROPOSED TSOS (PARTICULARLY THE TAKE-BACKS OF NUMBERS) ARE SIGNIFICANT

In lifting its ban on TSOs, the Commission noted that it still had concerns that "placing specific services and technologies in SOs could have an adverse impact on the affected customers and service providers."[8] Further, the Commission recognized that take backs "result in significant cost and inconvenience to those customers and their service providers."[9] The Commission acknowledges that these costs theoretically could be outweighed by certain benefits, but it places the burden to establish this squarely on the petitioning state commission. The CPUC's petition, however, fails even to acknowledge these costs, much less demonstrate that the benefits of its proposal outweigh the costs. Moreover, as a practical matter, AWS questions whether the TSOs proposed by the CPUC could even be implemented in the short period of time needed to prevent exhaust of the NPAs.

A. The CPUC Proposal to Take Back Wireless Numbers Imposes Tremendous Costs on Wireless Consumers

The Commission generally disfavors take-backs, and requires any state commission requesting authority to include take-backs in the SO to provide a "strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of the take-backs."[10] The Commission provides some guidance about how a state might make this showing. For example, the Commission suggests that a state could show that: (1)

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[8] *Third NRO Order* at para. 71.

[9] *Third NRO Order* at para. 88.

[10] *Third NRO Order* at para. 90.

consumers – particularly those that would be required to relinquish their numbers – "support such a measure," (2) the state will provide incentives for providers and current customers to give up their numbers, and (3) the state will use a phased-in approach to "help ease the cost burden on customers and service providers."[11] Because the CPUC petition fails to make any of these showings, there is no basis for permitting take-backs.

It is indisputable that telephone number changes impose significant costs and burdens on all customers and carriers; however, as the Commission itself has recognized, such changes are particularly burdensome for wireless customers.[12] Wireless customers may have to have their handsets re-programmed with the new number. If the number is not successfully re-programmed in the handset, the wireless customer is no longer able to receive calls. Like any customer experiencing a number change, wireless customers would also have to notify friends, family, and business associations of their new numbers and may incur costs to change their stationery and business cards. However, the burden of notifying callers of the number change is greater for wireless customers in part, because there are currently no printed directories or directory assistance for wireless numbers and wireless numbers do not have the same physical associations with a code. In addition, the level of public awareness associated with a TSO is likely to be significantly lower than with a geographic split where there is substantial public education and

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[11] *See Third NRO Order* at para. 90.

[12] *Third NRO Order* at para. 88; *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois; Petition for Declaratory Ruling Regarding Area Code Relief Plan for Area Codes 508 and 617, filed by the Massachusetts Department of Public Utilities; New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii),* FCC 99-243, CC Docket No. 96-98; CC Docket No. 95-185; NSD File No. 96-8; CC Docket No. 92-237; IAD File No. 94-102; NSD-L-96-15; NSD File No. L-98-03, Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order (Sept. 13, 1999) ("*Third Local Competition Order*") at para. 68.

the entire community of phone users, wireless and wireline, is aware of, and shares in, the number change experience.

Wireless number take-backs are not only disproportionately burdensome and costly, but are also anti-competitive and discriminatory. The Commission recognized the growing importance of wireless competition to wireline services in its latest CMRS competition report and relied on that growing competition as a basis for its recent decision reaffirming wireless carriers' need to be local number portability ("LNP") capable.[13] Chairman Powell moreover has repeatedly emphasized the importance of promoting inter-modal and intra-modal competition in the telecommunications market (especially for residential consumers).[14] It is unlikely, however, that wireless and inter-modal competition could develop in such an environment in which wireless customers and carriers alone are forced to relinquish and change their numbers.

Rather than addressing these costs and burdens, the CPUC first argues that its proposal to have wireless customers change their numbers is not really a take-back, but is more akin to an area code split.[15] The CPUC argues further that the Commission never meant to equate take-backs with an area-code change.[16] However, such arguments are baseless. The Commission clearly has characterized area code changes for wireless carriers as "take-backs". In fact, in its *Third Report and Order* in the *Local Competition* proceeding the Commission used the term

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[13] *Matter of Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, FCC 02-215, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order (2002) ("*Verizon LNP Forbearance Order"*) at paras. 17-18; *Implementation of section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 02-179, Seventh Report (July 3, 2002) ("*Seventh CMRS Competition Report*"), at 34.

[14] *Digital Broadband Migration Part II,* Press Conference of Chairman Michael K. Powell, FCC (Oct. 23, 2001) (noting that a significant portion of competition for residential consumers will come from platforms such as wireless and cable systems).

