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

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In the matter of	)	
	)	
Numbering Resource Optimization	)	
	)	
Petition of the California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule	)	CC Docket No. 99-200

ORDER

Adopted: August 5, 2003 **Released: August 11, 2003**

By the Commission: Commissioner Abernathy approving in part, dissenting in part, and issuing a separate statement; Commissioner Copps concurring and issuing a separate statement; Commissioner Martin issuing a separate statement.

I. INTRODUCTION

1. In this order, we grant, in part, the California Public Utilities Commission's (California Commission) request for waiver of the Federal Communication Commission's (FCC or Commission) contamination threshold rule.[1] The California Commission seeks authority to raise the contamination threshold in all numbering plan areas (NPAs or area codes) in California from ten percent to twenty-five percent.[2] Contamination occurs when at least one telephone number within a block of telephone numbers is not available for assignment to end users or customers.[3] Although we find that the California Commission has not demonstrated good cause to justify raising the contamination threshold throughout the state, we find that the California Commission has shown good cause to justify raising the contamination level in the 310 and 909 area codes, on an interim basis. This limited waiver will provide some additional time for the California Commission to implement area code relief in those areas.

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[1] *See Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule*, CC Docket No. 99-200 (filed Sept. 5, 2002) (California Commission Petition); 47 C.F.R. § 52 20(c)(1).

[2] California Commission Petition at 1 The Commission's rules require that "[a]ll service providers required to participate in thousands-block number pooling donate thousands-blocks with ten percent or less contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned." 47 C.F.R § 52 20(c)(1).

[3] *See* 47 C.F R § 52 7(h). A contamination level of ten percent means that ten percent of the numbers in a block are not available for assignment

II. BACKGROUND

2. *Statutory Provisions and Commission Rules.* Section 251(e) of the Communications Act of 1934, as amended (the Act), gives the Commission plenary jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues in the United States.[4] In the *Numbering Resource Optimization First Report and Order*, the Commission set the framework for national thousands-block number pooling (pooling).[5] The Commission adopted a ten percent contamination level for thousands-block number pooling, concluding that the donation of thousands-blocks with up to ten percent contamination had the potential to add significant numbering resources in areas where pooling has been implemented.[6]

3 Today, all carriers participating in thousands-block number pooling are required to donate thousands-blocks that have ten percent or less contamination to the thousands-block number pool for the rate center from which the numbering resources are assigned.[7] Carriers may retain at least one thousands-block per rate center, even if the thousands-block is less than ten percent contaminated, as an initial block or "footprint" block. Carriers are also permitted to retain enough thousands-blocks to meet their projected six-month inventory needs.[8]

4. *The California Petition.* On September 5, 2002, the California Commission filed a petition for waiver of the Commission's contamination threshold requirement. Specifically, the California Commission seeks to increase the contamination threshold from ten percent to twenty-five percent in California.[9] The California Commission asserts that raising the contamination threshold will allow California to retrieve a larger quantity of numbers from carriers currently holding blocks, and that those numbers can be donated to active number pools to maximize the amount of available numbering resources in areas where number pooling has been

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[4] Pub L No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934, 47 U.S C. §§ 151-174. Section 251(e)(1) states:

> The Commission shall designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

[5] *See Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No 99-200, 15 FCC Rcd 7574, 7660-62 (2000) (*Numbering Resource Optimization First Report and Order*). Thousands-block number pooling is a process by which the 10,000 numbers in a central office code (NXX) are separated into to sequential blocks of 1,000 numbers each (thousands-blocks), and allocated separately within a rate center. *See* 47 C.F.R. § 52.20(a).

[6] The Commission had sought comment on a ten percent threshold, a twenty-five percent threshold, and the combination of a twenty-five percent threshold for incumbent local exchange carriers (LECs) with a ten percent contamination level for competitive LECs. *Numbering Resource Optimization*, Notice of Proposed Rulemaking, CC Docket 99-200, 14 FCC Rcd 10322, 10403-04 (1999). The ten percent contamination level was supported by state commissions and used in state pooling trials. *See Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7661 n 463

[7] *See Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7661.

[8] *Id.* at 7661-62.

