

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

In the Matter of)
)
Implementation of the Local Competition) CC Docket 96-98
Provisions of the Telecommunications)
Act of 1996)

To: The Chief, Wireline Competition Bureau

PETITION FOR EMERGENCY RELIEF

Susan Y. Dever, Chair
South Bay Cities Council of Governments
5033 Rockvalley Road
Rancho Palos Verdes, CA 90275

Troy F. Tanner
Ronald W. Del Sesto
Swidler Berlin, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

*Counsel to
The Telephone Connection of Los Angeles,
Inc. and The Telephone Connection Local
Services, LLC*

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I. INTRODUCTION AND SUMMARY

Pursuant to sections 1.41, 1.43, 1.45(d)-(e), and 1.298(a) of the Federal Communications Commission (“FCC”) Rules,¹ the South Bay Cities Council of Governments (“SBCCOG”) and The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services, LLC (collectively, “TCLA”) (SBCCOG with TCLA, hereinafter referred to as “Petitioners”) hereby request that the Wireline Competition Bureau (the “Bureau”) immediately issue an order directing the California Public Utilities Commission (the “CPUC”) to stay implementation of its *Overlay Decision* regarding an all-services area code overlay in the 310 area code,² while the FCC reviews the CPUC’s compliance with federal numbering rules and guidelines. The Petitioners also request that the FCC issue a declaratory ruling that the CPUC’s *Overlay Decision* is not in compliance with the FCC’s rules and decisions regarding implementation of area code overlay dialing patterns, and direct the CPUC to:

¹ 47 C.F.R. §§ 1.41, 1.43, 1.44(e), 1.45(d)-(e), and 1.298(a).

² CPUC Decision 05-08-040, released August 25, 2005 (“*Overlay Decision*”), attached hereto as Exhibit A.

- (a) Implement 10-digit overlay dialing in the geographic area currently served by the 310 NPA, with permissive 1+10 dialing; and
- (b) Apply the 10-digit dialing mandate amongst all affected carriers and customers in the current 310 NPA, regardless of the technology used.

In the *Overlay Decision*, the CPUC adopted a plan to implement a new 424 area code in the form of an all-services overlay to the 310 area code. To complete local calls under the plan from a wireline phone, the new dialing procedure established requires callers to dial 1 + area code + telephone number, even when calling within the same area code. To complete calls from a wireless phone, callers only need to dial the area code + telephone number. The CPUC established a timetable for implementation of the overlay, which includes the implementation of a public education plan starting November 30, 2005, followed by permissive dialing under the new plan on December 31, 2005, and mandatory dialing commencing July 26, 2006. Beginning August 26, 2006, new telephone lines or services may be assigned numbers with the 424 area code.

The SBCCOG and the TCLA have joined together to submit this petition due to the irreparable harm that will be caused to both the constituents of the SBCCOG, and the numerous small competitive carriers like TCLA serving the 310 area code area. By way of background, the SBCCOG is a joint powers authority of 16 cities that share the goal of maximizing the quality of life and productivity in the Los Angeles area. Its members are the cities of Carson, El Segundo, Gardena, Hawthorne, Hermosa Beach, Inglewood, Lawndale, Lomita, Manhattan Beach, Palos Verdes Estates, Rancho Palos Verdes, Redondo Beach, Rolling Hills, Rolling Hills Estates, Torrance, and the Harbor City/San Pedro communities of the City of Los Angeles. And The Telephone Connection of Los Angeles, Inc. is a paging carrier serving California, and the parent

of The Telephone Connection Local Services, LLC, a carrier certificated by the CPUC to provide local exchange telecommunications services within California.

II. NEED FOR EXPEDITED RELIEF

As set forth below, the CPUC violated the FCC's area code overlay rules by adopting a 1+10-digit dialing pattern for wireline carriers in the geographic area served by the 310 Numbering Plan Area ("NPA"). The CPUC also violated dialing parity rules by not applying the 1+10 rules to wireless carriers. Based on the implementation schedule adopted by the CPUC, in the next two weeks carriers in the overlay area are going to need to start publicizing these changes and taking additional steps to implement the changes by December 31, 2005, when permissive dialing begins. TCLA has exhausted its remedies at the CPUC, having just had its petition for a rehearing denied by the CPUC on November 18, 2005.³ If the Bureau does not issue an immediate stay of the *Overlay Decision*, carriers will be forced to needlessly expend great sums of money implementing the public education plan, with the high likelihood that the CPUC decision will ultimately be reversed, resulting in increased consumer confusion, and additional carrier expenses to reeducate the public on the next overlay process.

III. WIRELINE COMPETITION BUREAU HAS AUTHORITY TO ACT

Section 251(e) of the Communications Act gives the FCC plenary jurisdiction over numbering issues such as area code overlays and geographic splits. Through a public comment and rulemaking procedure, the FCC delegated to the states authority to oversee the introduction of new area codes, subject to the guidelines established by the FCC.⁴ The FCC specifically

³ *Order Denying Rehearing of Decision (D.) 05-08-040*, Decision 05-11-033 (November 18, 2005) ("*Rehearing Decision*"), attached hereto as Exhibit B.

⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19512 at ¶ 272 (1996) ("*Second Report and Order*"), vacated in

stated it will permit overlay plans “only when they include: (1) mandatory 10-digit local dialing by all customers between and within area codes in the area covered by the new code...”⁵ The FCC also stated that if a state fails to implement an area code overlay consistent with the federal numbering guidelines, a party aggrieved by such a failure may file a petition for appropriate action with the FCC, and the FCC has delegated to the Wireline Competition Bureau authority to act on these petitions.⁶ Therefore, power rests with the Bureau to take what action is necessary to ensure the CPUC complies with the FCC’s rules.

IV. A STAY ORDER IS JUSTIFIED

It is well settled by the United States Court of Appeals for the D.C. Circuit that “[a]n order maintaining the *status quo* is appropriate when a serious legal question is presented, when little harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant.”⁷ This standard requires the Commission to examine “whether: (1) petitioners are likely to succeed on the merits; (2) petitioners will suffer irreparable injury absent a stay; (3) a stay would substantially harm other interested parties; and (4) a stay would serve the public interest.”⁸ Courts have considered these factors to be elements of a

part sub nom. People of the State of California v. FCC, 124 F.3d 934 (8th Cir. 1997), *rev’d*, *AT&T Corp. V. Iowa Util. Bd.*, 119 S.Ct. 721 (1999), *reconsideration granted in part and denied in part*, 14 FCC Rcd 17964 (1999) (“*Third Reconsideration*”).

⁵ *Id.* at ¶ 286.

⁶ *Id.* at ¶ 291 (initially authority was delegated to the Common Carrier Bureau, but with the dissolution of that Bureau, the delegated authority transferred to the Wireline Competition Bureau. *See* 47 C.F.R. § 0.91).

⁷ *Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (“*Holiday Tours*”); *see also Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

⁸ *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Holiday Tours, Inc.*, 559 F.2d at 843.

“sliding scale,” such that when “the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas” are less compelling.⁹ This is particularly true where, as here, a stay request simply seeks to preserve the *status quo* pending the Bureau’s complete review of the CPUC’s actions. Indeed, the FCC has in the past indicated that a stay maintaining the *status quo* should be granted “when a serious legal question is presented, if little harm will befall others if the stay is granted and denial of the stay would inflict serious harm.”¹⁰

A. The Petitioners will Succeed on the Merits.

The analysis as to whether to issue a stay begins with an evaluation of the likelihood of petitioner success on the merits. However, because the four factors originally established in *Virginia Petroleum Jobbers* are applied on a sliding scale, there is no rigid requirement that petitioners demonstrate “a mathematical probability of success.”¹¹ In this case, the Petitioners will succeed on the merits because the FCC has already considered and rejected a proposal to adopt 1+10 digit dialing for local numbers. In addition, the CPUC’s actions create a dialing disparity between wireless and wireline carriers. The CPUC cannot unilaterally change the FCC’s numbering guidelines without first seeking a waiver. If the FCC allows such wanton disregard for its rules in this case, it would be setting a bad precedent for states to follow in the future.

In a rulemaking clarifying the FCC’s initial overlay rules, the FCC specifically rejected a proposal that it adopt 1+10 digit dialing for local numbers. The FCC stated that “[t]he public

⁹ See *Serono Labs v. Shalala*, 158 F.3d 1313, 1317 (D.C. Cir. 1998).

¹⁰ *Florida Public Serv. Comm’n*, 11 FCC Rcd 14324, 14325-26 & n. 11 (1996).

¹¹ *Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d at 844.

interest is well-served by a uniform dialing pattern, such as 10-digit dialing for all local call and 1+10-digits for all long distance calls, which clearly differentiates between local and toll calls.”¹² In the *Third Reconsideration* decision, a company had suggested that the FCC mandate or permit 11-digit local dialing with a “1” + 10 digit format because the public is already familiar with the “1” + 10 digit toll dialing concept for long distance numbers.¹³ Not only did the FCC reject this approach to implementing overlays, to the best of our knowledge the FCC has not subsequently granted any waivers of this requirement.

The FCC’s rules concerning mandatory 10-digit dialing when implementing an overlay state: “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.”¹⁴ While states may determine the number of digits that must be dialed for intra-NPA toll calls and inter-NPA local calls, the FCC has specifically stated that states may continue to implement appropriate local dialing patterns, “subject to the Commission’s numbering administration guidelines, **including the Commission’s requirement in this *Order* of 10-digit dialing for all calls within and between NPAs in any area where an area code overlay has been implemented.**”¹⁵

The US Court of Appeals has upheld the FCC’s authority to require mandatory 10-digit dialing in cases of area code overlays.¹⁶ In the *NYPSC Decision*, the New York Public Service Commission (“NYPSC”) had appealed an FCC rejection of their waiver request to implement 7-

¹² *Third Reconsideration* at ¶ 39.

¹³ *Id.* at ¶ 31.

¹⁴ See 47 C.F.R. § 52.19(c)(3)(ii)(emphasis added).

¹⁵ *Second Report and Order* at ¶¶ 316-317 (emphasis added).

¹⁶ *People of the State of New York v. FCC*, 24 CR 1079 (2d Cir. 2001) (“*NYPSC Decision*”).

digit dialing in an area code overlay in New York City. The Court found the FCC did not abuse its discretion in denying a waiver of its 10-digit dialing requirement, and rejected the NYPSC's arguments regarding customer confusion and inconvenience, finding that implementation of any new area code will initially cause confusion and inconvenience.¹⁷ Significantly, in the present case the CPUC appears to be ready to use the same arguments as the NYPSC in rejecting the FCC rules.

In the CPUC's *Overlay Decision*, the CPUC offers no legal justification for mandating 1+10-digit dialing. Instead it only claims that (a) the imposition of 1+10 dialing reflects the protocol currently used by the industry within California,¹⁸ and (b) customers are already accustomed to dialing 1+10 digits for a significant portion of their calls,¹⁹ and therefore 10-digit dialing would result in potential customer confusion.²⁰ Yet the CPUC has never implemented an area code overlay in California, so it is nonsensical for it to even argue that what it is doing is consistent with industry protocol. In addition, the CPUC is making untested assumptions with no basis in fact, and that are in part based on an evidentiary record that is now almost ten years old.

¹⁷ *People of the State of New York v. FCC*, 24 CR 1079 (2d Cir. 2001).

¹⁸ *Overlay Decision* at 14, n.5.

¹⁹ *Id.* at 49.

²⁰ *Id.* at 49, n.21. Also note that in a recent draft decision of a California Administrative Law Judge ("ALJ"), addressing the issue of requiring 1+10-digit dialing, the ALJ states that not requiring an extra "1" would "be counterintuitive and contradictory to the familiar dialing pattern in California." Therefore, the ALJ states "the risk of prolonging the implementation of the 310/424 area code overlay and creating more customer confusion during the implementation phase prevails over the potential advantages ...". See Draft Decision of ALJ Pulsifer, *Opinion on Petition for Modification*, Agenda ID #5108, Rulemaking 95-04-043, Investigation 95-04-044, mailed November 15, 2005, at pg. 9, attached hereto as Exhibit C.

Regardless of the reasons the CPUC might have used to justify 1+10-digit dialing in its *Overlay Decision*, the CPUC cannot unilaterally change the rules established by the FCC for implementation of overlays without first seeking a waiver from the FCC. For instance, when the Pennsylvania Public Utilities Commission (“PaPUC”) wanted to implement an area code overlay contrary to the FCC’s guidelines (*i.e.*, the PaPUC permitted local 7-digit dialing), it was required to seek a waiver. Even though the PaPUC was already far along in the implementation and public education process, the FCC rejected the waiver for failure to show good cause, in particular because the waiver would “create a dialing disparity in the area to be affected by the overlay.”²¹

As in the PaPUC case, the *Overlay Decision* adopts an outcome that is neither competitively nor technologically neutral. Wireless carrier customers in the geographic area served by a 310 NPA overlay will need only dial 10 digits to reach another customer in the overlay area, while wireline carrier customers will have no choice but to dial 1+10 digits to any telephone number in the overlay area. Wireline carriers are at a distinct competitive disadvantage under a 1+10-digit dialing requirement. This is completely contrary to the FCC’s guidelines that specifically reject dialing disparities.²² Yet the CPUC, in denying TCLA’s request for a rehearing, stated that there is no dialing disparity because all customers of wireline carriers have to dial a “1” first. As for the disparity between wireline and wireless customers, the CPUC ducked the issue and did not deny there is a disparity, but found that there was insufficient support for a finding that wireline carriers would be harmed by the disparity.²³ Therefore, the

²¹ Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief, 12 FCC Rcd 3783 at ¶ 26 (CCB 1997).

