

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

In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Petition of the California Public Utilities Commission)	
and the People of the State of California for Authority to)	DA 03-3262
Implement Specialized Overlay Area Codes)	

**AT&T REPLY COMMENTS ON CALIFORNIA PETITION FOR AUTHORITY
TO IMPLEMENT SPECIALIZED OVERLAY AREA CODES**

Pursuant to the Public Notice issued in the above-captioned proceeding,¹ AT&T Corp. (“AT&T”) hereby submits its reply comments in response to the petition filed by the California Public Utilities Commission and the People of the State of California (collectively, “California”) seeking authority to implement specialized overlay area codes.² The comments overwhelmingly agree that California has failed to meet the criteria for service overlays (“SOs”) set forth in the Commission’s *Third NRO Order*³ by proposing relief that is both overly inclusive, encompassing area codes and services for which relief is not required, and ineffective in addressing the exigent circumstances in the

¹ *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Specialized Overlay Area Codes*, CC Docket No. 99-200, Public Notice, DA 03-3262 (rel. Oct. 16, 2003).

² Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Specialized Overlay Area Codes, CC Docket Nos. 99-200 and 96-98 (filed October 6, 2003) (the “Overlay Petition”). California filed the instant Petition seeking authority to place in the new SOs all “non-geographic based” numbers, except for cellular numbers, including numbers for services such as OnStar, E-fax, business (but not residential) modems and fax machines, and automatic teller machines (ATMs). California proposes to include numbers for paging companies, Internet telephony companies, Voice Over Internet Protocol (VoIP) providers, and dial-up Internet service providers (ISPs) in the new SOs.

³ *Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Order on Reconsideration, FCC 01-362 (rel. December 28, 2001) (“*Third NRO Order*”).

310 and 909 area codes.⁴ The record also shows that the inclusion of any Voice Over Internet Protocol (“VoIP”) service in an SO prior to the resolution of the Commission’s forthcoming VoIP proceedings would be damaging at worst and at best, premature. California freely concedes that its proposed SOs raise fundamental concerns in the industry - - most notably, concerns that carriers will be unable to implement the proposal at all - - but asks the Commission to “grant us some leeway in resolving these questions as we cannot today anticipate every issue nor propose a solution to unknown problems.”⁵ These statements are cold comfort to carriers and consumers who can expect to struggle with the complexities of California’s proposal for years to come without receiving any tangible benefits. The comments confirm that California’s request to impose two service overlays is without merit and should therefore be denied.

ARGUMENT

I. The Comments Show that California’s Request Fails to Meet the Commission’s Criteria for Service Specific Overlays.

In the numbering resource optimization proceedings, the Commission has expressed fundamental concerns with SOs, stating “we continue to be concerned that placing specific services and technologies in SOs could have an adverse impact on the affected customers and service providers” and “in some cases SOs may not promote

⁴ California seeks one SO for the 530, 707, 415, 925, 510, 650, 408, 916, 209 and 831 NPAs in the northern half of California, and a second SO for the 805, 559, 760, 661, 909, 858, 619, 818, 213, 323, 310, 562, 626, 714 and 949 NPAs in the southern part of the state. Overlay Petition, p. 4 and Appendix. “Service specific” or “technology specific” overlays (collectively, “specialized overlays” or “SOs”) are created when a new area code is introduced to serve the same geographic area as one or more existing area code(s), and numbering resources in the new area code overlay are assigned to a specific technology or service. *See* 47 C.F.R. 52.19(c)(4). *See also* INC Guidelines, at 6.3.4.

⁵ Overlay Petition, pp. 3-4.

number efficiency.”⁶ In the *Third NRO Order*, the Commission allowed state commissions seeking to implement SOs to request delegated authority to do so on a case-by-case basis, but set forth exacting criteria that it intends to apply in reviewing specialized overlays proposed by the state commissions.⁷ The vast majority of the comments agree that California’s proposal fails to meet the Commission’s criteria, and that its request for authority to implement two specialized overlays should be denied.⁸

A. California Fails to Show that the SOs Will be Limited to Locations Requiring Area Code Relief.

California’s proposal fails to meet the Commission’s most fundamental criterion for implementation of specialized overlays: SOs must be limited to areas in which a state has properly determined that area code relief is needed.⁹ In the *Contamination Threshold Order*, the Commission emphatically rejected California’s request for statewide area code relief, finding “the next closest projected exhaust date for an area code will occur in the 760 area code in the third quarter of 2005, and the majority of the state’s area codes are

⁶ *Third NRO Order*, at 71-72. All references are to paragraph numbers unless otherwise stated.

