

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Numbering Resource Optimization

CC Docket No. 99-200

**REPLY COMMENTS OF SUREWEST TELEPHONE**

**ON THE PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND  
OF THE PEOPLE OF THE STATE OF CALIFORNIA  
FOR AUTHORITY TO IMPLEMENT SPECIALIZED  
OVERLAY AREA CODES**

**I. INTRODUCTION**

Pursuant to the Public Notice issued by the Wireline Competition Bureau on October 16, 2003, and in accordance with 47 C.F.R. sections 1.415 and 1.419, SureWest Telephone offers these reply comments on the opening comments of interested parties on the California Public Utilities Commission's ("CPUC") October 6, 2003 Petition for Authority to Implement Specialized Overlay Area Codes ("Petition"). In all, 18 parties offered comments on the CPUC's Petition.<sup>1</sup> The 16 industry commenters, representing a broad cross-section of telecommunications technologies and providers, unanimously agree that the CPUC's specialized overlay ("SO") proposal has not met the legal standards outlined by the FCC, and that the costs and complexities of implementing the SOs would far exceed the alleged benefits. The comments of Vonage Holdings Corp. ("Vonage"), Onstar Corporation ("Onstar"), the Joint Paging

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<sup>1</sup> On November 24, 2003, NARUC also submitted late-filed, "ex parte" comments on the CPUC's proposal.

Commenters,<sup>2</sup> and j2 Global Communications, Inc. ("j2 Global") were particularly persuasive on these points, since they demonstrate the many inherent difficulties in applying the SOs to various technologies and service offerings.

Of the 18 parties offering opening comments, only the two state utility commissions support the CPUC's petition.<sup>3</sup> However, the brief comments by the New York and Michigan commissions provide nothing to bolster the CPUC's inadequate legal and factual showing. As several commenters identified, the CPUC is essentially asking the FCC to write a "blank check" endorsing the general concept of the SOs, without offering sufficient detail for the FCC to fully evaluate the advantages and disadvantages of the plan. Rather than granting the CPUC "some leeway" to work through the many problems in its proposal, the FCC must deny the CPUC's proposal unless and until it is properly targeted, sufficiently detailed, and fully cost-justified. For the reasons set forth in its opening comments, SureWest opposes any attempt to implement a statewide or "service specific" overlay.

## **II. THE BROAD-BASED OPPOSITION TO THE CPUC'S PETITION FROM DEMONSTRATES THE IMPRUDENCE OF THE "SPECIALIZED OVERLAY" PROPOSAL.**

The opposition to the CPUC's Petition comes from nearly every segment of the telecommunications industry, from parties with diverse and often conflicting interests.

Incumbent Local Exchange Carriers ("ILECs"),<sup>4</sup> Competitive Local Exchange Carriers ("CLECs"),<sup>5</sup> Inter-exchange Carriers ("IXCs"),<sup>6</sup> wireless providers,<sup>7</sup> a Voice Over Internet

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<sup>2</sup> The "Joint Paging Commenters" refers to the joint comments of the Allied National Paging Association, American Association of Paging Carriers, Arch Wireless Operating Co., Inc., Metrocall Holdings, Inc., and Weblink Wireless I, L.P.

<sup>3</sup> NARUC's late-filed "ex parte" comments are substantially similar to the comments by the state commissions.

<sup>4</sup> See generally, Comments of SBC Communications, Inc. ("SBC Comments"); Opposition of Verizon ("Verizon Comments"); Opening Comments of SureWest Telephone ("SureWest Comments"); Opening Comments of the Frontier Companies ("Frontier Comments"); and Opening Comments of the California Small LECs ("Small LEC Comments").

<sup>5</sup> See generally, Comments of MCI ("MCI Comments") and AT&T Comments on California Petition ("AT&T Comments")

Protocol ("VOIP") provider,<sup>8</sup> paging companies,<sup>9</sup> cable providers,<sup>10</sup> Internet Service Providers ("ISPs"),<sup>11</sup> telematics providers,<sup>12</sup> and unified messaging providers<sup>13</sup> have each independently reached the same conclusions regarding the SO proposal:

1. The proposal exceeds the CPUC's authority to fashion area code relief, since it would apply to many areas where such relief is not needed.<sup>14</sup>
2. The costs of implementing and administering the SO proposal overwhelm its supposed benefits, so the Petition cannot legally be granted.<sup>15</sup>
3. The CPUC's Petition lacks sufficient detail for the CPUC's proposal to be granted.<sup>16</sup>

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<sup>6</sup> See generally, Sprint Corporation Comments ("Sprint Comments").