²² *Second Report and Order* at ¶ 287.

²³ *Rehearing Decision* at pg. 5-6.

CPUC totally ignored the legal requirements that dialing disparities not be part of an area code overlay.

Therefore, the CPUC has clearly overstepped the authority delegated to it by the FCC in implementing the 310/424 area code overlay with 1+10-digit dialing. The CPUC's actions not only violate the letter of the law, but also the spirit of the law by creating a discriminatory dialing disparity that will harm wireline carriers. Accordingly, there is no doubt under FCC law and precedent that the Petitioners will prevail on the legal merits of their claim.

B. The Petitioners and the Public will Experience Irreparable Injury.

Not only will the Petitioners prevail on the merits, but they and the public stand to suffer irreparable injury if a stay is not issued. In applying the irreparable injury prong of the test for granting a stay petition, the Commission must find that the "injury is certain and great; it must be actual and not theoretical."²⁴ Further, the injury must be imminent such that "there is a clear and present need for equitable relief."²⁵

Small competitive carriers like TCLA will be harmed because they will be required to expend significant funds in public education materials on the area code overlay starting November 30, 2005. The CPUC has set a minimum preliminary budget of \$340,000 to be paid by carriers to conduct the public education campaign.²⁶ Past experience has shown that the required amount will be significantly higher. During the last public education campaign for an overlay in Los Angeles that ultimately was not implemented, the carriers had to print over

²⁴ *Wisconsin Gas v. FERC*, 758 F. 2d 669, 674 (DC Cir. 1985).

²⁵ *Id.*

²⁶ *Overlay Decision* at p. 42.

100,000 posters.²⁷ Should the FCC later find that the CPUC's plan for 1+10-digit dialing for the overlay implementation is not consistent with federal law, the carriers would have wasted all of the money spent on the initial campaign, and have to spend additional funds on a new customer education program. This is especially a hard burden on smaller carriers like TCLA because they generally do not have "public education budgets" nor public outreach groups like the ILEC's have.

In addition, the constituents of the SBCCOG will be harmed because there will be significant consumer confusion if the public education campaign starts at the end of this month, and then is later changed due to an adverse decision on the CPUC's actions. Efforts are already being made to design consumer education materials and posters. This includes two different posters for schools that show how to make calls using a wireless phone versus a wireline phone, the clear implication being it is easier to use a wireless phone.²⁸

Disparity in dialing will also hurt visually disabled callers and others who rely on *69 and other automatic callback features. This is because when someone from a wireless phone calls a wireline phone, the wireline consumer will not be able to use these callback features because the wireless call will not transmit an initial "1" with its call.

C. A Stay Would Not Substantially Harm Other Interested Parties

The Commission should grant the requested stay because "little if any harm will befall other interested persons."²⁹ Maintaining the *status quo* does not require an additional

²⁷ See Declaration of Marc O'Krent, President of The Telephone Connection of Los Angeles, Inc. and Manager of The Telephone "Connection Local Services, LLC, attached hereto as Exhibit D.

²⁸ *Id.*

²⁹ *Holiday Tours* at 844.

expenditure of funds on the part of any party. The FCC must act quickly, however, to stay the CPUC's actions before carriers begin to expend resources and time on the public education plan. While it is not the Petitioners intention to delay efforts to address a possible lack of numbering resources in the 310 area code, the FCC should still require that any overlay be done in a manner consistent with the FCC's rules.

D. The Equities and the Public Interest Favor a Stay

For the final prong of the test for granting a stay petition, the FCC must consider the equities and the public interest. In this regard, the CPUC's plan for implementing the area code overlay explicitly violates federal law. The Bureau has been delegated authority to ensure that states implement the FCC's numbering guidelines and rules as written. If the Bureau were to ignore the CPUC's clear disregard for the FCC's rules, the Bureau would in essence be giving a signal to all states that they can go their own way, and not follow federal guidelines when they choose. This would be particularly inequitable to states like Pennsylvania and New York that have been stopped in the past from implementing area code overlays contrary to the FCC's 10-digit dialing mandate.

V. CONCLUSION

For the reasons discussed herein, the Wireline Competition Bureau should grant this Petition for Emergency Relief and immediately issue an order to stay implementation of the CPUC's *Overlay Decision* while the FCC reviews the CPUC's compliance with federal numbering rules and guidelines. In addition, whether or not the FCC grants a stay, the FCC should still issue a declaratory ruling that the CPUC's *Overlay Decision* is not in compliance with the FCC's rules and decisions regarding implementation of area code overlay dialing patterns, and direct the CPUC to:

- (a) Implement 10-digit overlay dialing in the geographic area currently served by the 310 NPA, with permissive 1+10 dialing; and
- (b) Apply the 10-digit dialing mandate amongst all affected carriers and customers in the current 310 NPA, regardless of the technology used.

Respectfully submitted,



Susan Y. Dever, Chair
South Bay Cities Council of Governments
5033 Rockvalley Road
Rancho Palos Verdes, CA 90275



Troy F. Tanner
Ronald W. Del Sesto
Swidler Berlin, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

*Counsel to
The Telephone Connection of Los Angeles,
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November 23, 2005

EXHIBIT A

California Public Utilities Commission
Decision 05-08-040, released August 25, 2005
(*“Overlay Decision”*)

Decision 05-08-040 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**OPINION GRANTING PETITION TO MODIFY
DECISION 00-09-073**

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**OPINION GRANTING PETITION TO MODIFY
DECISION 00-09-073**

I. Introduction

By this decision, we approve a plan for the implementation of a new 424 area code in the form of an all-services overlay to the existing 310 area code under the terms set forth below. In taking this action, we rescind the previously adopted plan for a new area code in the form of a geographic split, and accordingly grant, in part, the “Joint Parties’”¹ Petition for Modification of Decision (D.) 00-09-073, filed on March 9, 2005. In D.00-09-073, the Commission adopted a “back-up plan” for a geographic split of the 310 Numbering Plan Area (NPA) as a contingency should it become necessary to prevent code exhaust, and as required under the authority delegated to this Commission by the Federal Communications Commission (FCC).

In conjunction with replacing the geographic split with an overlay, we also conclude that implementation of the new area code cannot be delayed any longer without jeopardizing customers’ access to telephone numbers from the carrier of their choice. A timely start of implementation of the overlay is important to ensure that consumers continue to have access to line numbers from their carrier of choice by replenishing the stock of telephone numbers available within the 310 area code region. Accordingly, we direct the implementation of the new area code overlay to commence immediately. A map of the 310/424 area code boundaries is presented in Appendix C. Under the new overlay plan, all calls within the 310/424 overlay region must include the three-digit area code and

¹ The Joint Parties sponsoring the Petition are Cingular Wireless, Nextel of California, Inc., SBC California, Sprint, T-Mobile, Verizon Wireless, and Verizon California Inc.

seven-digit line number. Customers may begin using this dialing pattern on a permissive basis beginning on December 31, 2005. Customers must begin using the 10-digit dialing pattern on mandatory basis on July 26, 2006. New numbers will begin to be issued using the new 424 area code on or after August 26, 2006.

The 310/424 overlay will constitute the first use of this form of area code relief within the State of California. Given the novelty of the overlay area code, an effective publicity and education program will be essential in fostering the success of this new form of area code relief, as ordered herein.

II. Background

The action we take today takes into consideration extensive debate over several years concerning the merits of geographic splits versus overlays. Moreover, we implement the overlay only after having pursued all reasonable efforts to ensure that numbers are being allocated efficiently, recognizing that further delay in opening a new area code would jeopardize customers' access to telephone numbers from the carrier of their choice.

The 310 area code serves Local Access and Transport Area (LATA) 730² located in Los Angeles County. The 310 area code was created in late 1991 to relieve number exhaustion in the 213 area code. The 310 area code was subsequently split in January 1997, forming a separate 562 area code, again to replenish number supplies. Telecommunications industry representatives began another round of customer notification of impending code exhaust and the need

² A "Local Access and Transport Area" is the designation for a service area covering one or more local exchanges within which local exchange carriers are authorized to provide service.

for yet another new area code plan for the 310 area in May 1997 pursuant to the 24-month customer notification requirements of Pub. Util. Code § 7930(a).

On February 18, 1998, industry representatives submitted to the Commission yet another proposed relief plan for the 310 area code, again claiming impending numbers exhaustion. In response to that industry proposal, on May 7, 1998, the Commission issued D.98-05-021, approving a 310 area code plan to implement the first overlay ever used within California.

In D.99-09-067, however, we determined that it was premature to open a new area code at that time, and that the life of the 310 area code could be extended through more efficient utilization of number resources. In D.99-09-067, therefore, implementation of the overlay plan was suspended, and the new 424 overlay area code was not placed into service.

We subsequently implemented a multi-pronged program for more efficient utilization of existing numbers, including number pooling and related measures. On September 15, 1999, the FCC granted the Commission's April 23, 1999 Petition for Additional Delegated Authority to implement various area code conservation and relief planning measures. Paragraph 15 of the FCC Order required that in any area code in jeopardy where the Commission implements a number pooling trial, steps must be taken to adopt a relief plan that could be implemented if numbering resources were in imminent danger of being exhausted. Since the Commission in D.99-09-067 mandated a number pooling trial in the 310 area code, and suspended the implementation of the overlay, it became necessary to adopt a back-up relief plan.

In D.98-05-021, we had concluded that an overlay would have less overall adverse impact than would a split. As a basis for devising a back-up plan for the 310 area code, however, we reevaluated the merits of an overlay. Based on this

reevaluation, we decided not to retain the overlay in formulating a back-up plan. Consequently, in D.00-09-073, the Commission adopted a geographic split as a back-up plan for the 310 area code.

Under the back-up plan adopted in D.00-09-073, rate centers in the southern portion of the 310 area code, including El Segundo, Hawthorne, Compton, Redondo, Lomita, Torrance, and San Pedro, would split to become the 424 area code. The northern region, including most of Inglewood, and all of Culver City, Marina Del Rey, Mar Vista, Santa Monica, Beverly Hills, West Los Angeles, Malibu plus a small portion of the City of Hawthorne and Ventura County, would retain the 310 area code. We deferred setting a schedule to implement the back-up plan, however, until after confirming that carrier-reported utilization data was reliable. We ordered an independent audit to make such confirmation. In the interests of avoiding the undue disruption to customers of a new area code, we have continued to defer implementation up until the present time. We now reconsider both the manner and timing of any new area code plan in response to the recently filed Petition to Modify D.00-09-073, as discussed below.

III. Petition to Modify to Replace the Geographic Split With an Overlay

A. Position of Petitioners

On March 9, 2005, the Joint Parties filed a Petition to Modify D.00-09-073 to replace the previously approved geographic split with an overlay as the adopted back-up plan for the 310 area code. Petitioners' proposal also called for a predetermined timing trigger that would automatically set in motion the implementation of the overlay based upon the number of remaining unassigned prefix codes. Petitioners' refer to their proposal as a "triggered overlay."

The process for modifying Commission decisions is governed by Pub. Util. Code § 1708 which states:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Joint Parties argue that the Petition to Modify is warranted in view of what they describe as dramatic changes since the geographic split was adopted as a back-up plan in D.00-09-073. As examples of such changes, Joint Parties argue that carriers and regulators have become better able to manage numbering inventories and have become accustomed to the FCC's requirements for efficient utilization of numbers. Joint Parties also argue that the Commission and carriers have implemented and exhausted all feasible number conservation measures in the 310 area code.

Joint Parties also argue that since D.00-09-073 was issued, carriers have garnered more experience with the implementation of overlays in various metropolitan areas in other state jurisdictions. Joint Parties claim that this experience gained in other states can be used effectively to implement an overlay in California. Joint Parties emphasize that their proposal incorporates a "trigger" provision, such that implementation would not begin until remaining unassigned prefix codes reach a predetermined level. As such, Joint Parties claim that their proposal does not require opening of the new area code earlier than necessary to assure an adequate supply of telephone numbers.

The Joint Parties also claim that they are aware of only one objection to an overlay, namely, its requirement for 1+10-digit dialing for all calls. Joint Parties

downplay such an objection, however, arguing that customer education can readily alleviate such concern.

B. Formal Parties' Responses to the Petition for Modification

Responses to the Petition to Modify were filed on April 8, 2005. A Joint Response was filed by the California Cable & Telecommunications Association (CCTA) and XO Communications Services, Inc (XO). CCTA/XO generally support the Petition, but argue that the overlay plan should also incorporate a transitional priority allocation process for 310 pooled numbers.