[15] CPUC petition at 8.

[16] *Id.*

"wireless number take-back" to describe the number change wireless customers would experience in connection with a geographic split, which indisputably requires only an area code change. [17] Moreover, "take-backs" that the Commission has considered (and rejected) in other TSO contexts all appear to have involved an area code change rather than a 10-digit number change.[18]

Although the *Third NRO Order* suggests possible ways for a state to overcome the Commission's effective presumption against wireless take-backs, the CPUC has failed to make these showings. Specifically, the CPUC has not justified why the public interest would be served by taking back the numbers only of one segment (wireless carriers) and not of any other segment of the telecommunications industry.[19] The CPUC has also failed to conduct the necessary cost-benefit analysis, much less provide <u>any</u> type of evidence suggested by the Commission, including any showing that wireless consumers support this measure, any indication that it will provide incentives to wireless customers to give up their numbers in the 310 and 909 NPAs, or any indication that it would adopt a phased-in approach to ease the burdens.[20]

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[17] *See Third Local Competition Order* at para. 53.

[18] *See Proposed 708 Relief Plan and 630 Numbering Plan Are Code by Ameritech-Illinois*, FCC 95-19, IAD File No. 94-102, Declaratory Ruling and Order (1995) ("Ameritech Order") at paras. 26-27. Ameritech proposed to move cellular and paging carriers from their current 708 codes to an existing 312 code, and further eventually to assign all wireless customers new numbers from a new overlay area code (630).

[19] Nor does the CPUC explain or provide any rationale for why a take-back of numbers from cellular, PCS, and SMR customers, but not from paging customers, is justified.

[20] The CPUC implies that it would be fair to require wireless customers to bear the burden of the area code changes since the CPUC has previously permitted the grandfathering of wireless numbers in connection with geographic splits. CPUC Petition at 8, n. 11. As a general matter, the fact that the CPUC gave wireless carriers the *option* of retaining their numbers would not justify the *forced* take back of numbers proposed by the Commission. However, forced take backs are particularly not justified in the 310 and 909 NPAs where only a de minimus number of wireless NXXs were grandfathered. Specifically it appears that no non-paging wireless NXXs were grandfathered in the 310 NPA and in the 909 NPA. *See California Codes in Rate Centers Not Consistent with NPA,* NANPA schedule (Aug. 16, 2002).

B. TSOs Are Discriminatory and Anti-Competitive

With little rationale or justification, the CPUC proposes to segregate wireless carriers and customers into the SO code and prevent them from obtaining numbers from the pool in the underlying code. This proposal – like the take-backs – is not only unfair and discriminatory, but it places wireless carriers at a competitive disadvantage to their wireline counterparts.

It is unfair to segregate wireless customers into a separate overlay code. It is also unfair and unreasonable to require wireless customers and wireless carriers to bear the sole cost and burden of area code relief in these areas. The CPUC has not alleged that wireless carriers have themselves caused the need for area code relief – nor could the CPUC make such allegation. In fact only approximately a quarter of the NXXs in the 310 and 909 NPAs are assigned/allocated to wireless carriers/customers. Moreover, there is no reason to believe that wireless customers are somehow less entitled to numbers in the underlying code or less interested in retaining their numbers than other customers. To the contrary, recent data indicates that a growing number of wireless customers view their wireless phones as their primary phones.[21]

The TSOs are not only unfair, but will have significant anti-competitive effects. As the Commission has recognized, a TSO may dissuade certain consumers from signing up for wireless services if they do not have access to numbers in the underlying desirable codes.[22] Thus a TSO makes it more difficult for wireless carriers to compete in today's highly competitive telecommunications market, particularly against wireline carriers who will continue to have access to the more desirable numbers. As discussed above, given that the Commission is placing

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[21] *Verizon LNP Forbearance Order*, at para. 17.

[22] *Third NRO Order* at para.71.

increasing reliance on inter-modal competition,[23] it should be loathe to place wireless carriers at a competitive disadvantage to wireline carriers.