<sup>7</sup> See generally, Comments of Nextel Communications, Inc. ("Nextel Comments"); Comments of the Cellular Telecommunications & Internet Association ("CTIA Comments"); and Opposition of Verizon Wireless ("Verizon Comments")

<sup>8</sup> See generally, Comments of Vonage Holdings Corp. ("Vonage Comments")

<sup>9</sup> See generally, Comments of Joint Paging Commenters.

<sup>10</sup> See generally, Comments of California Cable & Telecommunications Association in Opposition to California Petition ("CCTA Comments").

<sup>11</sup> See generally, CTIA Comments.

<sup>12</sup> See generally, Comments of Onstar Corporation ("Onstar Comments").

<sup>13</sup> See generally, Opposition of j2 Global ("j2 Global Comments").

<sup>14</sup> As AT&T's Comments point out, the North American Numbering Plan Administrator ("NANPA") has pushed out the projected exhaust dates for 19 of California's area codes due to a decrease in demand. See AT&T Comments, p. 13, fn 37); see also Nextel Comments, p. 4; CTIA Comments, p. 4 ("there are no exigencies that warrant imposing these burdens throughout the state of California") (citing FCC's Contamination Threshold Order at ¶16); CCTA Comments, p. 6 ("... only three of California's 25 area codes are nearing exhaustion, and therefore qualify for area code relief.")

<sup>15</sup> See, e.g. AT&T Comments, p. 11 ("[t]he Overlay Petition provides no showing of the benefits of the SO . . ."); Verizon Comments, p. 4 (implementing the SOs would require an extensive survey to be done, at the conclusion of which, the number resource issues in California will have changed); Nextel Comments, p. 3 ("the CPUC fails to satisfy [the] initial Commission requirement" that it "discuss why the . . . benefits of the proposed SO would be superior to implementation of an all-services overlay."); Vonage Comments, p. 14; Joint Paging Comments, p. 8 (demonstrating that the burden of take-backs on the paging industry would be extreme)

<sup>16</sup> See, e.g. Verizon Comments, p. 1 ("The California PUC's petition for two specialized overlays fails to meet the required showing, as it omits many important details of its plan."); j2 Global Comments, p. 5 ("the Petition is not the result of exhaustive analysis of the numbering situations in California . . ."); Verizon Wireless Comments, p. 4 ("the CPUC's petition provided very little detail about how the proposed SOs would be implemented, for what purpose and what benefit."); Verizon Wireless Comments, p. 6 ("The CPUC's petition must be denied because it did not present any evidence to satisfy these FCC criteria regarding take-backs of telephone numbers from paging carriers or other services."); see Joint Paging Comments, p. 2 (the "SO Petition . . . does not set forth any factual data to support [the] assumption" that "superimposing a new NPA over each of the southern and northern sections of the state will somehow materially extend the lives of all 25 underlying NPAs . . .")

4. The proposal runs a serious risk of harming number conservation efforts, given the increased possibility of number stranding, and the unknown demand for the services to be placed in the SOs.<sup>17</sup>

5. The proposal would produce a host of rating and routing issues, which the Petition does not even begin to address.<sup>18</sup>

6. The SO proposal would render number porting more difficult, in contravention of current FCC policy.<sup>19</sup>

7. The SOs would discriminate against certain service providers by erecting arbitrary boundaries between them.<sup>20</sup>

The consensus among these disparate industry commenters is striking, and demonstrates clearly that the CPUC's proposal is both legally insufficient and ill-advised. Based on these observations alone, the CPUC's Petition must be denied.