[9] *See* California Commission Petition at 1

implemented.[10] On October 17, 2002, the California Commission filed a motion to accept supplemental data in support of its waiver petition.[11] This updated data was considered by the North American Numbering Council (NANC) in its analysis of the California Commission's petition. We consider it as well.

5. *Comments.* On October 24, 2002, the Commission's Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on the California Commission's petition.[12] Fifteen parties submitted comments and three parties submitted reply comments. All but one commenter, the Michigan Public Service Commission, opposed the California Commission's proposal.[13] One commenter discussed a partial grant of the proposal as an alternative to denial.[14]

6. The Bureau also directed the NANC, the Commission's advisory committee on numbering issues, to evaluate the technical viability of increasing the contamination level.[15] The NANC created an Issue Management Group (IMG) to perform the evaluation. Because the IMG was unable to reach consensus on one proposal, the NANC offered two different analyses prepared by the IMG.[16] Each analysis presents the expected benefits and disadvantages of increasing the contamination threshold from ten to twenty-five percent, one without and the other with certain external factors taken into consideration[17] The NANC concluded, however, that the real benefits of increasing the contamination level can only be determined when the actual number of blocks that carriers could donate to the pools is established.[18] Appendix A summarizes the North American Numbering Plan Administrator's (NANPA's) projected exhaust dates for each California area code and the NANC's findings with respect to the length of time the exhaust would be extended if the contamination threshold is increased to twenty-five percent.

7. The IMG's first analysis (Analysis A) calculated the additional lifespan of pooled NPAs in California solely attributed to the donation of thousands-blocks that are more than ten percent and up to twenty-five percent contaminated. This analysis eliminated any external factors that may influence the life spans of the California NPAs.[19] The IMG concluded that

[10] *Id* at 1-2.

[11] *See Motion of the California Public Utilities Commission to Accept Supplemental Data With Respect to its Petition for Waiver of the Communications Commission's Contamination Threshold Rule*, CC Docket 99-200 (filed Oct 17, 2002) (California Commission Supplemental Data).

[12] *See Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission's Contamination Threshold Rule*, CC Docket No 99-200, DA 02-2822 (rel Oct. 24, 2002) (*Contamination Threshold Public Notice*).

[13] *See generally* Michigan Commission Comments

[14] *See, e g*, AT&T Comments at 6-8

[15] *See Contamination Threshold Public Notice.*

[16] *See Report on the Technical Viability of Increasing the Pooling Contamination Threshold*, Prepared for the NANC by the Contamination Levels Issues Management Group (dated Dec. 6, 2002) (NANC IMG Report) at 3.

[17] *Id* at 12, 14

[18] *See* Letter to William Maher, Chief, Wireline Competition Bureau, from Robert C. Atkinson, Chairman, North American Numbering Council at 2 (filed Dec 12, 2002)

[19] *See* NANC IMG Report at 3, 12. External factors include, but are not limited to, thousands-blocks held by the Pooling Administrator, NXX codes held by the NANPA, and returned codes *See id* at 12. "NXX code" or

(continued.)

although it is technically feasible to increase the contamination level from ten to twenty-five percent, considerable efforts would be required to make this proposal viable.[20] The IMG also found that raising the contamination level would only result in a minimal increase in the life spans of the California NPAs. According to Analysis A, the lifespans for the majority of the 25 NPAs in California would only increase by up to three months, eight would not increase, and none would increase by more than nine months.[21]

8. Unlike its first analysis, the IMG's second analysis (Analysis B) considers external factors that may influence the lifespans of the California NPAs.[22] Specifically, Analysis B assumes that demand for pooled blocks from November 2002 through July 2003 is representative of the future demand for pooled blocks. Also, Analysis B assumes that additional NXXs will be used to replenish the pools until the last NXX in the area code is assigned, at which point the area code will exhaust.[23] This analysis concludes that, although technically feasible,[24] increasing the contamination threshold in California to twenty-five percent would extend the lives of most of the twenty-five area codes in California by less than a year.[25] The IMG also generally reviewed costs that would be incurred to implement the California Commission's proposal. The IMG, however, did not develop any specific cost estimates. Rather, the IMG agreed that it would not factor cost into the analysis, but found it appropriate to identify factors that have associated costs (e.g., Operations System Support changes).[26]

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"Central office code" refers to the second three digits (also called digits D-E-F) of a ten-digit telephone number in the form NPA-NXX-XXXX, where N represents any one of the numbers 2 through 9 and X represents any one of the numbers 0 through 9. 47 C.F.R. § 52.7(c).