⁷ *Third NRO Order*, at 73 (“We continue to focus on the goals of numbering use efficiency nevertheless, and agree with commenters that in some cases, SOs may not promote number efficiency. We therefore set forth criteria below to provide some guidance to states on what types of proposals would likely merit our approval, and to help ensure that the numbering resource optimization benefits of any proposed SO are realized.”)

⁸ Comments of Allied, p. 2; California Small LECs, p. 3; CCTA, p. 22; CTIA, p. 2; Frontier Companies, pp. 2-3; j2 Global, pp. 5-6; Nextel, pp. 7-10; OnStar, p. 2; SBC, pp. 11-12; Sprint, pp. 4-6; SureWest, pp. 2-4; Verizon, pp. 3-5; Verizon Wireless, pp. 3-4; Vonage, pp. 5-7; MCI, pp. 2-3. The Michigan and New York commissions support California’s proposal.

⁹ *Third NRO Order*, at 80 (“[a]ny delegated authority granted to state commissions to implement SOs will be limited to areas in which a state has properly determined that area code relief is needed. The effect of allowing SOs to be implemented in areas that are not nearing exhaust could be staggering, because of the potential for multiple requests for area codes over a short period of time. In direct contravention of our numbering resource optimization goals, this would lead to an acceleration of NANP exhaust.”)

not projected to exhaust for at least several years.”¹⁰ Rather than heed the Commission’s order, California has returned with yet another statewide proposal. The record shows that California’s proposed service overlays go far beyond what is required to avoid numbering exhaust, constraining the availability of numbering resources by providing relief in area codes in which the need for relief has not been demonstrated.¹¹

California’s proposal also fails to provide meaningful area code relief in the area codes in which the need for relief is most urgent. As the comments make clear, service or technology specific overlays will not save NPAs that are nearing exhaust.¹² While area code relief in the 310 and 909 NPAs should have been well underway by this time, until recently, California had suspended or delayed nearly all area code relief proceedings pending before it.¹³ In the midst of this comment cycle, the CPUC announced that it intends to respond to the telephone number shortage in the 909 area code by splitting 909 into two area codes, creating a boundary line running through the geographic center of the 909 area in a west-to-east direction, and stating that it will assign a new area code

¹⁰ *Numbering Resource Optimization*, CC. Docket No. 99-200, Order, FCC 03-196 (rel. August 11, 2003) (“*Contamination Threshold Order*”) at 15 (“These projections contradict California’s claim that the severe shortage of available numbers constitutes ‘special circumstances warranting a deviation from the ten percent contamination rule.’ 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.”)

¹¹ Comments of Allied, p. 2; California Small LECs, p. 2; CCTA, p. 6; CTIA, p. 3; Frontier Companies, p. 2; j2 Global, pp. 6-7, 14; Nextel, pp. 7-8; SBC, pp. 6-7; Sprint p. 5; SureWest, p. 2; Verizon, p. 5; Verizon Wireless, pp. 6-7; MCI, pp. 3-4.

¹² Comments of Allied, p. 2; California Small LECs, p. 11; CCTA, p. 6; CTIA, pp. 3-4; Frontier Companies, p. 3; j2 Global, p. 6; Nextel, p. 4; SBC, p. 7; Verizon Wireless, p. 2 and fn 6.

¹³ See, e.g., NANPA, *Status of Active or Suspended NPA Relief Projects*, December 5, 2002; NANPA Planning Letter No. PL-250, November 10, 2000 (the California PUC will announce when the 310 split will take place); NANPA Planning Letter No. PL-230, May 31, 2000 (announcing the suspension of the 619 NPA split); NANPA Planning Letter No. PL-215, February 24, 2000 (the PUC has temporarily suspended the 909 NPA split). See also www.nanpa.com, under NPA Relief Planning.