A response in opposition to the Petition was filed by the South Bay Coalition (the Coalition).³ The Coalition characterizes the proposed mechanism to "trigger" the implementation of an overlay as poorly defined with no consumer protections. The Coalition agrees that the concept of a trigger theoretically would allow for better advance preparation for the eventual exhaust of numbers in a given area code. Nonetheless, the Coalition contends that without "appropriate guidelines" for measuring and managing carriers' number inventories, no "trigger" can be accurately or equitably defined.

The Coalition further argues that until the Commission addresses the concept of carrier inventory management, there will be no way to define the triggering event that would provide adequate protection to the public.

The Coalition expresses no preference for either a geographic split versus an overlay as the means by which any new area code may ultimately be

³ The South Bay Coalition consists of the South Bay Cities Council of Governments (SBCOG), Los Angeles County Supervisor Don Knabe, Congresswoman Jane Harman, Assemblymember Mike Gordon, and Assemblymember Jenny Oropeza. The SBCOG is a joint powers authority of 16 cities in the southwest portion of Los Angeles County.

introduced to relieve code exhaust in the 310 area code. The Coalition does, however, raise certain concerns with switching from a geographic split to an overlay plan. The Coalition points out that additional public education will be needed given the fact that an overlay has never been done before in California, and ends the association of a single area code with unique and specific geographic boundaries. The Coalition, however, believes that the period allotted by the Petitioners for such education is too short.

The Coalition further proposes that if such a plan would require mandatory 1+10-digit dialing for all calls originated within the 310/424 area code region, the Commission should consider the effects of implementing such a change on a broader geographic basis, rather than just for one area code region.

C. Public Meetings Regarding 310 Area Code Changes

In addition to responses by formal parties of record, members of the public have been given an opportunity to be heard regarding 310 area code changes. A local jurisdiction meeting for city and county government representatives was initially held on August 27, 1997, to provide local jurisdictions with a status report on the area code change process and to gather additional information.

Public meetings were required by statute to occur within six months of the initial May 1997 customer notification of a proposed area code change. The industry team held four public meetings during 1997, one more than required (Pub. Util. Code § 7930) due to the request of the Commission staff to ensure adequate coverage of the geographic area served by the existing 310 area code. Following those public meetings, the Commission adopted an overlay plan for the 310 area code, but subsequently suspended it before it was fully implemented, as previously explained.

Although there was no statutory requirement to do so, the Commission subsequently held additional public meetings during 2001, to obtain updated public input regarding the 310 area code geographic split plan in view of the passage of time since the original public meetings held in 1997. These were held in the cities of Carson and Redondo Beach on April 23, 2001, and in Culver City on April 24, 2001.

Most recently, a series of public meetings was convened during April 2005, in response to the most recent proposal of the Joint Carriers to replace the geographic split with an overlay as the back-up plan in the 310 area code. These meetings were held in El Segundo, Redondo Beach, Malibu, and Culver City. A "Local Jurisdiction" Meeting was also convened in El Segundo for local government officials within the 310 area code region to appear and comment concerning alternative plans for a new area code. The public meetings provided members of the public an opportunity to appear and be heard concerning the pending proposals for creating a new area code in the region assigned to the 310 area code.

The 2005 series of public meetings were well attended, with over 300 people attending the five meetings held. At the local jurisdiction meeting, there were a large number of local elected officials and representatives of many of the statewide elected officials from that region. The public officials generally spoke with a unified voice that it is premature to consider splitting the 310 area code, the Commission should wait until or if Assembly Bill 1380⁴ is passed, and that the Commission should continue our successful number conservation measures.

⁴ Assembly Bill 1380 is proposed state legislation that would require the Commission to take certain actions to impose inventory requirements on carriers' numbering supplies.

Footnote continued on next page

At the four other public meetings, the message was mixed, depending on in which portion of the 310 area code the audience members lived, and whether they would get to keep the 310 area code or be assigned the new 424 area code in the event of a geographic split. Most speakers did not want the Commission to take any action to add a new area code. The people living in the area who would keep the 310 area code in a geographic split appeared to favor the split plan. People living in the area who would get the new area code under a split tended to favor the overlay plan more. Many of the business people liked the overlay proposal better than the split. Those who represented the senior and disabled communities favored the split plan.

D. Discussion

1. Replacement of the Geographic Split With an Overlay

Petitioners raise two distinct issues. One issue involves the appropriate way of creating a new area code, and whether the previously approved geographic split should be replaced with an overlay. The other issue involves when the new area code should be implemented. We shall address each of these questions in turn.

First, regarding the merits of a geographic split versus an overlay, we have previously weighed the advantages and disadvantages of each method, as previously discussed. Now we are faced with yet another request to reevaluate the issue. No single method of creating an area code will ever be popular with everyone that is affected. Moreover, any adverse effects from creating a new

Although the Bill has passed the Assembly and first committee in the Senate, the ultimate disposition of this Bill is uncertain at this time.

area code will not be felt equally, or in the same manner, by all those affected. These facts are simply inherent in any area code method that is selected. Thus, our goal is to adopt the method that will have the least overall negative impacts over the long term.

Formal opposition to the Petition for Modification was filed by the South Bay Coalition. Yet, while the South Bay Coalition opposes action to implement any new area code, it expresses no particular preference for a geographic split as being superior to an overlay, assuming a new area code is required. The Coalition and CCTA/XO, however, raise additional issues to be addressed in connection with an overlay, as we discuss below.

Taking into account the advantages and disadvantages of each alternative, we are now persuaded that an all-services overlay is preferable to a geographic split for the 310 area code. The 310 area code is one of best candidates for an overlay in California particularly because of its characteristics as a geographically small, but densely populated region, surrounded by several adjacent area codes, which are also densely populated. The 310 area code has already shrunk with the previous geographic split to create the 562 area code. As the 310 area code faces the potential of yet further shrinkage through another geographic split, it becomes increasingly difficult to avoid dividing local communities of interest, consistent with Pub. Util. Code § 2887(a).

An overlay avoids various problems involved with the geographic splitting of local communities, by leaving existing boundaries intact. The overlay also avoids the need for existing customers to change their area code. At public meetings for the 310 NPA, there has been opposition expressed, particularly by business customers, about the economic hardships resulting from having to notify customers of area code changes, and to change business cards, letterheads,

etc. The geographic splitting of the 310 NPA also makes it increasingly difficult to balance the projected lives of the old and new area code regions. The shorter the area code life, the more frequently customers are subjected to the disruptions and hardships that come with new area codes.

The overlay, however, introduces its own separate set of concerns. For example, while an overlay would not change area code boundaries, the defining significance of the boundaries would itself, change. The geographic boundaries would no longer define a single area code, but two area codes. The traditional advantage of having geographically defined unique area code boundaries would give way to multiple area codes within a single geographic region.

Instead of dividing customers geographically, an overlay divides them chronologically, depending upon whether they obtain service lines before or after the overlay takes effect. An area code overlay signifies *when* the customer was assigned the number rather than *where* geographically, the number is located. The overlay also disadvantages new customers who must take the new area code which is less familiar and may create confusion as to where the customer is located.

As a result, a new business customer, for example, may be required to take the new underpopulated 424 area code while an established neighboring business retains the 310 area code, resulting in various advantages and disadvantages. A business with the new 424 area code may be perceived as newer or less established than the neighboring business that retains the more recognized 310 area code. Likewise, to the extent that newer telecommunications providers have fewer or no numbers in inventory from the 310 area code, they may find it more difficult to compete for new customers if they can only offer 424 area code numbers.

Another problem with the overlay is that customers who seek additional lines at the same location after the overlay takes effect may only be able obtain the additional lines through the new area code. Such customers will be left with different area codes for multiple lines at the same location. The only alternative, if the customer wishes for all their telephone lines to be under one area code, will be to change their original line numbers' area code, thereby losing one of the advantages of the overlay.

Within the overlay region, customers will also experience the loss of seven-digit dialing, even for calls within the same area code. Under the rules of both the FCC and this Commission, an overlay area code requires 10-digit dialing for all calls within the overlay region in the interests of providing competitive neutrality among carriers.⁵ Even though customers are already accustomed to dialing 10-digits for a significant number of existing calls, the overlay will mean that calls even within the same area code require 10-digit dialing. Customers will also lose the ability to uniquely identify a given geographic region by a single area code. The overlay will not only require callers to dial 10-digits within the same area code, but could also require dialing a different area code simply to call a next-door neighbor. Without mandatory

⁵ The 10 digits consist of the three-digit area code and the seven digit line number. The "1" preceding the 10 digits signals that the following three digits will be an area code rather than a central office prefix. For calls involving telephone numbers of wireline carriers, the network within California is currently configured to require that the "1" prefix be dialed preceding the 10 digits. The "1+" prefix is not mandated by the FCC, but reflects the protocol currently used by the industry within California. The network for wireless carriers currently does not require that the prefix "1" be dialed preceding a 10-digit-dialed number. In the discussion in this decision, references to 10-digit dialing should be understood as recognizing the "1+" prefix for calls involving wireline telephone numbers.

1+10-digit dialing for all calls within the overlay region, the burdens associated with the new overlay code would fall disproportionately on newer carriers and their customers. This is so because newer carriers rely more heavily on the overlay area code for numbers. The 10-digit dialing requirement, while inconvenient for certain customers⁶ thus promotes competitive neutrality through equal treatment between customers of more established carriers (who tend to have more stocks of numbers in the old area code) and customers of new carriers (who tend to rely more on stocks of numbers with the new area code).

In D.95-08-052, we therefore determined that dialing consistency should apply to calls within an overlay region, irrespective of which carrier provides the service. Subsequently, as more carriers acquired number blocks within the 310 area code, this disparity became less of an issue. Thus, we later filed a petition with the FCC to remove the mandatory 10-digit dialing requirement. On October 21, 1999, however, the FCC issued an order (FCC 99-243) denying several parties' requests to grant an exemption from the mandatory 10-digit dialing requirement for an overlay in order to avoid anticompetitive consequences. Thus, the 10-digit dialing requirement remains in effect.

The overlay will also create a disparity between how calls are dialed in the 310/424 area code overlay region versus calls dialed throughout the rest of California. We previously considered the trade-offs involved with disparate statewide dialing patterns resulting from an overlay. In D.96-12-086, we determined not to require statewide mandatory 10-digit dialing concurrent with implementing an overlay. In this way, we minimize the burdens on California

⁶ The inconvenience of 1+10-digit dialing may be mitigated in some instances, for example, by the use of automatic speed dialing.

residents. Nonetheless, the disparity in dialing patterns in the 310/424 area code overlay still constitutes a downside compared with the uniformity of a geographic split.

On balance, however, we conclude that while both the overlay and geographic split have drawbacks, as summarized above, the overlay will have fewer drawbacks for the 310 area code. The justification for an overlay outweighs that of geographic splits, particularly in the 310 area code, characterized by a small densely populated region. Because of the small geographic size of the 310 area code, a significant number of customers calls originated within the area code terminate outside of the 310 boundaries. Therefore, customers are already accustomed to dialing 1+10-digits for a significant portion of their calls.

Moreover, in the past five years since we last attempted an overlay of the 310 area code, various metropolitan areas outside of California have implemented new area codes utilizing the overlay approach. Since wireless carriers became capable of number pooling in November 2002, all area code relief within the United States (with the exception of the 909/951 area code split adopted by this Commission) has been done through overlays. A total of 23 overlays have been implemented within 14 states. At the time we last attempted an overlay of the 310 area code, this track record of experience had not yet been developed.

We believe that the drawbacks with an overlay relate largely to its novelty and highlight the need for an adequate transition period for customers to adjust to the change in dialing procedures. Issues relating to acceptance of the new dialing patterns should be adequately resolved through public education measures and the practical experience of making calls within the overlay region.

Accordingly, we hereby grant the petition to modify D.00-09-073 to the extent that we replace the geographic split with an overlay for the 310 area code under the conditions outlined below. As explained below, we decline to set a separate “trigger,” as proposed by Joint Parties, but instead, set a schedule herein for the overlay implementation.

The overlay that we approve shall apply to all services within the 310 area code region. Various members of the public have asked that any overlay, if approved, should be limited only to certain categories of telecommunications service, such as wireless only, or other limited technology-specific applications. Yet, such a technology-specific overlay would require FCC approval. This Commission has previously sought FCC approval of a technology-specific overlay without success. Accordingly, we are constrained to adopt the overlay on an all-services basis.

2. Overlay Implementation Schedule Issue

a. Should Inventory Rules Be Adopted Before Setting a Schedule?

Petitioners do not propose specific dates for the overlay to be implemented, but instead propose that it be subject to a “trigger” that would set in motion the implementation at some yet-to-be determined future date. The South Bay Coalition, however, argues that the concept of a “trigger” is “misguided” because it is premised on the assumption that an adequate system is in place for managing number resources. The South Bay Coalition challenges this assumption, claiming that the current number allocation system is “rife with inconsistency and manipulation, and provides inadequate consumer protections.”