[20] *Id* at 16

[21] According to Analysis A, an increase of the utilization threshold to twenty-five percent would have the following effects 8 NPAs would exhaust as scheduled, the lives of 3 NPAs would be extended by one month; the lives of 2 NPAs would be extended by two months; the lives of 7 NPAs would be extended by three months; the lives of 2 NPAs would be extended by four months; the life of 1 NPA would be extended by six months; the life of 1 NPA would be extended by 8 months, and the life of 1 NPA would be extended by nine months *See* Appendix A. *See also* NANC IMG Report at 13, 16-17

[22] *Id.* at 14. These factors include, but are not limited to, the current supply of pooled thousands-blocks and whole NXX codes. *Id.* at 14 Analysis B also assumes that carriers would not have to draw on their six month inventories in donating the ten to twenty-five percent contaminated blocks to existing number pools. *Id.* at 18.

[23] *See* NANC IMG Report at 14. Area code exhaust occurs when there are no NXX codes available for assignment. A new area code should be implemented prior to exhaust so that carriers that need new numbers in that geographic area can obtain numbers and customers are not deprived of their carrier of choice

[24] *Id* at 17.

[25] According to Analysis B, an increase of the utilization threshold to twenty-five percent would have the following effects the life of 1 NPA would be extended by one month, the life of 1 NPA would be extended by two months; the life of 1 NPA would be extended by three month, the life of 1 NPA would be extended by four months; the life of 1 NPA would be extended by five months, the life of 1 NPA would be extended by six months; the lives of 2 NPAs would be extended by seven months; the lives of 5 NPAs would be extended by eight months; the lives of 4 NPAs would be extended by nine months; the lives of 2 NPAs would be extended by ten months, the life of 1 NPA would be extended by eleven months; the lives of 2 NPAs would be extended by thirteen months, the life of 1 NPA would be extended by fourteen months; and the life of 1 NPA would be extended by 29 months. Data on the change in 1 NPA was not available *Id.* at 15 *See also* Appendix A

[26] NANC IMG Report at 17

9 *Waiver Standard.* Generally, the Commission's rules may be waived for good cause shown.[27] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[28] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[29] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[30] Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.[31]

III. DISCUSSION

10. We find that that the California Commission has shown good cause to justify raising the contamination level in the 310 and 909 area codes, on an interim basis, while it implements area code relief in those areas, but has not shown good cause to support increasing the contamination threshold from ten percent to twenty-five percent throughout the state.[32] Specifically, the California Commission has not demonstrated that special circumstances warrant a deviation from the national rules for all California NPAs or that raising the contamination threshold level in all California NPAs is consistent with the public interest. We conclude, however, that increasing the contamination threshold for the 310 and 909 area codes is warranted under our waiver standard and will provide the California Commission with some additional time and flexibility to implement area code relief in those NPAs, which are in need of immediate relief.

11. We emphasize that our action in this order is intended to assist the California Commission as it implements area code relief for the 310 and 909 NPAs, and should not be used to justify delaying this much needed relief. In recent years, the FCC has sought to prevent the premature exhaust of the NANP by ensuring that numbering resources are used more efficiently. The California Commission has worked diligently with the FCC to accomplish this goal. Although we applaud the California Commission's numbering resource optimization efforts, raising the contamination level across the state is not a practical solution to the telephone shortage that exists in the 310 and 909 area codes. We have repeatedly emphasized that numbering resource optimization measures should not be used as a substitute for area code relief.[33] Other states with NPAs facing exhaust have implemented timely area code relief when

[27] 47 C.F R § 1 3.

[28] *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C Cir 1969), *cert denied*, 409 U.S. 1027 (1972).

[29] *Northeast Cellular Telephone Co v FCC*, 897 F.2d 1164, 1166 (D C Cir 1990).

[30] *WAIT Radio*, 418 F 2d at 1159; *Northeast Cellular*, 897 F 2d at 1166

[31] *WAIT Radio*, 418 F 2d at 1159.