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<sup>17</sup> See, e.g. Sprint Comments, pp. 1-2 ("the latest proposal runs the real risk of being less efficient than traditional area code relief because it appears certain carriers would require duplicate thousand-blocks in the same rate center . . . simply to serve their existing customer base."); AT&T Comments, p. 12 ("[b]ecause California cannot determine how much demand would be diverted to the SO, it cannot make the required showing of the extent, if any, to which the life of the underlying area codes would be extended."); Verizon Comments, p. 5 ("One can expect that many of the blocks will be lightly used, . . . stranding most of the numbers in the block. Thus, two whole NPAs will be consumed, with a very low return on that substantial investment."); Verizon Wireless Comments, p. 6 ("the 378 rate centers in the northern half of the state and the 360 rate centers in the southern half of the state cannot be adequately supplied with numbering resources . . ."); Nextel Comments, p. 6 (a "single paging company could immediately consume one million of the new numbers in the SO by taking 10,000 numbers in each of those 100 rate centers."); Joint Paging Comments, p. 5

<sup>18</sup> See, e.g., Vonage Comments, p. 14 ("Parties placing calls between the existing area code and the overlay code would think that such calls were toll since 10-digit dialing would be required.")

<sup>19</sup> MCI Comments, p. 3 ("When numbers are portable among technologies, it makes no sense to relegate one technology to a specific NPA."); Nextel Comments, p. 5 ("With number pooling and LNP in place, SOs . . . are a tool whose time has passed . . . [and] will cause confusion and impediments to developing technologies."); Onstar Comments, p. 6 ("Onstar fails to see how it can comply with the upcoming portability regulations if California's petition is approved."); CCTA, p. 18 ("the retention of 7-digit dialing, combined with restricting VOIP services to their own area code, renders number portability unavailable to VOIP service providers that seek to port numbers from competitors.")

<sup>20</sup> See Sprint Comments, p. 4 ("Customers may understandably be reluctant to convert to VOIP services if such a conversion means that neighbors and business associates must dial extra digits or pay toll charges for what otherwise would be a local seven-digit call."); CTIA Comments, p. 5 ("the CPUC could not be more wrong in its conclusion that disparate dialing patterns are no longer discriminatory . . ."); Onstar Comments, p. 6 (" . . . there is no basis for discriminating against OnStar Personal Calling or similar services in favor of hand-held units in numbering policy . . ."); Joint Paging Commenters, p. 3 ("the SO Petition wholly fails to address the discriminatory and competitive consequences of imposing this type of burden on the paging/messaging industry sector, which continues to provide vital, low-cost, reliable telecommunications services . . .")

### III. THE OPENING COMMENTS OF VONAGE, ONSTAR, THE JOINT PAGING COMMENTERS, AND j2 GLOBAL UNDERSCORE THE INSURMOUNTABLE DEFINITIONAL AND ADMINISTRATIVE OBSTACLES THAT THE CPUC'S PROPOSAL WOULD INEVITABLY GENERATE.

As the opening comments amply demonstrate, there is not a clear distinction to be made between "geographic" and "non-geographic" services. The comments of Vonage, Onstar, the Joint Paging Commenters, j2 Global, and others clarify that the SOs would in fact apply to many services that are geographically-sensitive. Since many VOIP customers "are both aware of and have preferences for the localities with which their numbers are associated," VOIP services cannot reasonably be viewed as "non-geographic" in the way that Automatic Teller Machines ("ATMs") or credit card readers might be.<sup>21</sup> Similarly, Onstar's innovative in-vehicle, "hands-free, voice activated, prepaid, wireless cellular service" is most analogous to cellular phone service, yet this service would be relegated to the SOs.<sup>22</sup> Paging companies and unified messaging ("UM") providers have also been singled out for disparate treatment.<sup>23</sup> Isolating these services in the SOs would discriminate against them in favor of similarly-situated providers that would remain in the underlying area codes. Further, placing certain types of carriers in the SOs could create unique and unjustified burdens for customers and service providers. For example, would all cars with Onstar have to be "taken back" to place their numbers in the new area code? Would all pagers have to be returned for reprogramming? These results would be expensive and devastatingly burdensome.

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<sup>21</sup> AT&T Comments, p. 18; see also Vonage Comments, p. ii ("the CPUC proposes to include telephone numbers used by VOIP providers and their customers, that is, *geographic-based telephone numbers* . . .")

<sup>22</sup> Onstar Comments, p. 2.

<sup>23</sup> See Joint Paging Comments, p. 3 ("the SO inappropriately, and without explanation, singles out one part of the wireless industry – the paging industry – for inclusion in the SO."); see also j2 Global Comments, p. 4 ("it is a mistake to characterize UM as non-geographically sensitive.")