(951) to the region south of the boundary line.¹⁴ But as the comments correctly observe, California's proposed relief fails to address exigent circumstances in the 310 NPA, and number assignment will not commence in the 909 NPA until the year 2005.¹⁵

Rather than approve a request for relief that is both overly inclusive and plainly ineffective, the Commission should exercise its "right to take a stronger role in [the NPA relief] process."¹⁶ In short, the Commission must require California to "take all necessary steps to prepare an NPA relief plan that may be adopted by the state commission when [as now] numbering resources in the NPA are in imminent danger of being exhausted."¹⁷ Accordingly, if the Commission ultimately approves the use of SOs in California, that approval should be conditioned upon California's prior or concurrent implementation of a plan for meaningful area code relief in the 310 and 909 area codes.

¹⁴ Carriers may not begin to assign numbers within 951 *until February 27, 2005*. See CPUC News Release, "PUC Approves Plan Splitting 909 Area Code", Docket No. R.95-04-043 (November 13, 2003).

¹⁵ Comments of Allied, fn. 8; CCTA, p. 7; CTIA, fn. 10; Frontier Companies, p. 3 and fn. 5; j2 Global, p. 14; Nextel, pp. 2, 4; SBC, p. 7; SureWest, p. 3 and fn. 1; Verizon Wireless, fn. 6.

¹⁶ *Numbering Resource Optimization*, CC Docket No. 96-98 and 99-200, Second Report and Order and Order on Reconsideration, FCC 00-429 (rel. December 29, 2000) ("*Second NRO Order*"), at 59.

¹⁷ *Second NRO Order*, at 60. The Commission's rules require state commissions to introduce ten-digit dialing in the underlying area code(s) as well as in the overlay area code whenever an overlay is implemented. See 47 C.F.R. Section 52.19(c)(3)(ii) ("No area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.")

B. The Comments Show that State Commissions Must Implement Ten-Digit Dialing in the NPAs and the Underlying Area Codes.

Two parties--the Michigan PSC and the NYDPS--support the preservation of 7-digit dialing in the area codes underlying California's proposed SOs.¹⁸ In the *Third NRO Order*, the Commission considered the claims of state commissions who opposed the requirement of ubiquitous ten-digit dialing in permanent overlays. The Commission determined that, absent the issuance of a waiver, ten-digit dialing should be imposed.¹⁹

California proposes the utter opposite - - permanent 7-digit dialing within the SOs and the underlying NPAs - - stating only that the competitive considerations that prompted the Commission to adopt ten-digit dialing can no longer apply.²⁰ The Overlay Petition assumes the false conclusion that no competitive considerations can arise because all of the services within the overlay are "similar" and "non-geographic" in nature. Only one party - - the NYDPS - - appears to agree with this conclusion.²¹ The vast majority of the comments make clear that *neither* characterization applies: services such as VoIP and OnStar could not be more different or diverse, and many of the services

¹⁸ See Comments of the Michigan Public Service Commission, p. 3 ("Preserving 7-digit dialing within area codes, for local calls, enhances citizen approval toward the need for area code relief and traditional customer satisfaction."); Comments of New York State Department of Public Service (NYDPS), pp. 2-3.

¹⁹ *Third NRO Order*, at 92.

²⁰ Overlay Petition, p. 7 ("We do not believe ten-digit dialing would be necessary in the SOs because the competitive concerns, which prompted the Commission to adopt the ten-digit dialing requirements in 1996, have largely abated over time.")