Although the Coalition makes these broad claims, the only specific number allocation issue actually cited by the Coalition relates to whether Commission rules should be imposed limiting number blocks that carriers retain in inventory. The Coalition argues that the Commission should not set a trigger nor implement a new area code until it has adopted rules for the permissible level of carrier inventory.

Notwithstanding the Coalition's claims, however, the Commission has already considered the issue of guidelines for inventory so that carriers do not hoard excessive supplies of numbers. On July 16, 2004, the Assigned Commissioner issued a ruling on development of carrier six-month inventory rules. Comments were filed on July 30, 2004, with reply comments on August 6, 2004. A subsequent Assigned Commissioner's Ruling on September 24, 2004, set forth proposed rules for limits on permissible levels of carrier inventories. A workshop was held on October 4, 2004, where participants were offered the opportunity to provide input concerning proposed rules.

The South Bay Coalition filed comments, supporting the Commission's establishment of inventory guidelines and making similar arguments to those that it has made in response to the instant Petition to Modify. Several other parties filed comments asserting, however, that the Commission lacked authority to adopt guidelines for carriers' inventories, or to direct the Pooling Administrator or the North American Numbering Plan Administrator (NANPA) to determine a carrier's inventory. Such parties argued that authority lies exclusively with the FCC, and that the FCC authorized the NANPA to withhold numbering resources from carriers not in compliance with FCC rules. Parties argued that the states were merely to provide a forum for carriers to challenge

the NANPA and to either affirm or overturn the NANPA's decision to withhold numbering resources.

The parties argued that the FCC's delegation of numbering authority placed specific limits on Commission action, excluding authority to determine a carrier's inventory needs. The parties argued that although the FCC granted conditional authority to implement certain area code conservation and relief planning measures, the delegation was superseded by subsequent FCC decisions in the Numbering Resource Optimization (NRO) proceeding.⁷ The FCC NRO, released in March 2000, required among other things, that carriers keep no more than a six-month inventory of numbering resources.

In the NRO, the FCC determined that a carrier should be able "to retain a sufficient number of thousands-blocks to meet its six month inventory projection forecast."⁸ The FCC thus permitted carriers to determine a six-month inventory level based upon each carrier's own forecast of demand rather than being limited to historic use or other restrictions.

Although an ALJ's Draft Decision on this issue was subsequently presented for consideration, the Commission declined to adopt the Draft Decision or any alternate version thereof. The Commission has thus already declined to adopt inventory rules as a precondition before moving forward with opening a new area code, recognizing that the FCC delegated authority does not permit Commission adoption of such rules.

⁷ See Report and Order and Further Notice of Proposed Rulemaking (NRO Order) FCC 00-104 at ¶ 7.

⁸ FCC 00-104 at ¶ 191.

Accordingly, by raising the claim again here that the Commission should adopt inventory rules, the South Bay Coalition is seeking to relitigate a matter that has already been decided, and is no longer before this Commission. Thus, there is no basis to refrain from adopting a schedule for timely area code relief merely on the grounds that the Commission has not adopted inventory rules.

**b. Other Commission Actions to Extend
the 310 Area Code Life**

Likewise, we find unpersuasive the Coalition's claims that the existing number allocation system is subject to manipulation and inconsistency. Contrary to such claims, the Commission has adopted multiple reforms in recent years and has diligently pursued all feasible means within our jurisdiction to ensure that numbers are allocated efficiently, fairly, and consistently. As a result of such measures (as summarized, for example, in D.03-10-060), the Commission has been successful in extending the life of the 310 area code several years beyond the point at which the new area code was originally scheduled to open.

In D.99-09-067, in conjunction with suspending the previously planned 310 overlay, the Commission ordered the staff to study telephone number use in the 310 area code to ascertain how efficiently carriers were using the 10,000-number blocks already assigned to them. We required a full accounting of telephone numbers actually in use in the 310 area code before setting any schedule to open a new area code.

Beginning in March 2000, the Commission initiated the first-ever utilization study of actual number use in California, in the 310 area code. We found three million unused telephone numbers even though the area code was allegedly out of available telephone numbers. By the end of 2001, the Commission had completed a utilization study for each of the state's other 24

area codes. In every case, we found that each area code contained between 40- and 80% of the available numbers classified by the carriers as unused.

Moreover, under our delegated authority, new telephone numbers are now allocated to carriers much more efficiently than before. The most effective number conservation tool is number pooling. Prior to number pooling, numbers could only be assigned to individual carriers in NXX codes consisting of 10,000 numbers each. Number pooling assigns telephone numbers to carriers in smaller blocks of 1,000 numbers, thereby enabling multiple providers to share a single NXX code and use number resources more efficiently. Today, every area code in California has implemented number pooling.⁹ Distribution of numbers in smaller blocks better meets the needs of new, smaller companies without stranding numbers in a 10,000-number block.

The technology used to support number pooling is Local Number Portability (LNP). LNP was mandated in 1996 by the FCC to enable customers to retain their telephone numbers when switching to a different local telephone company. Without LNP, a customer is inhibited from changing carriers because he or she must change both the equipment and the telephone number.

Though LNP technology has existed for several years and wireline carriers became LNP-capable by 1998, the FCC gave cellular and PCS companies until November 2003, to become LNP-capable. The FCC further gave paging companies a permanent exemption from the LNP requirement. Until November 2002, only wireline carriers could participate in number pooling, and those carriers received telephone numbers solely through the number pool.

⁹ NeuStar, Inc. is the Pooling Administrator for all area code number pools in the United States.

Wireless carriers received numbers in 10,000-number blocks through Commission-administered lottery rationing, and through emergency requests to the Commission.

Wireless carriers began participating in number pooling in November 2002. Currently, both wireline and wireless carriers in California receive numbers through number pools. Only paging companies still receive numbers through the lottery system.

California also requires companies to manage the numbers they already have in an efficient manner. For example, a carrier must return any 10,000-number block that it has held for more than six months without using. Telephone companies must show they will be out of telephone numbers within six months before a request for additional numbers can be granted. Telephone companies must show they have used at least 75% of the numbers they hold before requesting additional numbers. Companies must assign numbers in thousand-block sequence, moving to the next thousand-block only after using all available numbers in the preceding opened block.

As an additional measure to extend the life of the 310 area code, the Commission petitioned the FCC on September 5, 2002,¹⁰ for a waiver from the FCC's "contamination" or number use, threshold requirement. Specifically, the Commission requested authority to increase the existing 10% "contamination" rate. Under FCC rules, carriers must donate to each area code's common number pool all thousand-blocks of telephone numbers that contain less than 10%

¹⁰ See the *Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communication Commission's Contamination Threshold Rule*, dated September 5, 2002.

“contaminated,” or used, numbers. An increase level of allowable contamination or usage rates for poolable thousand-number blocks (from current 10% to 25%) increases the number of thousand-blocks available to all carriers through each area code’s number pool.

The FCC acted upon this Petition by Order adopted August 5, 2003, and released August 11, 2003. While declining to grant a statewide waiver of the 10% contamination rate, the FCC did raise the contamination level in the 310 and 909 area codes. The Commission directed carriers to comply with the new contamination rate in the 310 and 909 area codes by ruling dated August 21, 2003.

Accordingly, this summary of measures taken by the Commission confirms that we have exercised due diligence to promote the most efficient use of number resources in the 310 area code. In view of the exhaustive measures we have implemented to promote efficient and fair number allocation, we affirmatively conclude that no further measures are left to be performed as a basis to delay taking further action to provide for adequate supplies of numbers in the 310 area code.

**c. Obligation to Provide Adequate
Numbers Within the 310 Area Code**

Notwithstanding our commitment to avoid unnecessary or premature opening of new area codes, we also recognize our obligation to ensure that customers are not deprived of adequate telephone number resources. Our mandate to implement area code relief is set forth in the September 15, 1999, FCC Order granting the Commission’s April 23, 1999 Petition for Additional Delegated Authority to implement various area code conservation and relief planning measures.

Paragraph 15 of that FCC Order requires that, in any area code in jeopardy where the Commission had implemented a number pooling trial, the Commission must adopt an area code relief plan that could be implemented if numbering resources were in imminent danger of being exhausted. Since the Commission in D.99-09-067 mandated a number pooling trial in the 310 area code, and suspended the implementation of the previous overlay, we must provide for timely area code implementation to assure an adequate supply of telephone numbers.

In D.03-10-060, issued October 16, 2003, the Commission revisited whether the time had come to move forward with the 310/424 area code split. At that time, the Commission found that adequate telephone number supplies still remained available in the 310 area code. We concluded that it was not yet necessary to split the 310 area code. Instead, we directed that the supply of telephone numbers in the 310 area code be closely monitored to ensure adequate telephone number supplies.

We also directed in D.03-10-060 that the success of wireless industry compliance with local number portability requirements, which took effect on November 24, 2003, be evaluated before imposing an area code split in the 310 area code. By porting migrating customers' existing numbers from one wireless carrier to another, wireless carriers no longer require new blocks of numbers for customers migrating between carriers.

The passage of time since October 2003 has provided further opportunity to evaluate the effects of number pooling on remaining number supplies, as well effects of other conservation measures. At the present time, only nine unassigned prefix codes currently remain available in the 310 area code for allotment through the semi-monthly lottery process, and only one prefix code

remains available as a set-aside for replenishing the 310 area code number pool. A total of 267 thousand-number blocks currently remain available for assignment in the 310 number pool.

Nonetheless, even with these unused blocks of numbers, various constraints limit carriers' ability to use these unassigned numbers in serving customer needs. For example, a certain quantity of unused numbers must remain reserved for carriers' inventory. Also, in certain cases, carriers may need numbers in a particular rate center.¹¹ The tabulation set forth in Appendix B of this order, however, shows that the 267 remaining thousand-blocks are not evenly distributed among rate centers. For example, no blocks remain available in the Torrence Rate Center. Less than five blocks remain available in each of four other rate centers. Even if there are unused numbers in the other rate centers, a carrier may be unable to use those numbers to serve customers in a rate center where a shortage exists of central office prefixes or number blocks.¹²

In addition to carriers' demand for number blocks from conventional telephone service, there is also the potential that additional number blocks may be demanded for newer applications such as Voice Over Internet Protocol (VOIP).

¹¹ A rate center is a specific geographic location within a local exchange that is used to determine the rating of calls as either local or toll, depending on the distance between the rate centers serving two calling parties. Telephone number prefixes are assigned to a particular rate center.

¹² In the case of wireless carriers, however, it is technically possible, though sometimes undesirable, to use numbers from an adjacent rate center to provide customers with numbers even if there is a shortage of central office prefixes in the desired rate center.

In view of the limited stock of number supplies remaining in the 310 area code, particularly in rate centers with five or fewer blocks, therefore, we conclude that a new area code must be implemented soon in order to replenish dwindling number resources to avoid code exhaust. We address the specific schedule for implementing the overlay in the following section.

d. Adopted Schedule for Overlay Implementation

In conjunction with proposing that the geographic split be replaced with an overlay, Petitioners also propose that a “trigger” be adopted to automatically initiate the overlay implementation. Thus, Petitioners do not propose a specific start date for overlay implementation, but propose that the “trigger,” once activated, would automatically set in motion the implementation process.

Under Petitioners’ proposal, the “trigger” would be automatically activated upon assignment of the seventh remaining NXX code. At that point, the NANPA would inform the Commission that only six unassigned NXX codes were left, and the Assigned Commissioner would authorize implementation to begin. The Petitioners propose the new overlay area code be opened 10 months later.

Petitioners argue that implementation should begin at the 6-NXX code trigger point to avoid code exhaust. Based on the current rate of block assignments of 26 thousand-blocks per month, Joint Parties claim that the remaining 6 NXX codes may theoretically provide adequate number resources until new numbers become available.

Joint Parties propose the following implementation schedule:

<u>Event</u>	<u>Triggering Event/Duration</u>
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Network Preparations for the Overlay:	Beginning effective with the issuance of this decision, to be completed within 120 days
Overlay authorized to be implemented	Upon NANPA notice that only 6 NXX codes remain
Carriers prepare and distribute Customer notification materials	Within 90 days after NANPA notification as noted above
Permissive dialing Period	Beginning 120 days after triggering event and continuing for 5 months
Customers sent second notice	30 days before beginning of Mandatory dialing
Mandatory dialing Period	After the 5-month permissive dialing period ends
New numbers become available	Not earlier than 30 days after the beginning of the mandatory dialing period

Petitioners distinguish their “triggered” overlay proposal from the all-services overlay previously approved for the 310 area code in D.98-05-021. As described by Petitioners, the “trigger” is “pulled” only when exhaust can no longer be avoided.

We view Petitioners’ “trigger” proposal, however, not as an alternative to an “all-services” overlay, but merely as a way to schedule an all-services overlay implementation. The “trigger” would not constitute a new principle that was not already required with the geographic split back-up plan. Our stated policy has consistently been that no new area code would be implemented until all

reasonable measures to conserve numbers have been employed and exhaust can no longer be avoided.