[32] *See* AT&T Comments at 1, 3; AT&T Wireless Comments at 2-8; Nextel Comment at 8, 12; SBC Comments at 5; Sprint Comments at 5; Time Warner Comment at 2-3; T-Mobile Comments at 9-10; Verizon Comments at 2; WorldCom Comments at 5-6

[33] *See, e g, Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utilities Commission Regarding Area Codes 412, 610, 215, and 717, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No 96-98, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009, 19027 (1998) (*Pennsylvania Numbering Order*), *Numbering Resource Optimization First Report and Order*, 15 FCC Rcd at 7581; *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-

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needed We, therefore, expect that the California Commission will expedite area code relief in the 310 and 909 area codes, which are both projected to exhaust in the fourth quarter of 2003.[34]

12. Concurrent with this limited partial grant, we expect that the California Commission will prepare for potential area code relief by undertaking any necessary public hearings in the 909 area code, and proceed with adopting an area code relief plan in the 310 area code where it has already undertaken the requisite public hearings.[35] We also request that the NANC submit a report to the Bureau by April 30, 2004, evaluating the effectiveness of increasing the contamination threshold in 310 and 909. The NANC report should include the number of additional blocks that are made available as a result of increasing the contamination threshold.

13. We find that special circumstances justify granting a limited waiver to raise the contamination threshold to twenty-five percent in the 310 and 909 area codes.[36] We agree with AT&T Wireless, that good cause exists for a partial waiver "because of the special exigency situation in the 310 and 909 NPAs, which cannot be alleviated by any other measure in time to prevent immediate exhaust."[37] The NANPA's projected exhaust date for these NPAs is the fourth quarter of calendar year 2003, which is by far the earliest exhaust date of the California NPAs. According to the NANC's projections, raising the contamination level in the 310 and 909 area codes could extend the lives of the 310 and 909 NPAs by two months and one month, respectively.[38] Such a delay, although not significant enough to obviate the need for area code relief, would provide additional time for the California Commission to implement area code relief for the 310 and 909 area codes, while at the same time providing some limited relief for carriers and customers that currently need numbers. The California Commission asserts that if the contamination threshold is raised to twenty-five percent, approximately 250 and approximately 275 thousands-blocks could be available for the 310 and 909 NPAs,

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200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd 306, 310 (2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, 17 FCC Rcd 252, 258-263 (2001)

[34] *See* http://www nanpa.com/pdf/NRUF/2003_NPA_Exhaust_Projections-WebPosting1 pdf (NANPA June 2003 Exhaust Data) In June, the NANPA updated its January 2003 exhaust data. The projected exhaust date of the 310 NPA remained the fourth quarter of 2003 The projected exhaust date of the 909 NPA was extended from the second quarter of 2003 until the fourth quarter of 2003. *See also See* North American Numbering Plan Administrator 2002 NRUF and NPA Exhaust Analysis, June 5, 2002 available at http://www nanpa.com/pdf/NRUF/nruf061501results.pdf (NANPA June 2002 Exhaust Data); North American Numbering Plan Administrator NPA Exhaust Analysis; Changes as of January 21, 2003, available at http //www nanpa com/pdf/NRUF/01_21_03_delta_nruf pdf (NANPA Jan 2003 Updated Exhaust Data).

[35] Moreover, the California Commission must file a report with the Bureau by April 30, 2004 on the outcome of the public hearings and addressing whether the interim waiver has accomplished the anticipated goals.

[36] *See* AT&T Wireless Comments at 6-8 (proposing that a limited waiver to raise the contamination threshold in 310 and 909 be granted). AT&T Wireless also states that the Commission should not grant the California Commission's waiver without requiring immediate area code relief Several other commenters also discuss the need for area code relief in the 310 and 909 NPAs. *See* CTIA Comments at 4-5; Cingular Comments at 3; Nextel Comments at 14-15

[37] AT&T Wireless Comments at 6-7 Specifically, AT&T Wireless states that it would take at least seven months to implement an all-services overlay, and at least 12 months to implement a geographic split.

[38] *See* NANC IMG Report at 13, 15.

respectively [39] Although we find that the evidence in the record indicates that fewer blocks than projected by the California Commission will actually be available,[40] even a limited number of additional blocks will help delay exhaust and prevent denial of numbers for carriers and consumers while area code relief is implemented in the 310 and 909 area codes. The increased contamination level in the 310 and 909 area codes should therefore be viewed and used as a tool to facilitate immediate area code relief in those NPAs.