As technologies continue to develop, and the lines between services continue to blur, the "geographic" versus "non-geographic" designation will be harder and harder to maintain. The CPUC's proposal could stifle innovation by forcing carriers to fit into one regulatory category or another simply to avoid being placed in the SOs. If the CPUC's proposal already raises problems for defining existing services, how will the CPUC decide how the next generation of services will be classified? The bulk of the opening commenters are correct that the CPUC's petition fails to address these complexities. The CPUC should not be permitted to draw arbitrary lines between potentially very similar services, as the current proposal undoubtedly would.

**IV. UNLESS AND UNTIL THE CPUC MEETS THE FCC REQUIREMENTS FOR A SPECIALIZED OVERLAY, ITS PETITION MUST BE DENIED.**

Neither the statements of other state commissions, nor any California statutory authority governing requests for area code relief can relieve the CPUC of its obligations to meet the FCC's established prerequisites for implementation of a specialized area code. The comments of the New York Department of Public Service and the Michigan Public Service Commission express blind faith in the CPUC's proposal without discussing any of the problematic nuances noted above. These commissions' statements of support cannot resuscitate the legal and factual failings of CPUC's Petition.

SureWest also disagrees with any suggestion that CPUC's Petition should be granted because it was compelled by California Public Utilities Code § 7943(b). It is true that this statute requires the CPUC to petition the FCC for "authority . . . to order telephone corporations to assign telephone numbers dedicated to wireless and data usage to a separate area code . . ." (Cal. Pub. Util. Code § 7943(b)). However, a California statute does not relieve the CPUC of the requirements imposed by FCC's *Third Report and Order on Numbering Resource Optimization*

("Third Report and Order") that area code relief be limited to areas in which it is needed, and that the burdens of any specialized overlay be outweighed by the benefits. Furthermore, whatever the intent of section 7943(b), it could not have been anything as arbitrary or overbroad as the CPUC's current proposal.

Further, the guidelines in the *Third Report and Order* require that the CPUC's Petition meet the necessary prerequisites *before* the FCC can properly grant authority to the CPUC to implement any SOs. SureWest echoes the comments of other parties that the CPUC should not be granted "some leeway" to resolve the many problems with its petition (CPUC Petition, p. 4). The *Third Report and Order* demands that the FCC evaluate on a "case by case basis" the specific problems associated with a given SO proposal *in advance* of granting authority for its implementation. (*Third Report and Order*, ¶67). The FCC must specifically examine the proposal in light of the established criteria to assure that its benefits outweigh any costs imposed by the proposal. (*Third Report and Order*, ¶80). The FCC is the appropriate forum for this examination to take place – not the state commissions. Indeed, although it "conditionally granted" the Connecticut request to implement a SO, the FCC specifically instructed the Connecticut Commission to "submit to the Bureau its implementation plan detailing the specific non-geographic sensitive services that it intends to include in the SO."<sup>24</sup> Absent further FCC approval, the Connecticut proposal cannot go forward. Even if the FCC were inclined to grant the Petition, it should not simply issue a "blank check" to the CPUC to fashion the details of its proposal absent FCC scrutiny.

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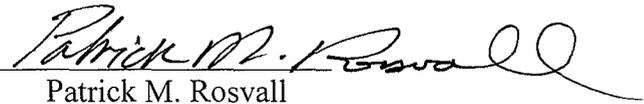
<sup>24</sup> *Memorandum Opinion and Order on Petition of Connecticut Department of Public Utility Control for Delegated Authority to Implement Specialized Transitional Overlays at ¶4.*

## VI. CONCLUSION

As the unprecedented industry consensus against the SO proposal demonstrates, the proposal will cause unnecessary costs and burdens on the California public, create arbitrary distinctions between otherwise similar carriers, generate significant administrative and implementation costs, and risk stifling technological innovations. Area code relief is always accompanied by some customer and carrier burdens, but the CPUC should pursue relief that avoids potential discrimination, minimizes the costs and confusion to customers, and focuses more specifically on the areas where number exhaust is imminent. For all the reasons set forth herein, SureWest urges the FCC to reject the CPUC's Petition.

Respectfully submitted,

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