III. THE CPUC DOES NOT DEMONSTRATE THAT THE COSTS AND BURDENS OF THE TSOS ARE OUTWEIGHED BY THE BENEFITS

The Commission acknowledged that some justifications for a temporary SO may be the "benefits of making more numbering resources available through SOs," and the preservation of the geographic identity of the underlying NPAs.[24] The Commission also held that "to optimize their value, SOs should not be implemented when the *underlying NPA has a projected life span of less than one year*."[25] The CPUC's proposal, however, would be implemented in NPAs that are set to exhaust within a year and would provide marginal benefits that would not outweigh its considerably discriminatory, unreasonable, and anti-competitive effects.[26]

The 310 NPA and 909 NPAs are scheduled to exhaust by the Second Quarter of 2003.[27] Thus, the CPUC's proposal is blatantly inconsistent with the Commission's requirement as to the timing of such TSOs and will ensure that any benefits of the TSOs are short-lived. The only marginal benefit that would accrue from the CPUC's proposed TSOs (as compared to an all-services overlay) is that wireline customers in the 310 and 909 NPAs would be able to receive numbers in the underlying 310 and 909 NPAs for *new* customer/service activations.[28] However,

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[23] *See Verizon LNP Forbearance Order* at paras. 17-18; *Digital Broadband Migration Part II,* Press Conference of Chairman Michael K. Powell, FCC (Oct. 23, 2001); *see also Broadband Migration III: New Directions in Wireless Policy*, Chairman Powell's Remarks at the Silicon Flatirons Telecommunications Program University of Colorado at Boulder (Oct. 30, 2002) (emphasizing that consumers are more frequently replacing their wireline phones with mobile phones).

[24] *Third NRO Order* at para. 72.

[25] *Third NRO Order* at para. 85.

[26] *See Third NRO Order* at para. 71-74.

[27] *See* NANPA 2002 NPA Exhaust Analysis, Changes as of October 31, 2002, at www.nanpa.com.

[28] It bears emphasis that the CPUC proposes take-backs not in order to keep wireline customers from having to change their existing telephone numbers, but so that when a wireline customer seeks to activate a new phone number, the wireline customer will be able to obtain that number from the old underlying code.

because the remaining supply of numbers in these NPAs is so small, it likely will not meet wireline carriers' numbering needs for very long.[29]

Thus the only way that the CPUC can get any benefit from the TSOs is by taking back wireless numbers. As an initial matter there is no way that the 310 and 909 wireless numbers could be returned by the Second Quarter 2003.[30] As a result, it is highly likely that for some period of time, the 310 and 909 NPAs will be completely exhausted – to the detriment of the very wireline customers the CPUC is trying to help.

Moreover, even once the take back process is completed, the resulting benefits will be of limited duration. Although the CPUC estimates that the TSOs will extend the lives of the 310 and 909 NPAs by five years, the CPUC's projections appear overly optimistic. For example, the projections do not appear to incorporate or consider the fact that within two years the TSOs would sunset and wireless carriers could again request numbers in the underlying NPAs.[31] Accordingly, AWS believes that the amount of time that the lives of the NPAs would be extended would be significantly less than the five years projected by the CPUC.

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[29] In fact, it seems likely that the remaining number supply will likely be exhausted before the TSOs could even be approved and implemented. In this regard it would be difficult for the FCC to issue a decision approving the TSO and for the industry to implement the TSO (even without take backs) before the projected exhaust date of Second Quarter 2003.

[30] In the only TSO implemented to date, the New York PSC gave the wireless carriers more than 6 *years* to take back their customers' numbers. *See Third NRO Order* at para. 75. Even with geographic splits, states that have not grandfathered wireless numbers have generally provided wireless carriers an extended period of time to their return numbers. For example, in Michigan and Alabama, wireless carriers were allowed a permissive dialing period of one year at the end of which time they would return their NXXs. *See* Comments of Cellular Carriers Association of California on Proposed Modification of Wireless Grandfathering Policy**,** CPUC R.95-04-043, I.95-04-044 (filed June 17, 2002) at 8.

[31] In its attachment to its petition, the CPUC outlines the projected demand for numbers from wireline carriers for the 310 and 909 NPAs and the projected demand for wireless numbers within the next five years. The CPUC's estimate of the "extended life of underlying area codes" does not appear to contemplate that for two years (during the period of the TSO), there will be a considerable pent-up demand among wireless customers for these numbers, and that by the third year, wireless customers will begin requesting numbers from the underlying NPAs. *See* CPUC petition, Attachment 1.

Any "preservation of geographic identity" will be even shorter-lived. Under the CPUC's proposal, the TSOs would transition to an all-services overlay two years from their implementation date.[32] Thereafter, the overlay codes will be available for new numbers for all types of services and the geographic areas will have two area codes. Thus the benefit of preservation of geographic identity for the 310 and 909 NPAs would be extended only for two short years.

As demonstrated above, none of these short term benefits outweighs the tremendous burdens and discriminatory impacts on *wireless* customers and carriers.

