

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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| In the Matter of |) | |
| |) | |
| Numbering Resource Optimization |) | CC Docket No. 99-200 |
| |) | |
| California PUC Petition for Authority to Implement Technology-Specific Overlays |) | DA 02-2845 |

**REPLY COMMENTS OF
j2 GLOBAL COMMUNICATIONS, INC.**

j2 Global Communications, Inc. (“j2 Global”) hereby submits its reply comments in opposition to the Petition of the California Public Utility Commission for Authority to Implement Technology-Specific Overlays.¹ j2 Global is one of the largest independent, non-carrier unified communications or “unified messaging” (“UM”) providers in the nation.

In its opposition, j2 Global explained that the Petition is fundamentally flawed, at least with respect to the CPUC’s proposal to include “non-geographic” numbers in the technology specific overlay (“SO”). The Petition lacks clearly defined standards for non-geographic services upon which authority could be delegated by the Commission. The Petition also fails to

¹ See 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, *Public Notice*, DA 02-2845 (rel. Oct. 24, 2002); Numbering Resource Optimization, CC Docket No. 99-200, *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 Sept. 27, 2002) (“Petition”).

meet the standards established in the *Third Report and Order*,² and it unreasonably discriminates between the competitive services offered by j2 Global and the services offered by incumbent carriers.

In addition to j2 Global's opposition, the comments filed in response to the Petition overwhelmingly oppose the SO proposal. While the commenters generally discussed the implications of the SO for wireless services, several parties demonstrate the Petition's failings with respect to UM services as well. Specifically, the New York Department of Public Service ("NYDPS") comments unintentionally reveal the ambiguity of the CPUC's proposal, while the incumbent carriers in California seriously question the practicality of the proposal for "non-geographic" services. Cingular also explained that

the CPUC's petition fails to adequately explain the mechanics of how it will segregate "transparent" or "non-geographic" numbers into an SO. . . . [I]t is incumbent upon the CPUC to justify to the Commission and to affected carriers why and how it proposes to implement a significant aspect of its proposal. While the CPUC provides a vague idea of the services that will be included in this SO, the proposal provides no discussion of how the affected numbers will be identified; whether business customers or their carriers will be required to identify lines as non-voice; or whether the CPUC is proposing to exercise regulatory jurisdiction over consumers as well as carriers in order to enforce this provision. In general, non-geographic SOs may be effective numbering optimization tools, but a state petitioning the FCC for authority to implement such an SO must be required to do more than request "some leeway" before authority is granted.³

Because the CPUC has failed to adequately define "non-geographic" services, j2 Global has explained that an open-ended grant of the Petition would create a slippery slope to include

² Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability, CC Docket Nos. 99-200; 96-98; 95-116, *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 Report and Order*").

³ Cingular Comments at 15 (citations omitted).

any service the CPUC deems “non-geographic” with no clear regulatory certainty for users of telephone numbers. Although supporting the CPUC’s proposal, the comments filed by the NYDPS prove this to be true. The NYDPS contends that “consumers will know that modems and fax machines of large businesses and *other non-voice services* will all use the same area code”⁴ Setting aside the merits of the claim, the NYDPS apparently understands the Petition to not only request authority for non-geographic services, but to include “non-voice services” in the SO as well. The Commission, of course, has never found that “non-voice services” should be segregated, nor is there a reasonable basis for doing so. The conclusion reached in the *Third Report and Order* was that certain services are not geographically sensitive and thus ideal for a SO.⁵ But how those services are defined is critical. As the comments make clear, the CPUC has proposed no standard beyond naming two services it intends to include. Such an open ended delegation is not in the public interest, nor does it meet fundamental principles of agency decision making.

The merits of the NYDPS’ claims are also dubious and they reveal the impracticability of the CPUC proposal.⁶ Neither the Petition nor the NYDPS explains how the SO will actually work. Verizon notes in its comments that “[t]he petition gives no hint how a LEC is supposed to

⁴ NYDPS Comments at 2 (emphasis added).

⁵ See *Third Report and Order* ¶ 69 (“For example, a service-specific overlay could include services that generally do not require numbers from a specific geographic area”); *id.* ¶ 74 (“We would also likely favor service-specific overlays that would include non-geographically sensitive services”).