We find no useful purpose in adopting a separate “trigger” for overlay implementation rather than simply setting a schedule now. Particularly because the remaining NXX code stock is already very close to the 6 NXX code level, anyway, it is unnecessarily cumbersome to introduce the additional administrative burden of a separate “trigger” for initiating the starting and ending dates for implementation of the overlay. A “trigger” could also lead to potential customer confusion as to the significance of what is being ordered in today’s decision versus a separate later authorization to start implementing the overlay.

We are also concerned that delaying the start of implementation until only 6 prefix codes remain may create undue risk that the 310 area code would exhaust before the overlay could be completed. Given the limited number of remaining prefix codes and number blocks available for assignment either to the lottery or to the number pool, and continued demand for numbers expected over the next 12 months, we conclude that a schedule should now be set for the overlay implementation.

Key transitional events in the implementation schedule involve customer notifications, and “permissive” and “mandatory” dialing periods leading up to the point where the new area code is opened for number assignments. The overlay does not involve a “permissive” dialing period as narrowly defined in Section 7931 (i.e., where the caller can reach the same party by dialing either the old or new area code). The term “permissive” dialing period in connection with the overlay, however, refers to the period during which customers can reach the same party by dialing either seven digits or 1+10-digits. Customers are

permitted, but not required, to use 1+10-digit dialing during this period. Correspondingly, the “mandatory” dialing period refers to the mandatory requirement to dial 1+10-digits for all calls within the overlay region.

Parties assume a 10-month duration from the point of NANPA notification to the point where new numbers become available. While we agree with Joint Parties that information conveyed closer in time to an actual event will be more effective, we question whether all of the necessary preparations for the Public Education Program (PEP) can be executed within the shortened schedule contemplated by the Joint Parties. In order to provide reasonable assurance that the PEP can be properly planned, administered, and executed, we conclude that a 12-month duration should be applied from the effective date of this decision until the point where new numbers become available.

Thus, we generally adopt the schedule durations proposed by the Joint Parties, but shall lengthen the duration of the permissive dialing period from five months to seven months. The additional two months provide more time to ensure that an adequate PEP effort can be developed and disseminated.

As part of the education program for the 310 overlay, we shall require that “permissive” dialing be instituted beginning no later than seven months before the beginning of mandatory 1+10-digit dialing. To the extent that any carriers providing local service within the 310 NPA do not presently offer their customers the capability to dial 1+10-digits within the same area code, they shall make permissive 1+10-digit dialing available to their customers no later than this date. During permissive 1+10-digit dialing, customers should be encouraged to voluntarily dial 1+10-digits for calls within their area code as part of the education program for the overlay.

In D.96-12-086, we directed that, upon activation of mandatory 1+10-digit dialing, customers who try to dial seven digits will hear an instructional recording informing them of the 1+10-digit dialing requirement. In D.96-12-086, we contemplated that mandatory 1+10-digit dialing would be instituted at the same time that the overlay took effect. In D.98-05-021, in the interests of minimizing customer confusion, however, we directed that mandatory 1+10-digit dialing take effect three months prior to initiation of the new overlay area code. In this way, customers would already have become somewhat accustomed to dialing 1+10-digits before making the further adjustment of distinguishing between two different area codes within the same geographic calling area. In their current schedule, Joint Parties propose that new numbers in the 424 area code become available not earlier than 30 days after the beginning of the mandatory dialing period. We shall incorporate Joint Parties' 30-day window in the adopted schedule.

Although we are requiring a somewhat longer PEP duration than Joint Parties assumed, we are also starting the implementation earlier than contemplated under Joint Parties' "trigger" concept. Thus, the point in time at which new numbers become available under the new overlay area code may not be significantly different than what would have resulted from applying the Joint Parties' "trigger" concept. In this way, the PEP implementation efforts can proceed on a timely basis while still meeting the same end point as proposed by the Joint Parties for opening the new area code.

E. Proposed Reservation of Blocks for New Entrants

The FCC recognized that with an overlay, new CLEC entrants could be competitively disadvantaged by consumer preference for the original area code. In its Local Competition Second Report and Order,¹³ the FCC found that “. . . customers would find it less attractive to switch carriers if new entrants had to assign telephone numbers to their customers from the new, overlay area code, while incumbent LECs had telephone numbers available for assignment to their customers from both the overlay code and the old area code.”¹⁴ In order to ensure a new entrant had access to numbering resources in both the old area code and new area code,¹⁵ the FCC required that before implementing an all-service overlay, the state regulatory body must first ensure the availability of at least one full NXX code (ten-thousand numbers) in the existing area code to every telecommunications provider in that area.¹⁶

The Commission incorporated this requirement into its original 310 overlay plan by requiring the set-aside of several 310 NXX codes for new entrants prior to the implementation of the overlay.¹⁷ The FCC eventually dropped the NXX Code “set-aside” precondition in its Third Order¹⁸ in part,

¹³ *Local Competition Second Report and Order*, 11 FCC Rcd at 19519.

¹⁴ *Id.* at 19519 ¶¶ 287-289.

¹⁵ *Local Competition Second Report and Order* at ¶ 288.

¹⁶ *Id.*; see also 47 C.F.R. § 52.19(c)(3)(iii).

¹⁷ See D.98-05-021, *mimeo.* at 26.

¹⁸ *Third Order on Consideration of second report and order* CC Docket No. 92-237, Sept. 13, 1999.

because assigning full NXX codes to new entrants could spur depletion of an area code.¹⁹

CCTA/XO argue that although the FCC removed this preference rule, the underlying justification for the rule remains. Moreover, since the FCC issued its Third Order, the industry has deployed number pooling so providers no longer require a full NXX per rate center and the inefficiency that led the FCC to drop its new entrant preference rule no longer exists. CCTA/XO thus argue that the spirit of the FCC's new-entrant preference plan should be retained by implementing the New Entrant Reserve Pool (NERP).

CCTA/XO thus propose that in the event an overlay is implemented, the Pooling Administrator set aside a maximum of 6 blocks for new entrant "footprint" use in each of the 16 rate centers. CCTA/XO propose that for each rate center, the NERP function for 12 months from the date that an NXX is first assigned from the 424 area code, or until the 6 NERP blocks in the rate center are assigned, whichever comes first. Under their proposal, all remaining 310 area code blocks in each rate center would become generally available thereafter consistent with national pooling rules. Only initial block requests would qualify for a NERP block and only one NERP block would be assigned per service provider in a rate center. Such a pool would not only provide new carriers with the opportunity to obtain at least one thousand-block of 310 numbers in rate centers for customers who desire the 310 number, but would also facilitate the wide dispersment of the new 424 area code among carriers, thus facilitating distribution and public acceptance of the new 424 overlay.

¹⁹ *Id.*

While we agree in principle with the goal of CCTA/XO that newer carriers should not be competitively disadvantaged by the lack of availability of number blocks, we cannot approve their NERP proposal at this time. Such a proposal would entail establishing a separate new number pool within the 310 area code. CCTA/XO have not shown that this Commission has the jurisdictional authority to order and implement such a new number pool. To the extent that CCTA/XO seek to continue pursuing this proposal, their recourse would be to take this matter up with the pooling administrator and appropriate regulatory channels within the FCC.

F. Public Education Program for the Overlay

1. Background

As a condition of replacing the adopted back-up plan for a 310 area code from a geographic split to an overlay, an effective PEP is necessary. The public is familiar with the traditional association of a single area code with a unique geographic area, and has had a long standing expectation that telephone calls between numbers within a single area code require dialing only seven digits. With an overlay, however, these traditional paradigms would no longer apply to calls within the overlay region. Instead, every call originated within the 310 and 424 overlay area code will require mandatory 1+10-digit dialing, even for calls terminated within the same area code. Accordingly, the public will need an adequate transitional period to become educated to the resulting changes due to an overlay.

In D.96-12-086, the Commission required that for an overlay, a PEP would be required to begin at least 12 months prior to the implementation of mandatory 1+10-digit dialing for the affected region. (D.96-12-086 at 36.) For the 310 area code overlay plan previously approved in D.98-05-021, the PEP began with the

introduction of permissive 1+10-digit dialing, to provide for 12 months in which to educate the public before the overlay was to take effect.

In the Petition to Modify D.00-09-073, Joint Parties propose only a nine-month period to conduct a PEP from the initial triggering of implementation until mandatory 1+10-digit dialing begins. The proposed schedule allows a five-month period for “permissive dialing.” This is the period during which callers within the 310 area code would retain the option of dialing either the seven-digit line number only or dialing the 1 plus the area code (for a total of 1+10-digits) to reach other numbers within the 310 area code. Yet, a nine-month period for educating the public would be inconsistent with the 12-month duration for the PEP prescribed in D.96-12-086.

The ALJ issued a ruling dated March 25, 2005, concerning whether to shorten the lead time requirement for the PEP, consistent with accomplishing the goals of the PEP. The March 25, 2005 ALJ ruling also solicited comments concerning whether, or to what extent, the PEP previously approved for the 310/424 overlay should be applied for the currently proposed overlay. In the alternative, parties were to address what, if any, changes from the previously approved PEP should be made for purposes of the overlay as currently proposed.

In response to the ruling, Joint Carriers filed comments on April 18, 2005, arguing that the Commission should shorten the lead time for the PEP from twelve months to nine months prior to the beginning of mandatory dialing. The Joint Carriers argue that given their past experience with overlays in other parts of the country, a nine-month lead time is sufficient for the PEP. The Joint Carriers’ experience is that information about the overlay that is conveyed closer

in time to the actual event taking place is more effective than when it is conveyed too far in advance.

The Joint Carriers attached as Exhibit A to their comments (attached as Appendix A of this order), a proposed list of activities to be performed with a schedule for completing them.

An ALJ ruling was issued on May 31, 2005, soliciting further comments on the PEP relating to additional issues. Comments in response to the supplemental ALJ ruling were filed on June 15, 2005. In addition to carriers, comments regarding the PEP were also filed by the South Bay Coalition. We take those comments into account in adopting the PEP requirements.

In D.98-12-081, the Commission previously set the scope of PEP-related measures for the 310/424 overlay plan, to achieve at least a 70% customer awareness level. The Commission identified four major objectives of the PEP:

- (1) public awareness of the change in dialing patterns and area code identification resulting from implementation of the overlay;
- (2) understanding of how customers will be affected by the change and the rationale behind the change;
- (3) public assurance that cost or quality of telephone service will not be adversely affected by the change; and
- (4) promotion of positive acceptance by customers of the change.

In D.99-02-074, the Commission augmented the PEP to require paid advertising about the overlay in the zoned editions of newspaper media, including newspapers targeting communities not reached by the mass market,

with the potential use of radio advertising within the 310/424 area code region and adjacent regions which were sent bill insert notices of the overlay.²⁰

The PEP adopted for the previously approved 310/424 overlay was required to meet the following objectives:

1. Explanation of why mandatory 1+10-digit dialing is a necessary feature of an overlay;
2. Information indicating that the change in the dialing pattern resulting from an overlay will not affect the distinction between local and toll calls, nor the rates charged for the different type of calls;
3. Focus attention on educating the elderly, children, and ethnic groups;
4. Give priority notification to those entities that will need to reprogram equipment to allow for a maximum lead time;
5. Provide information to easily locate the correct area code for a given number and to know that the 1+ the area code must be dialed preceding any number within the region subject to the overlay;
6. Provision to inform customers to dial directory assistance to locate numbers applicable to different area codes within the same overlay region;
7. Use of billing inserts, public service announcements, as well as press releases, TV and radio announcements discussing the effects of the overlay;
8. Change of telephone directories to identify the area code in addition to the seven-digit number for each directory listing;
9. Scope of education plan must include adjacent area codes; and

²⁰ The Commission subsequently adopted a similar PEP in June 1999 for the 408/669 area code overlay in Appendix A of D.99-06-087.

10. Industry must submit the public education plan to the Commission for review and approval.

Notwithstanding these efforts to educate and prepare the public, there was still significant negative public reaction in the 310 area code when mandatory 1+10-digit dialing was instituted in the spring of 1999. Moreover, six years have elapsed since that time, and reinstatement of mandatory 1+10-digit dialing will require a new PEP effort.

In comments, the Joint Parties propose the establishment of a 310 Task Force to manage the PEP. CCTA proposed that the Commission address PEP-related cost issues to assure that PEP funding is sufficient, timely, fairly allocated, and cost-effective. CCTA raises the issues of how the PEP will receive sufficient funding, what type of 310 resource-users will be expected to fund the PEP, and what equitable cost recovery mechanism will be adopted.