14. We also find that raising the contamination threshold from ten to twenty-five percent in only the 310 and 909 area codes is in the public interest. Providing such relief will allow the California Commission additional time to target area code relief to the areas where it is most needed without requiring carriers to undertake extraordinary measures where such relief is not imminently needed. Although we recognize that increasing the contamination level in 310 and 909 will have some adverse effects on carriers and consumers,[41] we find that the exigencies in 310 and 909 justify this added burden. Further, because this waiver will expire when area code relief is implemented in the 310 and 909 area codes or sooner, as discussed below, the burden on carriers and consumers will be of a limited duration.

15. In contrast, we find that California has not shown special circumstances justify increasing the contamination level for all NPAs in California as it has requested. Although both the 909 and 310 area codes are projected to exhaust in the fourth quarter of this year, the next closest projected exhaust date for an area code will occur in the 760 area code in the third quarter of 2005. Moreover, the majority of the state's area codes are not projected to exhaust for at least several years.[42] These projections contradict California's claim that the severe shortage of available numbers constitutes "special circumstance warranting a deviation from the ten percent contamination rule."[43] Based upon these projections, it appears that California has substantial time to plan for the exhaust and, in turn, relief of the remaining area codes in the state.

16. In addition, increasing the contamination threshold to twenty-five percent throughout California would not be in the public interest, as it would have adverse effects on carriers and consumers without a corresponding benefit that would justify the costs. If the contamination threshold is increased, the maximum amount of numbers donated per thousands-block would rise from 100 to 250, a 150% increase. This increase could require additional "intra-carrier ports."[44] When thousands-blocks with contaminated numbers are donated to the pool, the contaminated numbers must be ported back to the original carrier and marked as unavailable for assignment by the new carrier.[45] As several commenters explain, automated pooling and porting processes will likely be supplanted by the manual processing of each of

[39] *See* California Commission Supplemental Data, Attachment

[40] The California Commission's projections do not account for blocks that are not available for donation. Rather, it assumes that all blocks with twenty-five percent or less contamination will be donated for pooling. *See* para. 17, *infra*

[41] *See* para. 16, *infra.*

[42] The projected exhaust dates for most California area codes are beyond 2010 See Appendix A. See *also* NANPA Jan 2003 Updated Exhaust Data

[43] *California Petition* at 2.

[44] *See* AT&T Comments at 2, BellSouth Comments at 5; Sprint Comments at 10, Verizon Comments at 5.

[45] *See* AT&T Comments at 2

these additional porting orders [46] Each additional manual port will add costs for the carriers and, in turn, for customers. These additional manual ports will also increase the probability for errors during the pooling and porting processes and thereby increase the risk of customer service problems, including the loss of service.[47] Unlike 310 and 909, there are no exigencies that warrant imposing these burdens throughout the state of California.

17. We also conclude that increasing the contamination threshold for the entire state of California would not likely produce the numbering resource optimization benefits asserted by the California Commission. The California Commission states that approximately 7,000 more blocks could be placed in pools in California if the contamination threshold is raised to twenty-five percent in California.[48] We agree with commenters that this estimate is not reliable because it does not take into account that many of the blocks included in the California Commission's estimate will not be available for donation to the pools.[49] For example, the California Commission did not account for blocks that would be retained in carriers' six-month inventories and blocks that would be retained as initial blocks.[50] Commenters also point out that the California Commission failed to exclude blocks that must be retained by a carrier because they contain the carrier's location routing number (LRN), and blocks that are set aside as necessary for 911 service, which are not available for donation.[51]

18. We emphasize that this limited waiver should not be construed as a retreat from our long-standing policy that numbering resource optimization measures are not a substitute for needed area code relief.[52] Because of the severe shortage of numbering resources available in the 310 and 909 area codes, granting this petition will not obviate the need for immediate relief in these area codes. By granting this partial waiver, we only acknowledge that raising the contamination threshold level in the 310 and 909 area codes is justified as a special measure to defer exhaust in the interim period between now and the implementation of area code relief. In order to facilitate the process, as described above, we expect that the California Commission will, concurrent with this limited waiver, undertake the requisite proceedings or otherwise proceed with adopting an area code relief plan where it has held such proceedings. Also, because of the unique nature of this grant, we shall require a report from the California

[46] *See* AT&T Comments at 2, 8-9; Cox Comments at 4; Nextel Comments at 9-10; SBC Comments at 6-8; Sprint Comments at 10; T-Mobile Comments at 7.