²¹ Comments of NYDPS, p. 3 ("A specialized overlay can be accomplished with little interruption and will not impede the growth of competing non-geographic services, even with the retention of seven-digit dialing. Under the CPUC's proposal, all carriers providing similar services will be on an equal footing, since all customers for similar services will be in the overlay area codes.")

to be included in the SO are indisputably geographically sensitive.²² As Vonage states, “VoIP customers use their service to receive personal and business calls. Such use of telephone numbers is not in any way similar to services that use telephone numbers such as OnStar, automatic teller machines, and point-of-sale devices where the end user does not care what the actual telephone number is.”²³

C. The Comments Oppose Rationing in the NPA and Underlying Area Codes.

California’s proposal to continue to apply existing rationing approaches in the SOs, including the statewide rationing of numbers using a lottery system, finds little support in the Commission’s rulings.²⁴ The Commission has stated that rationing may be implemented pursuant to a declaration by the NANPA that a jeopardy situation exists, meaning that the underlying area code is projected to exhaust before a new area code is implemented.²⁵ The Overlay Petition simply ignores this requirement, which the

²² See Comments of Allied, p. 2 (“Paging numbers are neither ‘transparent’ nor ‘non-geographic’ and paging services are not functionally or operationally similar to other services potentially subject to the SO.”); j2 Global, p. 7 (Unified messaging services “cannot be included in a non-geographically-sensitive category of services, as UM relies upon the geographic identification of a familiar area code to market its services.”); Nextel, p. 8 (“The ‘non-geographic based’ services identified in the SO, such as paging or VoIP services, would lose their geographic identity and callers would not be able to readily ascertain whether or not calling those numbers would result in toll charges.”); OnStar, at 4 (“OnStar objects to this proposal on the basis that OnStar is a geographically sensitive service.”); SBC, pp. 3-4 (telephone numbers serving modems and fax machines, and dial-up numbers for ISPs are geographically sensitive); Sprint, pp. 2-4 (CMRS and dial-up services are geographically-based); Verizon Wireless, pp. 2-3 (paging companies offer geographically sensitive services).

²³ Comments of Vonage, p. 5

²⁴ Overlay Petition, p. 9 (“The CPUC proposes that the rules of the existing NPAs in California, including pooling and lottery, apply to the SOs. In addition, we propose that number conservation rules such as sequential numbering and fill rate apply to the SOs as well.”) “Rationing” is a number conservation measure that limits the amount of numbering resources made available for allocation to carriers in a given area in accordance with an industry-implemented or state implemented rationing plan.

²⁵ *Third NRO Order*, at 93 and fn. 226.

Commission has applied with equal force to specialized overlays.²⁶ California's rationing proposal finds even less support in the comments. The comments agree that there is no basis for statewide rationing in California's proposal: apart from the 310 and 910 area codes, no jeopardy situation currently exists.²⁷ California's rationing approach is plainly inconsistent with the Commission's rationing requirements for SOs as stated in the *Third NRO Order* and should therefore be rejected.

D. The Comments Demonstrate that SOs Will Fail to Divert Significant Demand to Extend the Life of Area Codes.

In the *Third NRO Order*, the Commission stated:

“To provide any meaningful benefits, a SO should divert significant demand from the underlying area code to extend the life of that area code. We believe, for example, 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.”²⁸

There is no evidence to support California's assertion that two specialized overlays would slow the pace at which numbering resources are depleted by reducing the demand for numbers in multiple area codes. California has in fact conceded that it cannot estimate the present usage of the resources it proposes to divert to the SO, because it does appear that service providers separately track the numbers assigned to the categories of service

²⁶ *Third NRO Order*, at 93 (“We find that any SO that achieves the purposes for which it is implemented (that is, the availability of numbering resources is increased for all carriers) should not need to be subject to rationing. Thus we agree with commenters that neither the SO NPA nor the underlying area code(s) should be subject to rationing.”)

²⁷ Comments of Allied, p. 2; California Small LECs, p. 2; CCTA, p. 6; CTIA, p. 3; Frontier Companies, p. 2; j2 Global, pp. 6-7, 14; Nextel, pp. 7-8; SBC, pp. 6-7; Sprint p. 5; SureWest, p. 2; Verizon, p. 5; Verizon Wireless, pp.6-7; MCI, pp. 3-4.