⁶ In addition, the NYDPS’ comments reveal the inefficiency of utilizing SOs at all. The comments note that the 917 code in New York City, established as a SO for wireless services, only has a total of 3 million wireless subscribers. The code is now open to all services, but if it was not, putting every wireless subscriber in the code, in one of the most populous cities in the world, only yielded a utilization rate of approximately 40 percent. See NYDPS Comments at 2, n.3.

implement this requirement -- fax and modem lines are indistinguishable from any other business lines, and a voice line today can become a fax line tomorrow without the telephone company's knowing anything about it."⁷ Presumably, the CPUC intends to have incumbents incur the expense of notifying all business users with more than 50 access lines that they have to report themselves to the LEC and the LEC will then issue the user a new number for all of the business customer's modems and fax machines. In addition, any time a business with more than 50 lines connects a modem or fax, the customer will have to notify the LEC to request a new phone number in the SO. To impose this cost on consumers and carriers is patently unreasonable. To believe it will actually work borders on folly.⁸

Notably, the CPUC was aware of this well before it filed its Petition. As the Petition explains, the CPUC presented the proposal to the two largest LECs in California. Based on their responses, among others, the CPUC concluded that implementation issues could be resolved.⁹ But SBC makes clear in its comments that it expressed serious reservations about the proposal to the CPUC in April.¹⁰ In fact, both SBC and Verizon, the two largest LECs in California, have filed comments opposing the proposal. They note that the Petition fails to meet the standards

⁷ Opposition of Verizon at 3.

⁸ See SBC Comments at 2-3 ("Because SBC's records do not enable it to identify lines used for OnStar, eFax, modems or faxes, these services would require self-identification from consumers. Consequently, the success of the CPUC's plan depends on the cooperation of consumers -- cooperation which cannot be verified.").

⁹ See Petition at 3.

¹⁰ SBC Comments at 2 ("[T]he CPUC does not state how these [transparent or non-geographic] numbers will be identified for assignment in the SO. In an April 2002 meeting with the CPUC, SBC Pacific Bell expressed concerns about the ability to identify these numbers.").

established in the *Third Report and Order*, fails to undertake a cost-benefit analysis, and with respect to non-geographic services, is completely unworkable.

Furthermore, the commenters uniformly agree that the proposed SO is discriminatory and contrary to the requirements of section 251 of the Communications Act of 1934, as amended (“Act”). Under section 251(e), the Commission must ensure that telephone numbers are made available by states “on an equitable basis.”¹¹ j2 Global has explained on numerous occasions that its services compete directly with those that will not be included in the SO. In fact, most of its customers are smaller or home office or residential users, all of whom would be exempt from the proposed SO if they purchased similar services from the LEC or simply purchased a fax or modem. Segregating j2 Global’s Efax service thus fails to meet the basic requirements of numbering administration established in the Act.

Finally, it is clear that access to telephone numbers is critical to almost all aspects of the telecommunications industry. If the SO was the only means of ensuring that consumers obtained telephone numbers in a timely matter, all of these harms to j2 Global and to wireless carriers, might be outweighed by the benefits of making numbers available. The comments, however, show overwhelming support for another option -- an area code overlay -- a more traditional solution that can be implemented in a more timely manner. It is also the solution the Commission favored in the *Third Report and Order* for these types of circumstances. It is indisputable that the subject codes are going to exhaust in less than one year.¹² In the *Third Report and Order*, the Commission made clear that “to optimize their value, SOs should not be

¹¹ 47 U.S.C. § 251(e).

¹² See Opposition of Verizon at 3.

implemented when the underlying NPA has a projected life span of less than one year.”¹³ The Petition does not address this prerequisite. Nor does it explain why a SO, which is discriminatory and unclearly defined, is superior to an area code overlay.

Notwithstanding the general area code situation in California, and the possible causes for the proliferation of area codes throughout the state over the last several years, the fact remains that the two codes that are the subject of this Petition are on the verge of exhaust and the CPUC has failed to propose a long term solution. The Commission should deny the Petition, it should prohibit the continued use of draconian rationing measures which largely stifle the growth of telecommunications services, and it should direct the CPUC to carry out the requirements set forth in the Act. The solution is set out clearly in the comments; the Commission should order the CPUC to adopt forthwith measures to implement an area code overlay. This can be done efficiently and expeditiously. For a crisis situation such as this, the Commission should not permit states to adopt untried solutions, with unclear implementation plans and anti-competitive effects on the services offered to consumers.

¹³ See *Third Report and Order* ¶ 85.

For the foregoing reasons, j2 Global respectfully requests the Commission deny the CPUC's Petition to adopt a SO for non-geographic services such as UM.

Respectfully Submitted,

/s/

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