[47] *See* AT&T Comments at 2, 8-9; SBC Comments at 8.

[48] California Commission Petition at 4-5; California Commission Supplemental Data at 1-2, Attachment.

[49] Cingular Comments at 5 (pointing out that the bulk of the blocks that are between ten and twenty-five percent contaminated may not be available for donation); Cox Comments at 2-3 (arguing that most of the blocks identified by the California Commission are likely to be exempt from pooling regardless of the contamination threshold because of carriers' six-month inventories and the number of blocks that would be retained as initial blocks); Verizon Comments at 3-4 (arguing that the California Commission's analysis ignores factors that would substantially reduce the number of additional blocks that raising the contamination threshold would produce)

[50] Cingular Comments at 5; Cox Comments at 2-3 (noting that more than two thirds of the blocks in California with a ten to twenty-five percent contamination level are accounted for as part of a carrier's six-month inventory or as the only block in a rate center), Verizon Comments at 3-4

[51] Cingular Comments at 6 (stating that the California Commission's analysis does not account for blocks that are received to obtain an LRN, which cannot be donated); Verizon Comments at 3-4 (noting that blocks that contain a service providers LRN and blocks that are necessary for 911 service would not be available for donation)

[52] *See, e g, Pennsylvania Numbering Order,* 13 FCC Rcd at 19027

Commission that evaluates the effectiveness of this waiver. This report must be filed with the Bureau by April 30, 2004 to determine whether this limited relief should be extended. We also request the NANC to evaluate the extent to which increasing the contamination threshold made additional numbering resources available in the 310 and 909 area codes. The NANC report should be submitted to the Bureau by April 30, 2004 as well.

IV. PROCEDURAL ISSUES

19. We find that the California Commission provided its supplemental data in a timely manner. On October 17, 2002, the California Commission filed a motion to accept supplemental data with respect to its waiver petition.[53] In its supplemental filing, the California Commission updated its data on the number of blocks contaminated between ten and twenty-five percent based on the June 30, 2002 Numbering Resource Utilization Forecast Report. This data was unavailable until September of 2002.[54] This information was submitted soon after it was received and analyzed, as discussed in the California Commission's initial filing.[55] We hereby grant the California Commission's motion to accept this supplemental data into the record in this proceeding.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to sections 1, 3, 4, 201-205 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154, 201-205, 254, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3 that the Petition for Waiver filed by the California Public Utilities Commission and the People of the State of California on September 5, 2002, IS GRANTED IN PART AND DENIED IN PART, as discussed in this Order.

21. It is FURTHER ORDERED that the Motion to Accept Supplemental Data filed by the California Public Utilities Commission and the People of the State of California on October 17, 2002, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[53] *See* California Commission Supplemental Data.

[54] *Id* at 2.

[55] *See* California Commission Petition at 4 n.8

Appendix A
Projected Exhaust of California NPAs

NPA	NANPA Projected Exhaust Date[1]	NANC Analysis A –Extension in Months[2]	NANC Analysis B –Extension in Months[3]
209	4Q2012	0	8
213	3Q2022	8	29
310	4Q2003	1	2
323	2Q2009	2	9
408	1Q2008	0	7
415	1Q2008	4	9
510	3Q2008	3	6
530	2Q2011	0	13
559	3Q2013	3	9
562	2Q2016	4	10
619	1Q2013	0	8
626	1Q2014	3	9
650	2Q2011	3	14
661	1Q2011	0	N/A
707	3Q2009	0	7
714	2Q2006	2	3
760	3Q2005	0	5
805	1Q2009	0	8
818	4Q2006	1	4
831	1Q2022	9	8
858	2Q2018	3	11
909	4Q2003	1	1
916	1Q2011	3	13
925	2Q2013	3	8
949	3Q2017	6	10