²⁸ *Third NRO Order*, at 82.

that California proposes to include in the SO.²⁹ The comments confirm that carriers do not track the data needed to make usage estimates.³⁰ Because 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 will be extended. As CCTA states, “[A] proposal that cannot even begin to address the question of demand is not a proven or viable area code relief solution.”³¹

E. The Comments Overwhelmingly Agree That the Costs of California’s Proposal Will Outweigh Any Conceivable Benefits.

The Commission has made it clear that any assessment of a specialized overlay must include a cost-benefit analysis, stating “[w]e also emphasize that SOs are numbering resource optimization measures; thus states seeking to implement a SO must also demonstrate that the benefits will outweigh the costs of implementing the SO.”³² As the vast majority of the comments observe, the Overlay Petition makes no serious attempt to balance the benefits offered by imposing specialized overlay area codes against the disadvantages to carriers and consumers resulting from such an approach.³³ While even a substantial increase in the life expectancy of California’s numbering resources would fail to justify the excessive costs and complications caused by a grant of California’s request,

²⁹ Overlay Petition, p. 3.

³⁰ Comments of Allied, p. 5; California Small LECs, p. 5; CCTA, pp. 8-9; CTIA, p. 4; Frontier Companies, p. 5; j2 Global, p. 10; SureWest, pp. 4-5; Verizon, pp. 4-5; Verizon Wireless, p. 7; MCI, p. 13.

³¹ Comments of CCTA, p. 9.

³² *Third NRO Order*, at 80.

³³ Comments of Allied, p. 6; California Small LECs, p. 4; CTIA, p. 5; Frontier Companies, pp. 4-5; j2 Global, p. 5, 14; SBC, pp. 11-12; Sprint pp. 5-7; SureWest, p. 4; Verizon, pp. 1-2; Verizon Wireless, p. 4; Vonage, pp. 13-14.

no significant increase in life expectancy can be anticipated in California NPAs in any event. The North American Numbering Plan Administrator (“NANPA”) in fact has pushed out the projected exhaust dates of nineteen California NPAs due to an anticipated *reduction* in the demand for these numbers.³⁴

Contrary to the Commission’s requirements, the Overlay Petition fails to address the many complications to the porting and pooling processes and associated database and forecasting functions that will result from the imposition of the proposed SOs.³⁵ The record shows that by requiring carriers to generate separate numbering usage forecasts for each included service, and to collect and maintain the data needed to support these forecasts, California’s proposal would increase the costs of pooling and porting. Separate number pools would have to be maintained for each category of service to effect number changes when customers switch services within these SOs, and numbering plan administration and practices would have to change accordingly, adding to the significant costs already borne by carriers and the NANPA.³⁶

The Overlay Petition also fails to address the considerable burdens that would be placed on carriers and consumers by such action. As j2 Global states, “[t]he CPUC’s hope of easy resolution to problems that it has not addressed or even considered may be

³⁴ See 2002 NPA Exhaust Analysis (changes as of October 31, 2002) (noting that the estimated exhaust date for the 209, 323, 408, 415, 510, 530, 559, 619, 626, 650, 707, 714, 760, 805, 818, 909, 916, 925, and 949 NPAs have been extended between 3 and 75 months, depending on the NPA). In addition, more than 5,000 codes were returned to the NANPA in 2001, and more than 3000 were returned in 2002. See NANPA Report to the NANC, at 3 (November 19-20, 2002).

³⁵ *Third NRO Order*, at 81.

³⁶ Comments of Allied, p. 5; California Small LECs, p. 5; CCTA, pp. 8-9; CTIA, p. 4; Frontier Companies, p. 5; j2 Global, p. 10; SureWest, pp. 4-5; Verizon, pp. 4-5; Verizon Wireless, p. 7; MCI, p. 13.

overly optimistic.”³⁷ Capturing data related to the installed base of each service, tracking customers’ changes in service, migrating telephone service between the NPA and the SOs in response to customer requests, and modifying service order processing functions to implement California’s proposal would impose significant costs and administrative burdens on California carriers, the benefits of which have not been demonstrated. These problems will multiply if California’s proposal is adopted in other states.

F. California Fails to Show that the Benefits of SOs Will Exceed the Benefits of an All Services Overlay.

In the *Third NRO Order*, the Commission required states seeking to implement SOs to show that the numbering resource optimization benefits of an SO will exceed those of an all-services overlay.³⁸ State commissions who seek to impose specialized overlays bear a heavier burden than proponents of all-services overlays, due to the costs and complexities of implementing the former approach.³⁹ Neither the CPUC nor the two state commissions supporting California’s service overlays have shown that the numbering resource optimization benefits of implementing California’s proposal would be superior to the implementation of an all-services overlay.⁴⁰ As California

³⁷ Comments of j2 Global, p. 12.