2. Adopted Scope and Standards

As a starting point for the PEP, we shall require that the minimum scope of activities and standards adopted in the previous PEP for the 310 and 408 area code overlays be applied prospectively. As proposed, we shall order the formation of a 310 Task Force to manage the PEP. The Task Force shall be comprised of Commission staff and at least one representative from each entity holding numbering resources in the 310 area code. The Task Force shall be responsible for implementing the specific details of message content, public awareness, outreach to ethnic communities, as well as potential post-implementation efforts. The Task Force shall be required to implement the scope of activities and standards of activities on at least the level contemplated in the previously budgeted 310 and 408 PEP amounts. Accordingly, the PEP shall be conducted at the level of effort necessary to achieve at least a 70% public

awareness. PEP outreach efforts shall specifically target key governmental agencies and community leaders, chambers of commerce, major airports, hospitals, alarm providers, pay telephone providers and the state coordinator for E-911. The PEP shall also include special outreach to senior citizens, the disabled, and ethnic communities.

The Task Force shall be required to arrange for paid advertising about the overlay in the zoned editions of newspaper media, including newspapers targeting communities not reached by the mass market, with the potential use of radio advertising within the 310/424 area code region. Funding for such paid advertising shall be set at the minimum level previously adopted for the 408 overlay. We discuss authorized funding levels for the PEP in more detail in Section III.F.4 below.

The Commission previously adopted a PEP for the 408/669 area code overlay which was ultimately suspended without taking effect. In the 408/669 overlay PEP, however, the Commission identified various elements requiring clarification and augmentation. We conclude that those same elements need to be clarified and/or augmented as part of the PEP for the 310/424 overlay.

For example, the Commission noted that the PEP did not clearly delineate the division of responsibility between individual carriers versus the Task Force for coordinating press releases and distributing collateral materials. Likewise, there was no tracking mechanism for implementing Speakers' Bureau activities to determine who was expected to speak to particular groups. Such delineation is necessary so that appropriate follow-up and monitoring can be performed to make sure that mandated tasks are carried out on the schedule and on the scale that is set forth in the PEP budget. We shall require the Task Force to develop a reasonable means of delineating the division of responsibility for the

above-referenced activities so that adequate tracking and compliance can be assured.

The Commission also found that the 408 PEP was deficient in not clearly specifying which ethnic or non-English-speaking groups were included in the outreach to those sectors of the public. As reported by Joint Parties, the principal ethnic groups in the 310 area code region include Caucasian, Hispanic, African-American, and Asian communities. Thus, we agree that PEP materials must be made available in the native languages applicable to the principal ethnic communities in the 310 area code. In certain cases, the PEP also failed to identify a scheduled target date for completion of designated tasks. We shall require the Task Force to report with sufficient specificity on these matters.

In the PEP previously attempted for the 310 overlay, volunteer efforts by employees of individual carriers were sometimes challenging with much work being done by just a few volunteers. The Task Force for the 408 overlay, therefore, solicited the assistance of a professional firm to provide logistical administration for the PEP. Since the cost of this effort was unknown, the Task Force requested that any reimbursable budget adopted by the Commission for the 408 PEP identify this as a line item, with costs to be determined later. The Commission agreed to this approach for the 408 PEP.

In its comments in this proceeding, CCTA agrees that based on the experience from the 408 Task Force, it is not practical to rely on in-house telecommunications employees, often outside their area of expertise, to manage the logistics of the PEP. CCTA notes, however, that the substantial body of materials that have already been produced from the prior PEP efforts would be usable in a prospective 310 PEP effort, with appropriate updating. The effort of a

professional agency could then be left to focus on implementation, and not on development of the PEP.

The Joint Parties, however, are not in favor of using an outside professional agency for logistical administration. They argue that given their combined experience in managing previous overlay implementation, they can handle such administration more efficiently by using in-house personnel.

The 310 Task Force should be able to handle responsibility for developing the materials and content of the PEP, maximizing the use of prior PEP efforts, and conforming to the requirements of this order. We remain concerned as to whether the Task Force will also be able to adequately staff logistical and administrative functions. At this time, the Task Force will not be required to solicit the assistance of an outside professional firm to focus on implementing the logistical administration of the PEP. Nonetheless, we shall require the Task Force to report on the steps it is taking to provide an adequate level of in-house staffing to handle administrative logistical issues. If logistical administrative problems develop during the course of implementation, the Commission shall reconsider whether outside professional assistance must be required.

3. Potential for Continuation of the PEP Beyond the Overlay Opening Date

In D.99-06-087, the Commission determined that a second-phase PEP extending beyond the opening of the overlay area code may be necessary to promote necessary public awareness regarding the fact that the 408 and 669 area codes would co-exist in the same geographic area. In the case of overlays implemented in other states, the Commission observed that some customers had expressed confusion, thinking that the overlay area code served a different geographic area, perceived as requiring a toll call. The Commission noted the

concern as to the competitive consequences of such a misperception should it emerge in California, since competitive local carriers would be more likely than incumbents to serve customers with the new, less recognized overlay area code.

The Commission agreed that by focusing mainly on the change to mandatory 1+10-digit dialing patterns, and by ending the PEP before the overlay actually takes effect, public confusion could remain a problem concerning the identification of the new area code with the original area code region. With the 408 area code overlay, the Commission agreed that it may prove useful to extend the duration of the PEP beyond the opening of the overlay area code to ensure that customers are not confused as to the location of the new area code and that the rating of calls would not be affected.

In its comments, CCTA agrees that planning for the continuation of the PEP beyond the opening of the overlay area code could provide useful flexibility to ensure proper public awareness. We shall monitor the effectiveness of the PEP through the implementation period, and make a further assessment at a later date as to whether, or to what extent, the PEP should continue to actively disseminate information after the overlay area code is opened.

4. Funding for the PEP

Joint Parties also raise the issue of the funding of the PEP. Regarding the funding for the previously approved 310 and 408 PEPs, the industry costs of preparing and implementing the PEP were to be collected as a joint pool of funds from all NXX code holders in the area code, with funds to be withdrawn by individual carriers as needed to reimburse them for prescribed PEP activities. Moreover, in D.00-12-032, the Commission denied a motion by Pacific Bell Telephone Company seeking to recover any PEP-related costs from retail customers as a "limited exogenous" factor.

For the 310 PEP, the Commission initially approved a budget of \$187,715, but later, by D.99-02-074, augmented this amount by \$120,000 to cover additional mass media advertising and by \$10,000 for collateral materials and distribution. The resulting final PEP budget was \$317,715. For the 408 overlay, the Commission approved a budget of \$340,000, covering a similar level of effort, with provision for further augmentation to cover the costs of outside professional administration of the PEP, as described above.

We shall authorize a preliminary budget for the 310 PEP of \$340,000 based upon the allocation to activities as previously authorized in the 408 overlay PEP. Of this total amount, we shall require that a minimum of \$120,000 be allotted to cover mass media advertising, including radio and television, and \$10,000 for collateral materials and distribution. Because the budgeted PEP amounts were adopted in 1999, they do not reflect any price level changes attributable to the effects of inflation. Accordingly, we shall authorize increases in the preliminary budget to reflect the effects of inflation since 1999. Subject to continuing review and monitoring as PEP activities progress, we may find it further necessary to adjust the budgeted PEP amount prospectively. We shall delegate responsibility for approving any subsequent PEP budget adjustments for inflation or other items to the Commission's Director of the Information and Management Services Division, in consultation with the Telecommunications Division.

In their comments filed June 15, 2005, Joint Parties proposed that the funding mechanism be based on thousand-block assignments. To the extent that actual expenses for shared costs exceed or are less than the budgeted costs, Joint Parties propose that any shortfall be made up on the same basis and any refund be distributed accordingly. Joint Parties propose that individual carrier costs for carrier-specific tasks be the responsibility of each carrier.

We shall adopt Joint Parties' proposal that funding for those joint tasks be allocated among carriers in proportion to the relative percentage of thousand-blocks that they hold in the 310 area code as of the effective date of this order. In its comments, CCTA assumes that the Commission and its staff will exercise oversight regarding the terms of PEP funding withdrawals. The Commission and its staff do not have the budgetary resources to administer the collection and disbursement of PEP funds. It will instead be the responsibility of the 310 Task Force to arrange for adequate accounting of total PEP costs incurred, determination of contributions due from each carrier based on their block holdings, and follow up for collections and disbursements of PEP funds. The Task Force, shall however, provide for periodic reporting to the Commission staff concerning the details of collections disbursements by individual carriers relating to the PEP. Such reporting shall be necessary to confirm that the PEP is carrying out its authorized mandate on schedule. The specific details of the budgetary reporting framework shall be developed as part of the Task Force administration.

Telecommunications carriers serving in the 310 area code shall institute an instructional announcement directing callers to dial 1+10-digits effective beginning on July 26, 2006. With this measure in place, customer confusion should be minimized, even for visitors from other areas outside of the 310 area code that are subject to different dialing patterns. With repeated usage over time, we are confident that public familiarity and acceptance of 1+10-digit dialing should increase.

IV. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules and

Practice and Procedure. Comments were filed on August 15, 2005, and reply comments were filed on August 22, 2005.

We have reviewed parties' comments on the Draft Decision, and have taken them into account, as warranted, in finalizing the overlay implementation plan. We provide a discussion below of certain specific comments on the Draft Decision.

A. Coalition Claims Concerning Number Utilization Study

In its comments on the Draft Decision, the Coalition opposes implementing any area code relief plan at this time. The Coalition argues that it is premature to implement a new area code based on its claim that a telephone number utilization study has not been performed to determine that number inventory in the 310 area code is being efficiently utilized pursuant to Pub. Util. Code § 7943.

We find the Coalition's claim unpersuasive that it is necessary or useful to conduct another telephone number utilization study before proceeding with implementation of a 310/424 area code relief plan. Contrary to the Coalition claim, we are in compliance with § 7943 in that a number utilization study has already been completed for the 310 area code. Although the utilization study was completed in March 2000, the Commission's Telecommunications Division has continued to monitor telephone number utilization in the 310 area code since then up until the present time. Thus, we have an accurate and reliable picture concerning how numbers are being utilized in the 310 area code.

In addition, on February 16, 2001, the Telecommunications Division completed an independent audit of the number utilization data from the 310 area code utilization report. In its published audit findings, the Telecommunications Division's reached three overall conclusions. First, the audit found that carriers

did not deliberately misreport telephone number utilization data for the March 2000 Report on the 310 area code. Second, the audit authenticated the utilization data that carriers submitted for the March Report, except for certain recommended adjustments as noted in the audit report. Third, the audit found that the additional telephone number adjustments noted in the audit report were not sufficient to extend the life of the 310 area code. Even with the unused blocks of numbers remaining as found in the March 2000 Utilization Report, various constraints limited the ability of carriers to make use of these unassigned numbers in meeting current customer service needs in certain rate centers, as previously discussed. Accordingly, given the limited quantity of prefix codes remaining, the staff audit report recommended that the 310 area code back-up plan proceed with implementation. Nonetheless, even though the staff recommended immediate implementation at that time, we have been able to defer implementing the new area code up until now.

In view of the independent audit conducted by the Telecommunications Division, we have added assurance that the underlying utilization data reported in March 2000 report was reliable, and that carriers were not deliberately misreporting data. In addition, the Telecommunications Division has continued to monitor changes in number utilization data in the 310 area code since March 2000. Moreover, since the March 2000 utilization report was completed, carriers have been subject to the strict utilization documentation requirements, as previously noted above, in order to obtain additional numbers from the NANPA.

In view of these facts, we have reliable contemporary data concerning number utilization. No useful purpose would be served by expending time and resources to conduct another number utilization study or audit for the 310 area code before implementing a new area code. On the other hand, delaying relief to

conduct such a new study would serve to increase the risk that stock of numbers could be depleted at least for certain carriers in certain rate centers before a new area code could be implemented.

B. Coalition Claims Concerning Additional Conservation Measures

In further comments on the Draft Decision, the Coalition claims that “not all reasonable telephone number conservation measures have been implemented,” as required by Pub. Util. Code § 7943.

We find this claim unsupported by the facts. For example, although the Coalition calls for the return of unused numbers in the inventory of paging companies, this Commission has no authority to order paging companies to return additional stocks of numbers. The Coalition speculates that this Commission could “work more closely with the FCC to explore how such numbers can be returned to the 310 pool,” yet the Coalition provides no explanation as to whether, when, or how FCC rules would be changed in this regard. It would be irresponsible for this Commission to avoid implementing needed numbering relief based upon speculation in this regard.

Likewise, the Coalition argues that the Commission should resubmit its petition to the FCC for a technology-specific overlay plan. Under the previously submitted plan, an overlay would only apply to assigned numbers that utilized only certain technologies such as wireless telecommunications. As acknowledged by the Coalition, such an approach would require separate FCC approval. The Commission previously submitted such a proposal to the FCC, but subsequently withdrew it after the passage of time with no action from the FCC. Moreover, under current federal rules, customers are now able to port their telephone numbers between wireline and wireless carriers. Thus, with the ability

to port numbers between technologies in this manner, any plan that would limit the overlay area code on a technology-specific basis is rendered moot.

In its comments on the Draft Decision, the Coalition also repeats its argument that the Commission should reverse its previous position in recognizing the FCC's jurisdiction for establishing carrier inventory rules. We have already dealt with this argument above.