[1] North American Numbering Plan Administrator NPA Exhaust Analysis, Changes as of January 21, 2003, available at http //www nanpa com/pdf/NRUF/01_21_03_delta_nruf.pdf

[2] *Report on the Technical Viability of Increasing the Pooling Contamination Threshold*, Prepared for the NANC by the Contamination Levels Issues Management Group (dated Dec. 6, 2002)

[3] *Id*

SEPARATE STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY, APPROVING IN PART AND DISSENTING IN PART

Re: *Numbering Resource Optimization Petition of the California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule.*

I share my colleagues' desire to provide flexibility to state commissions to address numbering issues, but I respectfully dissent in part from this decision because granting an unconditional waiver in this case is inconsistent with the public interest. Congress gave this Commission plenary authority over numbering issues. In exercising that authority, based on careful consideration of the costs and benefits at issue, the Commission adopted a contamination threshold of 10 percent. The Commission also has made clear (in a succession of orders) that numbering resource optimization measures should not be used as a substitute for area code relief.[1] The Commission may waive its rules in exceptional circumstances, but, as the record in this proceeding overwhelmingly demonstrates, the costs associated with increasing the contamination threshold are considerable, while the benefits are negligible. Nevertheless, in light of the impending numbering crisis in the 310 and 909 area codes, I would have been willing to grant the requested increase in the contamination threshold in those NPAs — *if* it were conditioned on prompt implementation of area code relief. While area code splits and overlays may be unpopular in the short term, independent experts have projected that the 310 and 909 area codes will exhaust by the end of *this year*, making such action not only necessary, but urgently so. Raising the contamination threshold is a band-aid that, according to the North American Numbering Council (NANC), will extend the life of those area codes by only *one to two months*. Accordingly, I cannot support a decision that fails to include any assurance of more meaningful relief. When the inevitable train wreck occurs, this Commission unfortunately will bear part of the blame.

The record makes clear that authorizing a change in the contamination threshold would be difficult to justify even on a conditional basis. The California Commission's waiver petition includes no discussion of the costs associated with a change in the contamination threshold. The public comments and NANC Report, however, demonstrate that the costs will be significant. In particular, the NANC Report catalogues a variety of substantial costs including intra-carrier porting (which is not only expensive but threatens customer disconnections), OSS changes, and adverse impacts on Efficient Data Representation (EDR) software, among others. *See* NANC Report at 6.[2] The first analysis in the NANC Report concludes that "it would be difficult to cost-

[1] *See, e g*, *Numbering Resource Optimization,* Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 ¶ 120 (2000) ("*First NRO Order*") (state commissions may not "engage in thousands-block number pooling to the exclusion of, or as a substitute for, unavoidable and timely area code relief"). Moreover, the Commission has ruled that states should not be delegated authority to undertake numbering conservation measures when the NPAs at issue have a life span of less than a year — as is the case here. *Id.* at 7648 ¶ 164. I appreciate that the Commission seeks today to reaffirm that increasing the contamination threshold "should not be used to justify delaying . . much needed [area code] relief," Order at para. 11, but that is precisely what this decision will do The only way to avoid delaying area code relief is to condition the waiver on prompt implementation of such relief

[2] Commenters note that additional costs will arise from the need for increase Signal Control Point capacity and other network and software modifications. *See* Ex Parte Presentation of BellSouth, Qwest, SBC, Sprint, and Verizon at 6 (June 18, 2003).

justify expenditures to increase the contamination level from 10 to 25 percent," given that there would be "little if any increase in the life of the California NPAs that would support the additional economic burden that would be placed on the consumers of California." NANC Report at 16.[3] Not surprisingly, service providers unanimously echoed this conclusion.

Notwithstanding these costs, the impending number exhaust in the 310 and 909 area codes appears to justify increasing the contamination threshold *on an interim basis* while the California Commission prepares to implement an area code split or overlay. But absent any assurance that the state commission will in fact pursue area code relief — and none has been given — such costs may well be incurred for naught. While the California Commission asserts that a waiver "would dramatically slow the pace at which numbering resources in California are depleted," Petition at 5-6, the NANC Report squarely refutes this claim. The first analysis conducted by the NANC concludes that raising the contamination threshold would extend the 310 and 909 area codes by one month each, and the second concludes that the waiver would extend these NPAs by two months and one month, respectively. NANC Report at 13, 15. No commenter supplies any data indicating more substantial extensions. Given these scant gains, modifying the contamination threshold as a stand-alone measure — without any assurance of area code relief — is likely to undermine the public interest, rather than advance it.