³⁸ *Third NRO Order*, at 81. The INC Guidelines incorporate this provision, stating “[a] state commission seeking to implement a technology-specific or service-specific overlay should discuss why the numbering resource optimization benefits of the proposed overlay would be superior to implementation of an all-services overlay.” INC Guidelines, at 6.4.3.

³⁹ The Commission’s rules thus make it clear that state commissions may not implement service-specific or technology-specific overlays without express authorization from the FCC. Under 47 C.F.R. Section 52.19(c)(4) “[s]tate commissions may not implement a technology-specific or service-specific overlay without express authority from the Commission.”

⁴⁰ Generalized assertions of the benefits of numbering resource optimization, such as those made by Michigan and New York in this proceeding, fail to meet the specified burdens of the

candidly concedes, the imposition of two specialized overlays would impose unwarranted and in some cases unsustainable burdens on carriers.⁴¹

The parties overwhelmingly agree. The comments show that the imposition of a temporary, geographically targeted all-services overlay would be preferable to the specialized overlays California now seeks.⁴² All-services overlays are not specific to any particular service or services. They do not result in “take backs” of customers’ numbers. All-services overlays can be targeted to the area codes and geographic areas most in need of area code relief, alleviating number exhaust instead of accelerating it. Because they require the use of ten-digit dialing in the parent NPA and the overlay NPA, all-services overlays alleviate customer confusion and concern. All-services overlays are also simpler and less costly to administer, as they do not require the establishment of separate number pools, customer notification procedures and other costly measures made necessary by the imposition of specialized overlays.

state commissions in this regard. *Third NRO Order*, at 81 (listing eight specific criteria that state commissions must address).

⁴¹ Overlay Petition, p. 3. (“California anticipates that a number of questions pertaining to the technical details of implementing the SOs will arise as we plan for this change. For example, we will need to address and resolve specific concerns the carriers raise regarding assignment of transparent numbers to the SOs. The industry has also informed the CPUC staff that they do not currently track the type of services to be included in the SOs. At this time, the industry can neither estimate the current level nor the future demand of numbers used for these services. Carriers assert that they would need to individually survey their customers to determine the extent of usage and identify the individual numbers assigned to specialized overlay type services. Going forward, carriers will need to modify their billing, provisioning and ordering data bases and systems in order to track these services.”)

⁴² Comments of California Small LECs, pp. 5-8; Frontier Companies, p. 12; j2 Global, pp. 2-3; Nextel, pp. 3, 6-7, 8-9; SBC, pp. 1, 13-14; Sprint, pp. 2; 5; SureWest, pp. 6-9; Verizon Wireless, pp. 4, 8-9.

II. The Comments Confirm That California Cannot Justify the Inclusion of VoIP in its Proposed Service Overlays.

The Commission has properly taken a “wait and see” approach toward Voice Over Internet Protocol (“VoIP”) technology, allowing the services to develop before making “any definitive pronouncements.”⁴³ California, in contrast, seeks to include VoIP in its service overlays precipitously, making no effort to define VoIP technology and no attempt to determine which, if any, of these emerging services should be included in the proposed SOs. The comments show that the premature and haphazard application of traditional telecommunications regulation to unidentified or still evolving VoIP services runs a significant risk of impeding the growth of such services, and should be assiduously avoided.⁴⁴ As Vonage states, “requiring customers of [VoIP] services to utilize telephone numbers from a specialized overlay will slow the deployment of VoIP services as well as impede the propagation of broadband services.”⁴⁵

The Commission disfavors service-specific overlays, and has made it clear that if they are to be approved at all, they must be limited to non-geographically sensitive

⁴³ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd. 11,501, at 90 (“Universal Service Report”). On December 1, 2003, the Commission held a public forum on Internet Telephony, and will issue shortly thereafter a Notice of Proposed Rulemaking (“NPRM”) on the subject of VoIP services. The NPRM will gather public comment on the appropriate regulatory environment for VoIP services and will examine other critical regulatory issues. *See FCC News Release*, “FCC to Begin Internet Telephony Proceedings-VoIP Forum Scheduled for December 1” (November 6, 2003).