IV. WIRELESS SERVICE OVERLAYS NO LONGER MAKE SENSE

AWS acknowledges that there may have been some justification in requiring wireless carriers to obtain numbers from a separate NPA when wireless carriers could not participate in pooling. For this reason, AWS joined a number of other wireless carriers in supporting transitional overlays as an alternate means to meet the numbering demand for wireless carriers and other providers who were not participating in thousands-block pooling.[33] However, given that wireless carriers are already pooling capable and are required to be LNP capable in less than a year, TSOs no longer are justifiable.

Wireless carriers began participating in pooling on November 24, 2002. Accordingly, wireless carriers are now donating thousands blocks and acquiring blocks from the pool. They

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[32] CPUC petition at 6.

[33] *See* Letter from Judith St. Ledger-Roty and Todd Daubert, Kelley, Drye and Warren to Magalie Roman Salas, Secretary, FCC (Nov. 15, 2000) (filing on behalf of PCIA, AWS, Nextel, Verizon Wireless Messaging Services and Voicestream Wireless) ("Joint Wireless Commenters Proposal"). The Commission acknowledged this potential use of TSOs in the *Third NRO Order,* noting that "in areas subject to thousands-block number pooling, non-pooling carriers could receive numbering resources from a SO to relieve demand on the underlying code." *Third NRO Order* at para. 82.

no longer need whole NXXs to meet their numbering demand. Thus, there is no number conservation rationale for requiring wireless carriers to get their numbers from a separate NPA.

Moreover, under the FCC's recent *Verizon Forbearance LNP Order*, wireless carriers are required to be LNP-capable by November 2003. Once wireless carriers are LNP-capable, wireless customers will be porting numbers from wireline carriers and *vice versa*. At this point, the technical or service-specific nature of the overlay is destroyed – wireless customers have 310 and 909 numbers and wireline customers have overlay code numbers.[34] Once this occurs[35] it would be impractical and confusing to try to maintain a separate code for wireless.

V. THE CPUC HAS FAILED TO PROVIDE OTHER REQUIRED SHOWINGS

A. The CPUC Fails to Justify its Transition Mechanism

The Commission held that state commissions should "explain how the proposed transition mechanism [of a temporary SO into an all-services overlay] meets our numbering resource optimization goals and equitably balances the interests of affected carriers and consumers in their proposal for transitioning SOs to all-services overlays."[36] The CPUC proposes to transition the TSOs to all-services overlays within two years; however, it does not attempt to explain how its transition mechanism equitably balances the interests of affected carriers and consumers.[37] Further, the CPUC's proposed transition date appears to be arbitrary and not related to any objective factors or the Commission's suggested transition mechanisms.

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[34] Moreover, once LNP is implemented by wireless carriers, those wireless customers who desire numbers in the underlying code could "game" the system by obtaining service with a wireline carrier and porting the number to a wireless carrier.

[35] Given the length of time needed for the approval of the TSOs and its implementation, it seems unlikely that the TSOs could be implemented significantly in advance of November 2003.

[36] *Third NRO Order* at para. 87.

[37] CPUC petition at 6-7. The CPUC only notes that the TSOs would be "transitional" in light of the Commission's preference for "transitional SOs."

B. The CPUC has Failed to Justify Permanent Waiver of 10-Digit Dialing

The CPUC seeks a permanent waiver from the 10-digit dialing requirement. Because its request for a permanent waiver from 10-digit dialing is inconsistent with the Commission's guidance for TSOs[38] and established precedent, the CPUC must make a strong showing that the benefits of the waiver would outweigh the harm. Given the other anti-competitive and discriminatory elements of its TSO proposal, the Commission has not and cannot make such a showing with regard to the proposed TSOs.

The CPUC contends that 10-digit dialing is unnecessary "because the competitive concerns which prompted the Commission to adopt the 10-digit dialing requirement in 1996 have largely been abated over time."[39] The CPUC further asserts that the Commission's initial concerns that only new competitors would be required to take numbers in an overlay while established carriers could draw on plentiful numbers in the existing code are no longer valid, because "[m]ost of the carriers have been in business for some years and hold many numbers in the existing NPAs."[40] Although these assertions, if true, might justify a waiver of 10-digit dialing in an *all-services overlay* in which all carriers *retain* their existing supply of numbers, they do not justify a waiver for the TSOs with take backs proposed by the Commission.