C. Statewide Policies on Area Code Relief

In its comments on the Draft Decision, the Coalition also raises the question of how the Commission plans to conduct area code relief in the future throughout the state – both in terms of conservation measures and as a preferred form of area code relief planning. The Coalition asks the Commission to formally address telephone number utilization throughout the state with a consistent statewide policy that can be explained to policy makers, community leaders, and consumers.

In terms of number conservation measures, the Commission has already implemented numerous measures on a statewide basis as enumerated in various prior decisions issued in this docket. As to the question of what form of area code relief may be appropriate in future regions of California, that issue is beyond the limited scope of this decision which concerns itself with the Petition to Modify D.00-09-073 relating specifically to the 310 area code relief plan. Given the demographic diversity of the various area code regions within California, a one-size-fits-all approach to area code relief planning may be questionable. In any event, we make no prejudgment in this decision concerning what form of area code relief may be warranted in other California geographic regions in the future.

D. Community Representation on the PEP Task Force

The Coalition further proposes that if the overlay does proceed, the Task Force for the PEP should include representation from the area that will be impacted by the relief plan. In reply comments, the “Joint Telecommunications Carriers” (JTC) indicate that they would welcome constructive input from community representatives (*e.g.*, an educator or someone involved with special needs communities such as senior citizens or the disabled). Such input could then be used by the Task Force as it implements the PEP. Accordingly, we shall direct that the PEP Task Force membership be augmented to include such representation from the 310 area code community. We shall direct the Commission staff coordinator of the PEP Task Force to take appropriate steps to obtain representation in this regard. In any event, however, the implementation schedule for the PEP must not be delayed because of the time involved in obtaining community representation for the PEP Task Force.

E. “1+10-Digit” Dialing Requirements

In comments on the Draft Decision filed by Mr. Douglas Carlson and TCLA, they argue that the Commission should defer the overlay implementation to consider the use of only 10-digit dialing (instead of the currently required “1+” 10-digit dialing). As noted by both Mr. Carlson and TCLA, the Commission previously required “1+” 10-digit dialing as a condition for implementing an overlay in D.96-12-086. Although the FCC does require 10-digit dialing for all calls within an overlay region, Mr. Carlson correctly points out that the “1” preceding a 10-digit telephone number is not a specific requirement of the FCC. Nonetheless, the wireline telephone network is currently configured in California to require the dialing of the “1” preceding a 10-digit-dialed telephone number. TCLA and CALTEL argue, moreover, that because calls over the wireless

telephone network do not require the additional "1+" prefix, the overlay as planned would not be competitively neutral. In other words, only wireline customers would experience the "1+10-digit" dialing requirement while wireless customers would only have to dial 10 digits, without the preceding "1+" prefix.

Wireline customers and service providers in California are accustomed to, and have conformed with, the 1+10-digit dialing plan for any call to a different area code. With an overlay, wireline customers will still be required to dial the "1+" preceding the 10 digits, even within the same area code. To the extent that wireless customers currently do not dial the "1+" preceding 10-digit calls, they will continue in the same manner after the overlay takes effect. Thus, the overlay will simply continue area code dialing protocols that already exist with respect to wireline and wireless customers. Given the impending exhaust of the 310 area code, consideration of the implications of a policy change from 1+10-digit to 10-digit only dialing, cannot reasonably be accomplished within the limited time available to implement the PEP for the 310 area code overlay.²¹ Accordingly, we shall implement the overlay under the constraints of existing "1+" dialing patterns as they apply to wireline carriers. Further consideration of 1+10-digit dialing pattern changes should be addressed through the Petition for Modification of D.96-12-086 submitted by Mr. Carlson on August 3, 2005.

F. Seven-Digit Dialing Waiver

In its comments on the Draft Decision, the Coalition also argues that the Commission should pursue new efforts to seek FCC permission for carriers to

²¹ Implementing a 10-digit dialing only in the 310/424 area is equally problematic given the existing statewide dialing patterns in the state, the need for immediate area code relief and the potential customer confusion.

dial only their seven-digit line number for calls within the same area code within an overlay region. The Coalition argues that seven-digit dialing would not only alleviate the inconvenience of the overlay, but would create consistency in dialing patterns with other area codes in California.

The requirement for the area code to be dialed along with the seven-digit line number (i.e., 10-digit dialing) was originally required by the FCC, and also adopted by this Commission to produce competitive neutrality among carriers whose numbers were subject to an area code overlay. Absent this requirement, the dialing burden of the new overlay area code would disproportionately disadvantage customers of carriers that could not obtain numbers in the established area code. As with the other proposals of the Coalition, it would be speculative to assume when or whether, if at all, the FCC would reverse its rules to permit seven-digit dialing for calls within an overlay region. It would produce an unreasonable delay in area code relief to pursue such a request while denying area code relief implementation waiting for the FCC to answer such a request.

G. Request to Shorten the PEP Implementation Period

In comments on the Draft Decision, the JTC ask the Commission to consider shortening the implementation schedule by two months so that carriers will be able to begin obtaining numbers from the new overlay area code sooner. The JTC seek the shortening of time in view of their concern that number exhaust may occur before the new area code is opened.

We decline to shorten the schedule as suggested by the JTC. The duration for the PEP has been established so that sufficient time will be available to complete the planning, preparation, and execution of the various measures involved. A shortening of the time could unduly compromise the integrity of the

planning and preparation process for the PEP. Accordingly, to provide assurance that there will be adequate time to conduct the PEP and to meet the goals set forth in this decision, we shall not shorten the schedule.

V. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. Pursuant to FCC requirements, this Commission previously adopted a back-up plan in D.00-09-073 to implement a geographic split of the 310 area code to be initiated at a subsequent point in time once it was determined that code exhaust was imminent.
2. Joint Petitioners presented updated information regarding the successful implementation of overlays in other regions of the nation over recent years.
3. Based upon reevaluation of the merits of the split versus overlay options, taking into consideration more recent experience with overlays in other states, it is found that an overlay would result in fewer overall adverse impacts when compared with a geographic split of the 310 area code.
4. Good cause has been shown to modify D.00-09-073 to replace the geographic split with an overlay as the adopted form of relief.
5. A new area code is needed within the next year in view of pending exhaustion of numbering resources in the 310 area code.
6. The Commission is required under FCC rules to open a new area code where necessary to avoid code exhaustion and denial of numbering resources necessary for competitive service.

7. The Commission has undertaken reasonable measures to ensure that numbering resources in the 310 area code are being utilized as efficiently as possible.

8. The Commission has already considered an ALJ's Draft Decision as to whether this Commission has the authority to impose or should impose guidelines regarding the six-month inventory level of number blocks that carriers may retain, and declined to adopt any such guidelines.

9. D.96-12-086 required mandatory 1+10-digit dialing within the region subject to an overlay to prevent an anticompetitive dialing disparity between customers of competing carriers who lacked equivalent access to NXX codes in the old NPA.

10. Although there is no area code change for existing numbers with an overlay, customers still need a transitional period to become familiar with mandatory 1+10-digit dialing and the notion of two area codes within a single geographic area.

11. In the context of an overlay, "permissive" dialing has reference to 1+10-digit dialing, and means that customers are permitted to dial 1+10-digits for calls within the same area code, but are not required to do so.

12. Before the permissive dialing period can begin, network preparation and initial customer notification must be completed.

13. A 120-day network preparation period, to begin upon the effective date of this order, will provide carriers with adequate time to make the required modifications to the network to begin permissive dialing when necessary.

14. A 90-day initial customer notification period, to begin with the effective date of this order, will provide carriers adequate time to work with the Commission to prepare and provide customers with the initial notification of

dates for the permissive and mandatory dialing periods, as well as other necessary information regarding the overlay.

15. A seven-month permissive dialing period will provide the necessary time for the PEP efforts to be developed, executed, and disseminated, so that customers may become acquainted with the new requirements associated with the overlay before new prefix codes in the 424 overlay area code become available to carriers and their customers.

16. D.96-12-086 required that a customer education program be instituted at least 12 months before an overlay would take effect explaining the new mandatory 1+10-digit dialing requirements and the overlay plan to the public.

17. D.96-12-086 directed that, upon activation of the overlay area code, customers who dial seven digits will hear an instructional recording informing them of the 1+10-digit dialing requirement.

18. D.96-12-086 identified certain minimum elements to be included in the customer education plan, including an explanation why mandatory 1+10-digit dialing is necessary, and assurance that the change in their dialing patterns will not affect the rates charged for calls.

19. As the 310 NPA faces further potential shrinkage with a geographic split, the drawing of boundaries that minimize the splitting of local communities becomes increasingly difficult.

20. The overlay avoids the need for existing customers to change their telephone number area code for existing lines.

21. A geographic split creates economic hardships particularly on affected businesses which must notify customers of area code changes, and change business cards, letterheads, advertisements, etc.

22. With an overlay, geographic boundaries no longer define a single NPA, thereby eliminating the advantage of having geographically-defined NPA boundaries as a means of identifying and unifying communities of interest.

23. Although customers in the 310 NPA are already accustomed to dialing 10-digits for a significant portion of their calls, the overlay will still require them to learn that calls within the same area code also require 10-digit dialing.

24. While both the overlay and geographic split have certain adverse impacts, the overlay will have less overall adverse impacts than either of the geographic split alternatives proposed for the 310 NPA.

Conclusions of Law

1. The Petition to Modify D.00-09-073, filed by the Joint Parties, should be granted, in part, to replace the geographic split with an all-services overlay to the 310 area code in accordance with the schedule adopted below.

2. Joint Parties have not shown why a “trigger” set at 6 NXX codes would produce a more efficient or coherent implementation approach as opposed simply to setting an implementation schedule as ordered below.

3. Because the FCC has not delegated authority to this Commission to impose carrier inventory rules, there is no basis to delay implementation of necessary area code relief in the 310 area in order for this Commission first to develop carrier inventory guidelines.

4. The adoption of the proposed overlay back-up plan for the 310 NPA provides a better overall solution than does a geographic split in terms of minimizing impacts on customers.

5. An overlay plan should be approved in accordance with the schedule and conditions adopted in the order below.

6. A PEP to acquaint customers with mandatory 10-digit dialing and the overlay, should be required as a condition of approving the overlay, consistent with D.96-12-086.

7. The PEP should incorporate, at a minimum, the requirements set forth in Appendix A, and be consistent with the previously authorized PEP for the 310 and 408 area code overlays.

8. Once permissive 1+10-digit dialing is in place, customers should be encouraged to voluntarily dial 10-digits for calls within their area code as part of the education program during the year leading up to the overlay.

9. The recorded instructional announcement alerting customers who dial seven digits to dial 10-digits should begin on, or no later than, July 26, 2006, and shall be continued until further notice by all telecommunications carriers following the date the 310 NPA overlay area code is opened. The instructional announcement should also be instituted on all 424 codes as they are opened and continue until further notice.

10. The public education plan should focus attention on the education of all classes of customers including children, the elderly, the disabled, as well as the various ethnic groups in the current 310 NPA.

11. The industry should give priority to notifying entities which will need to reprogram equipment as a result of the change to mandatory 10-digit dialing.

12. Further consideration of dialing pattern changes relating to the "1+" prefix requirement for 10-digit dialing should be addressed through the Petition for Modification of D.96-12-086 submitted on August 3, 2005.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Decision 00-09-073, filed by the Joint Parties identified above, is hereby granted, in part, in accordance with the terms adopted below.

2. The previously adopted back-up plan known as Alternative 1A, the geographic split of the 310 Number Plan Area, is hereby replaced with an all-services overlay, in accordance with the terms and conditions set forth below, consistent with Federal Communications Commission requirements.

3. The schedule set forth below is adopted for the overlay.

4. Carriers shall complete any network preparation (including but not limited to network translations, operational support system modifications and E-911 configurations) necessary to implement the overlay within 120 days of the effective date of this order.

5. Effective with the date of this order, the North American Numbering Plan Administrator is hereby authorized and directed to notify code holders in the 310 area code to proceed with implementation of the all-services overlay adopted in this order.

6. No later than 90 days after the effective date of this order, carriers serving in the 310 area code shall provide their customers with initial notice of the schedule for permissive and mandatory dialing associated with implementation of the all-services overlay adopted in this order.

7. Permissive 1+10-digit dialing shall officially begin on December 31, 2005, after the effective date of this order, and shall continue for a period of seven months thereafter.