⁴⁴ *See, e.g.* Comments of CCTA, p.4 (“VoIP services, in particular, are fast appearing, but they are still nascent. Imposing unique area codes upon those services at this early stage has the potential to thwart innovation and to pigeon-hole those offerings into unknown and undesirable codes.”); MCI, p. 3 (“In the context of VoIP, implementation of a technology-specific overlay is highly problematic.”); Frontier Companies, p. 15 (“At a minimum, the uncertain regulatory treatment of VoIP warrants postponement of this SO proposal until the role of VoIP in California telecommunications market is further clarified.”); CTIA, p. 6; j2 Global, pp. 8-9; Nextel, pp. 3, 7; SureWest, p. 14.

⁴⁵ Comments of Vonage, pp. 9-10.

services.⁴⁶ California proposal to place “non-geographic based” numbers, including VoIP numbers, in the proposed SO is wide of the mark.⁴⁷ The record makes clear that VoIP services should not be placed in the SO, because they are geographically sensitive in nature: VoIP customers are both aware of and have preferences for the localities with which their numbers are associated.⁴⁸

The comments further show that the ill-conceived application of traditional dialing assumptions to VoIP services runs a significant risk of distorting competition for such services.⁴⁹ Citing customer preferences for abbreviated dialing, California states that it intends to impose a permanent seven-digit dialing requirement on services included in the SOs. Calls across any area code boundary, including calls between the underlying

⁴⁶ *Third NRO Order*, at 74.

⁴⁷ “Non-geographic based” numbers are numbers that (unlike ordinary location based numbers) are not related to the geographic location of the customer’s equipment and are not assigned to NPAs on the basis of such location.

⁴⁸ *See, e.g.* Nextel, p. 8 (“The ‘non-geographic based’ services identified in the SO, such as paging or VoIP services, would lose their geographic identity and callers would not be able to readily ascertain whether or not calling those numbers would result in toll charges.”); MCI, p. 3 (“Insofar as the CPUC implies that VoIP services are non-geographically sensitive, it is misguided. VoIP services that include inbound calling from the PSTN are invariably “geographically sensitive”); Vonage, p. 5 (“[t]he Petition includes geographic-based telephone numbers in the proposed service overlays. VoIP providers, like Vonage, provide service to residential and business customers. Such use of telephone numbers is not in any way similar to services that use telephone numbers such as OnStar, automatic teller machines, and point-of-sale devices where the end user does not care what the actual telephone number is since the device is not used to place or receive telephone calls to family, friends, customers and business associates.”); CCTA, p. 9 (“VoIP services can vary in terms of whether they are geographic or non-geographic.”)

⁴⁹ The comments show, for example, that California’s proposal could impede the ability of end-users to retain their numbers at their current locations when switching from one carrier to another. Attempts to port numbers between traditional services and VoIP providers could be frustrated by the placement of VoIP services in the proposed SOs, depriving consumers of a significant competitive alternative to ILEC telephone services. *See, e.g.* Comments of CCTA, p. 17.

area codes and the SOs, would require 1+ ten-digit dialing, however.⁵⁰ As several parties note, California’s proposal would place services such as VoIP at a competitive disadvantage, since VoIP customers would have to dial ten digits while customers of ILECs and CMRS carriers would dial only seven. The comments show that this proposal, if implemented, would discriminate against VoIP in favor of services with which VoIP service will compete and that have been excluded from the SOs.⁵¹

California further requests authority for “take-backs” requiring customers who wish to switch from non-VoIP offers to VoIP offers to accept an unwanted number change. In the *Third NRO Order*, the Commission expressed reluctance to approve permanent technology-specific overlays because of the likelihood that customers would continue to forfeit their numbers while other numbering resources would lie fallow.⁵² Accordingly, the Commission stated “to ensure that the costs of take-backs are given careful consideration, we will require state commissions proposing to use take-backs to

⁵⁰ Overlay Petition, pp. 7-9.