Similarly, although the CPUC claims that there will not be any dialing disparity[41] because all wireless carriers would be required draw numbers from the overlay code, this argument fails

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[38] *Third NRO Order* at para. 92 (in which the Commission clearly indicated that it was unlikely to grant a request for a permanent waiver of ten digit dialing.)

[39] CPUC petition at 9.

[40] CPUC petition at 11.

[41] Dialing disparity occurs when existing telephone users in the old area code need only dial 7-digits to call others, while users in the new overlay code will have to dial 10 digits to reach customers in the old underlying code. *Matters of Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, ordered by the Public Utility Commission of Texas, Administration of the North American Numbering*

to consider the dialing disparity that would be created between wireless and wireline customers and the resulting anti-competitive effects on wireless carriers. Even with wireless takebacks, the majority of telephone numbers will still be in the underlying codes; thus the volume of 10-digit dialing by wireless customers will necessarily increase and be higher than the volume of 10-digit dialing by wireline customers.[42] As a result, wireless carriers will be at a competitive disadvantage to wireline counterparts.[43] The anti-competitive effects are even more exaggerated under the CPUC's proposed TSOs because with take backs, wireless carriers will have virtually no numbers in the underlying NPAs.[44]

Finally, in considering the CPUC's request for a 10-digit dialing waiver, AWS urges the Commission to consider the routing problems that have occurred with regard to other 10-digit dialing waivers. As Nextel noted in its comments on the CTDPUC petition for a TSO, overlays with 10-digit dialing waivers in other states (e.g., New York) have experienced technical and routing problems.[45] Although these problems may not occur in California, since California requires 1+ dialing for all ten digit calls, these technical issues should be thoroughly and carefully considered in connection with any ten digit dialing waiver request.

Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, FCC 96-333, Second Report and Order and Memorandum Opinion and Order (rel. Aug. 8, 1996) ("*Local Competition Second Report and Order*") at para. 287.

[42] The CPUC's argument that this dialing disparity would somehow be offset by the fact that an SO customer could reach a larger geographic area with seven digit dialing, ignores the fact that that this purported benefit would apply only to wireless to wireless calls, which still make up a only a small percentage of mobile-originated calls.

[43] The CPUC itself recently stressed the importance of wireless-wireline competition in its comments opposing LNP forbearance. CPUC comments, *Matter of Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability*, WT Docket No. 01-184, CC Docket No. 95-116 (Sept. 21, 2001) at 5, 19-20.

[44] For this reason as well the effects of the disparity will likely continue much longer than the two years predicted by the CPUC. *See* CPUC Petition at 12.

[45] *See* Nextel comments at 6, *Matter of Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Conduct a Transitional Service Technology Specific Overlay Trial in Connecticut*, CC Docket No. 99-200, NSD File No. L-02-03 (Feb. 26, 2002).

C. The CPUC has Failed to Demonstrate that its Proposal Would be Preferable to an All-Services Overlay

In addition to failing to demonstrate adequately that the benefits would outweigh the costs of implementing TSOs in the 310 and 909 NPAs, the CPUC fails to explain or justify how the TSOs would be preferable or superior to an all-services overlay. In fact, given the numerous costs and burdens and the marginal benefits that would result from the proposed TSOs, an all-services overlay is the more efficient and reasonable approach to address the area code exhaust problem in these areas.

With all-services overlays, all customers needing new numbers – regardless of type of service – would obtain numbers in the new codes and the remaining codes in 310 and 909 would be allocated on a first-come, first-serve basis (taking into account a carriers' verified need for numbers). Unlike the proposed TSOs, all service overlays would not: (i) require a customer to change his or her phone number; (ii) unreasonably discriminate against any customer, carrier, or type of technology; (iii) require one industry or segment to bear all the burdens of a TSO; and (iv) result in dialing disparity. All-services overlays are also less confusing. Once implemented, customers in the NPAs can adjust to one type of area code relief, and not have to undergo two different stages of area code relief (as with the proposed TSO). Finally, an all-services overlay has been successfully implemented in 41 other metropolitan areas in 15 states, and there is no reason why it cannot be similarly implemented in California.

VI. CONCLUSION

The numbering situation in California's 310 and 909 NPAs has reached a critical point. The CPUC TSO proposal would provide only an interim, stop-gap measure and would inflict significant harm on wireless consumers and carriers. For the reasons discussed above, AWS respectfully requests the Commission deny the CPUC petition and instead order the CPUC to

expedite implementation of area code relief in the form of an all-services overlay or area code split in the 310 and 909 NPAs.

Respectfully submitted,

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November 25, 2002