In conclusion, while I would ordinarily defer to the California Commission's judgment about the appropriate course of action, the record overwhelmingly weighs against granting an unconditional waiver. Far from demonstrating circumstances unique to California — as the waiver standard requires[4] — the California Commission is grappling with the very same issue numerous other states have successfully addressed through area code relief. And far from implicating considerations isolated to California, changing the contamination threshold will require nationwide carriers, which manage their numbering resources on a centralized basis, to make system-wide changes to accommodate a single state.[5] This is just one reason why Congress granted this Commission exclusive jurisdiction over the management of numbering resources — and why the Commission previously ruled that service providers should not have to "conform with different requirements for every jurisdiction in which they operate, which would be unwieldy and inefficient."[6] Because the unconditional grant of this waiver contravenes sound Commission policy and is at odds with the input of our independent expert advisory body and a chorus of nearly unanimous commenters, I respectfully dissent in part.

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[3] The NANC Report includes an alternative conclusion that tentatively makes the case for raising the contamination threshold, but that analysis expressly states that cost considerations were ignored (NANC Report at 17) — something the Commission cannot do in evaluating a waiver petition.

[4] *See, e g , Florida Cellular Mobil Communications Corp v FCC*, 28 F.3d 191, 199 (D. C. Cir 1994)

[5] *See First NRO Order*, 15 FCC Rcd at 7580 ¶ 7 ("Although we have delegated to the states certain elements of numbering administration, such as implementing area code relief, that are local in nature, numbering resource optimization policy is part of our role as guardian of the nationwide NANP resource.")

[6] *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306, 328 ¶ 46 (2002)

SEPARATE STATEMENT OF COMMISSIONER MICHAEL J. COPPS, CONCURRING

Re: *Numbering Resource Optimization Petition of the California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule.*

Number conservation is not an issue that the federal government can undertake by itself. States have an integral role to play. They are our partners in the effort to address the proliferation of new telephone numbers and area codes that have frustrated so many consumers. When state commissions devise innovative ways to address local number crunches, we need to treat these proposals seriously and with the speed necessary to ensure their effectiveness.

I fear today's decision is less than optimal, because it does not afford the experimental efforts of the California Public Utilities Commission the deference they deserve. I concur because I would have preferred to grant this petition in a less area code restricted fashion than the majority does in its decision today. Furthermore, I would have preferred to have done so some time ago. I fear that we may have jeopardized the ability of the California Public Utilities Commission to provide some of the relief sought, through the slow regulatory speed with which we resolved this matter. With the release of this decision, our state counterparts in California will need to shift into high gear to ensure that the new contamination threshold still can serve as a meaningful numbering resource optimization measure. I am confident they will do so.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: *Numbering Resource Optimization Petition of the California Public Utilities Commission for Waiver of the Federal Communications Commission's Contamination Threshold Rule.*

Nearly a year ago, the California Public Utilities Commission filed a petition for waiver of the Commission's contamination threshold requirement. While I am pleased that we are finally taking action on the petition, I would have granted the State of California greater flexibility.

During the past two years, I have supported the Commission's effort to grant the requests of several states for additional assistance to address local numbering resource issues. As I have said before, giving States additional flexibility in how to address numbering issues is crucial, because it is the State Commissions, not this Commission, that feel the outcry from consumers when numbering conservation measures are adopted.[1]

I expect this Commission to continue to work with the States to facilitate their number conservation plans and look forward to quick Commission action on other requests for regulatory flexibility.[2]

[1] See Remarks by Kevin J Martin, Commissioner, Federal Communications Commission, to the Southeastern Association of Regulatory Utility Commissioners (SEARUC) Conference 2002 (June 3, 2002).

[2] Separate Statement of Commissioner Kevin J Martin, *Petition of the Connecticut Department of Public Utility Control for Delegated Authority to Implement Specialized Transitional Overlays (CC Docket No 99-200) (rel. May 15, 2003)*