⁵¹ Comments of California Small LECs, p. 9 (“Indeed, the FCC has rejected proposals for “specialized overlays” in other states based on the potential for discrimination. [citations omitted] If VoIP providers, ISPs, and paging companies are only allowed to issue numbers in the specialized overlay, they are likely to experience precisely this kind of discrimination.”); CCTA, pp. 16-17 (“Consumers who obtain service from a provider whose offering is furnished over VoIP would be forced to dial ten digits for most of their local calls, while consumers who obtain similar service from a non-VoIP based provider would continue to dial seven digits for most local calls. That is precisely the anti-competitive outcome the FCC feared when SOs were first proposed, and it is the reason why the FCC initially prohibited SOs.”); CTIA, p. 5 (“The CPUC could not be more wrong in its conclusion that disparate dialing patterns are no longer discriminatory.”); j2 Global, p. 8 (“A discriminatory impact will result if VoIP providers using unfamiliar area codes are forced to compete against LECs that have access to familiar existing area codes.”); Frontier Companies, pp. 3, 10; Sprint, p. 4; Vonage, pp. 6-10.

⁵² *Third NRO Order*, at 88. As the Commission has stated, “take-backs require certain providers to reprogram their equipment and change their customers’ phone numbers. Thus, take-backs result in significant cost and inconvenience to those customers and their service providers that are required to relinquish their existing numbers and use numbering resources in the SO NPA.” The Commission has also made it clear that it is opposed to technology-specific overlays that would include take-backs of numbers that are geographically sensitive. *Id.* at 90.

include a strong showing that the consumer and industry costs associated with take-backs are outweighed by the optimization benefits of ‘take-backs’ including a specific showing that the negative effects of take-backs will be mitigated by the benefits in the particular area, and that subscribers support such measures.”⁵³ There is no showing in the Overlay Petition, nor is there any reason to believe, that the affected customers would support such a take-back. Nor has California shown that the harms associated with take-backs will be mitigated with respect to VoIP. The comments demonstrate resoundingly that take-backs -- particularly those caused by ill-conceived numbering resource optimization measures --impose unwarranted and unmitigated costs on carriers and consumers.⁵⁴ The inclusion of VoIP services in a specialized overlay is therefore inconsistent with the Commission’s criteria and cannot be justified.

⁵³ *Id.* at 90 (“In their petitions, state commissions seeking to use take-backs would have to specifically demonstrate that the negative effects of take-backs will be mitigated by the benefits in a particular area by showing, for example, that (1) consumers, particularly subscribers that would be required to relinquish their telephone numbers, support such a measure [citation omitted]; (2) the state will provide incentives for providers and their current customers to relinquish their numbers in the underlying area code; and (3) a phased-in approach will help ease the cost burden on customers and service providers.”)

⁵⁴ Comments of Nextel, pp. 8-9 (“The CPUC proposal . . . overturns the principal advantage of all-services area code overlays, *i.e.*, that no existing number need be taken back.”); SBC, p. 9 (“Petitioner is merely seeking a blank check on take-backs and has provided none of the details the FCC has insisted it would need to perform the costs-benefits analysis of the proposal.”); SureWest, p. 5 (“If the CPUC’s proposal to implement a ‘take-back’ of existing numbers is granted, the problems for carriers would be magnified significantly.”); Vonage, p. 13 (“If the Commission were to grant [take-back] authority to the CPUC it would create a dangerous precedent whereby state commissions could assert vague needs to initiate take-backs without considering the economic costs and inconvenience imposed on carriers, VoIP provider end – users, and customers alike”).

CONCLUSION

For the foregoing reasons, AT&T respectfully requests that the Commission deny California's request to implement two specialized overlay area codes for the state. The comments confirm that the proposed specialized overlay codes would complicate critical numbering processes, harm both consumers and carriers, and undermine the Commission's numbering resource optimization policies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Hagi Asfaw, do hereby certify that on this 2nd day of December 2003, a copy of the foregoing “AT&T Reply Comments on California Petition for Authority to Implement Specialized Overlay Area Codes” was served via electronic mail on the following:

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