8. Mandatory 1+10-digit dialing shall begin on July 26, 2006.
9. The 424 overlay area code shall be opened effective August 26, 2006, and new numbers shall begin to be assigned effective on or after that date.
10. A Public Education Plan (PEP) shall be required as a condition of approval of the overlay. The PEP shall at a minimum consist of the measures as set forth in Appendix A of this order, and shall incorporate at a minimum the scope of activities and standards previously required for the 310 and 408 area code overlay PEPs. PEP outreach efforts shall specifically target key governmental agencies and community leaders, chambers of commerce, major airports, hospitals, alarm providers, pay telephone providers and the state coordinator for E-911. The PEP shall also include special outreach to senior citizens, the disabled, and ethnic communities. The PEP shall be conducted to achieve a 70% public awareness level.
11. A PEP Task Force shall be formed comprised of members of Commission staff and at least one representative from each entity holding number resources in the 310 area code to administer the PEP in accordance with the requirements of this order.
12. The PEP Task Force shall develop a reasonable means of delineating the division of responsibility for the above-referenced activities so that adequate tracking and compliance can be assured.
13. The Commission's Director of the Telecommunications Division shall maintain general oversight of the PEP Task Force and shall require periodic reporting of the status of PEP activities, as deemed warranted.
14. Funding for the joint tasks of the PEP shall be allocated among carriers in proportion to the relative percentage of thousand-blocks that they hold in the 310 area code as of the effective date of this order.

15. A preliminary budget shall be designated for the 310 PEP of \$340,000 based upon the allocation to activities as authorized in the 408 overlay PEP. Of this total amount, a minimum of \$120,000 shall be allotted to cover mass media advertising, including radio and television, and a minimum of \$10,000 shall be allotted for collateral materials and distribution. Because the budgeted PEP amounts were adopted in 1999, they do not reflect any price level changes attributable to the effects of inflation. Accordingly, we shall authorize subsequent increases in the preliminary budget to reflect the effects of inflation since 1999.

16. The Commission's Director of Information and Management Service Division shall have responsibility for approving any subsequent 310 PEP budget adjustments.

17. The PEP Task Force shall arrange for adequate accounting of total PEP costs incurred, determination of contributions due from each carrier based on their block holdings, and follow up for collections and disbursements of PEP fund among carriers.

18. The PEP Task Force membership shall include representation from the 310 area code community in order to provide for input from local community interests including special needs groups such as senior citizens or the disabled. The Commission staff coordinator of the PEP Task Force shall take appropriate steps to obtain representation in this regard. The schedule for the PEP shall not be delayed, however, due to the time involved in obtaining community representation for the PEP Task Force.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

**APPENDIX A
Elements of Overlay Public Education Plan**

Timeframe	Activity	Description	Audience	Shared or Individual Carrier Effort
Posted by 4/11/04 per ALJ Ruling	Information	Update company websites to include 310 Public Meeting Notice.	All telecom users	Individual
TBD		Petition for Modification Granted		
Approximately one week of Issuance of Order	Administration	Formation of PEP Committee - each carrier to designate a committee representative	n/a	Commission Staff and Carrier Representatives
After Issuance of Order	Information	As Directories are published add a Banner to alert the consumers of 10-digit dialing in the 310 Area Code	All telecom users	Individual
Approximately 30 days after Issuance of Order	Information	Distribute information internally to be used as a tool by customer service representatives in order to answer customer inquiries.	Service Representatives	Individual
Periodically	Information	Notify the California Relay Service to send messages to alert their customers to the 10-digit dialing in the 310 Area Code	Hearing Impaired	Individual

**APPENDIX A
Elements of Overlay Public Education Plan**

TBD		Trigger Date		
Approximately one week after Trigger Date	News Release	Telecommunication industry to issue release which describes the Los Angeles 310 Area Code relief plan. (distribute within 310 Area including chambers of commerce and local governmental agencies)	All telecom users	Shared
Approximately 30 days after Trigger Date	Information	Telecommunications industry to send information package to Chambers of Commerce, city councils, LAX, and public safety organizations (e.g., police, sheriff and fire) throughout the 310 Area.	Select organizations and associations	Shared
Approximately 60 days prior to permissive dialing	Information	Customer Notification No. 1: Announce the new area code plan. Include information about 10-digit dialing and indicate affected areas.	Resident & Business Customers	Individual
Approximately 60 days prior to permissive dialing	Information	Notification to pre-paid customers.	Wireless prepaid Customers	Individual
Approximately 60 days prior to permissive dialing	Information	Provide information to key government agencies, 911 and alarm-service providers by mail, phone or visit.	Select business segments	Shared

**APPENDIX A
Elements of Overlay Public Education Plan**

Approximately 60 days prior to permissive dialing	Information	Contact key community leaders, legislators, state/local government contacts by letter, phone or visit.	Key Leaders	Shared
Approximately 60 days prior to permissive dialing	Information	Provide targeted information to advocacy groups (seniors, consumer panels, activist organizations, schools, etc.) by letter, phone or visit	Advocacy groups & consumer groups	Shared
Approximately 30 days prior to permissive dialing	Information	Begin the process for developing recorded announcements required for Mandatory Dialing	Residence and Business customers	Individual
Approximately 30 days prior to permissive dialing	Public Appearances	Offer speeches or appearances to Chambers of Commerce, economic development organizations, service clubs, and other business organizations.	Select organizations and associations	Shared (Assuming use of Industry Spokesperson(s))
Approximately 30 days prior to permissive dialing	Public Appearances	Telecommunications industry to schedule appearances on local radio or TV Talk shows.	All Telecom users	Shared (Assuming use of Industry Spokesperson(s))
Approximately five to ten days prior to permissive dialing	Information	Telecommunications industry to issue new release to Los Angeles media regarding approach of "transitional" dialing period.	All telecom users (310 Area Code Area)	Shared

**APPENDIX A
Elements of Overlay Public Education Plan**

120 days after Trigger Date		Permissive Dialing Begins		
Approximately 30 days prior to mandatory dialing	Information	Customer Notification No.2	Residence & Business customers	Individual
Approximately 15 days prior to mandatory dialing	Public Appearances	Telecommunications industry to schedule appearances on local radio or TV Talk shows.	All telecom users	Shared (Assuming use of Industry Spokesperson(s))
Approximately 15 days prior to mandatory dialing	Public Appearances	Offer speeches or appearances to Chambers of Commerce, economic development organizations, service clubs, and other business organizations.	Select organizations and associations	Shared (Assuming use of Industry Spokesperson(s))
Approximately five days before mandatory dialing begins	News Release	Telecommunications industry to issue release to media regarding the start of mandatory dialing	All telecom users (within the 310 NPA and adjacent NPA areas)	Shared
270 Days After Trigger Date		Mandatory Dialing		

(END OF APPENDIX A)

APPENDIX B

**Status of Remaining Number Blocks in 310 Area Code
(By Rate Center)**

Rate Center	Number of Blocks Available in the Pool
Avalon	6
Beverly Hills	28
Compton: Compton DA	27
Compton: Gardena DA	26
Culver City	11
El Segundo	44
Hawthorne	2
Inglewood	9
Lomita	2
Malibu	7
Redondo	23
San Pedro	1
Santa Monica: Mar Vista DA	54
Santa Monica: Santa Monica DA	26
Torrance	0
West Los Angeles	<u>1</u>
Total	267

(END OF APPENDIX B)

D0508040 Appendix C

EXHIBIT B

**California Public Utilities Commission
Decision 05-11-033, released November 21, 2005
(*“Rehearing Decision”*)**

Decision 05-11-033 November 18, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

ORDER DENYING REHEARING
OF DECISION (D.) 05-08-040

I. BACKGROUND

D.05-08-040 grants the petition for modification of D.00-09-073, filed by Cingular Wireless, Nextel of California, Inc. ABC California, Spring T-Mobile, Verizon Wireless, and Verizon California, Inc. (collectively referred to as the "Joint Parties"), on March 9, 2005. By D.00-09-073, the Commission adopted an "overlay" plan for the geographic split of the 310 Numbering Plan Area (NPA), to also include a new 424 area code. Under the new overlay plan, all calls within the 310/424 overlay region shall include a three-digit area code plus the seven-digit telephone number.¹ Thus, under the new overlay plan, all customers in the 310/424 overlay region will experience the loss of seven-digit dialing, even for calls within the same area code. (D.05-08-040 at 14.) Permissive use of the new dialing pattern in the 310 NPA begins on December 31, 2005 and mandatory use begins on July 26, 2006.

¹ The Federal Communication's Commission (FCC), requires mandatory 10-digit dialing for an overlay. (*In the Matter of Numbering Resource Optimization*, Second Report and Order, Appendix B, Section E, Paragraph No. 29, FCC CC Docket Nos. 96-98 and 99-200, adopted December 7, 2000; *Re Competition for Local Exchange Service* (2003) ___ Cal.P.U.C.3d ___, 230 P.U.R.4th 471, 2003 Cal.P.U.C. Lexis 655, *24, slip. op. D.03-11-022 (hereinafter referred to by its "D." number).)

In Re Competition for Local Exchange Service (1996) 70 Cal.P.U.C.2d 464, 467, slip. op. D.96-12-086 (hereinafter referred to by its “D.” number), and *Re Competition for Local Exchange Service* (1996) 67 Cal.P.U.C.2d 365, slip. op. D.96-08-028 (hereinafter referred to by its “D.” number), we discussed the background of the supply of available telephone numbers in North America, which is governed by the North American Numbering Plan (NANP) that prescribes the structure of telephone numbering codes. Telephone numbers throughout the United States utilize a 10-digit dialing format composed of a three-digit area code, a three-digit central office (NXX) code, and a four-digit line number. Area codes are assigned nationally for designated local NPAs by Bell Communications Research, Inc. (Bellcore) which currently serves as administrator of the NANP. (D.96-12-086, *supra*, 70 Cal.P.U.C.2d at p. 467.) Although wireless carriers and some landline carriers use a 10-digit protocol, in California, the incumbent local exchange carriers’ (ILECs) network is currently configured to require the 1+ prefix be dialed preceding the 10 digits.

On August 3, 2005, after the draft decision (DD) was issued but prior to the adoption of a final decision (D.05-08-040), Douglas Carlson, a party in the underlying proceeding, filed a petition for modification of D.96-12-086, requesting the Commission consider whether 1+10-digit dialing pattern changes should be addressed through that petition. We agreed that the issue should be addressed through Mr. Carlson’s petition for modification of D.96-12-086. (D.05-08-040 at 49, Conclusion of Law No. 12.) On August 15 and 22, 2005, The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC (collectively TCLA), jointly filed comments and reply comments, respectively, on the DD. TCLA presented policy arguments in its comments for modifying the DD to make the 1+10-digit requirement for landline carriers permissive and mandating a 10-

digit overlay plan.² In its reply comments on the DD, TCLA argued for the first time that wireline carriers would be at a competitive disadvantage if a 1+10-digit dialing requirement is implemented.

TCLA applied for rehearing of D.05-08-040 alleging that we erred by adopting a 1+10-digit dialing pattern in the region served by the 310 NPA. TCLA filed a concurrent motion requesting an order shortening time for responses to its application. That motion was denied by ALJ ruling on September 20, 2005. On September 26, 2006, TCLA filed a motion to reopen the proceeding for consideration of the 1+10 digit overlay dialing requirement.³ On September 28, 2005, Pacific Bell Telephone Company (PacBell) and Verizon California, Inc. (“Verizon”), filed a joint response to TCLA’s application for rehearing. On October 12, 2005, TCLA filed a motion to strike portions of PacBell’s and Verizon’s joint response, and PacBell and Verizon filed a response thereto on October 27, 2005.

II. DISCUSSION

TCLA argues that the Commission’s requirement of a 1+10-digit dialing for wireline carriers contradicts rules of the Federal Communications Commission (FCC) as well as Commission rules and decisions, and that by D.05-08-040 the Commission: 1) abused its discretionary power; 2) failed to proceed in a manner required by law; and 3) acted in excess of its power and jurisdiction in violation of Public Utilities Code section 1757, subdivisions (a)(1) and (a)(3). Further, TCLA contests the Commission’s rationale for imposing a “1” prior to the 10-digit dialing.

² The terms “wireline” and “landline” carrier are used synonymously for purposes of this proceeding.

³ Neither the Carlson petition for modification nor TCLA’s motion to reopen the evidentiary record are subjects of this order. Accordingly, today’s order is not intended to dispose of or prejudice the outcome of the petition for modification or TCLA’s September 26, 2005 motion.

In its application for rehearing, TCLA argues that the FCC prohibits the imposition of a “1” preceding a 10-digit telephone number when implementing an overlay. By order, the FCC requires that 10-digit dialing be required when implementing an overlay. (See *In the Matter of Numbering Resource Optimization*, Second Report and Order, Appendix B, Section E, Paragraph No. 29, FCC CC Docket Nos. 96-98 and 99-200, adopted December 7, 2000.) D.05-08-040 is consistent with the FCC’s requirement. The FCC does not prohibit the imposition of “1” before a 10-digit telephone number. Indeed, as TCLA readily acknowledges, California is not the only example of “1+” 10-digit dialing in the United States.

TCLA also argues that D.05-08-040 errs claiming that Commission decisions prohibit the imposition of a “1+” 10-digit dialing. Since the earliest Commission reviews of overlay plans versus geographic splits, we have routinely used the phrases “10-digit” and “1+10-digit” dialing interchangeably. (*AirTouch Communications v. Pacific Bell* (1995) 61 Cal.P.U.C.2d 153, 177, slip. op. D.95-08-052; see also, D.96-08-028, *supra*, 67 Cal.P.U.C.2d at pp. 371-372).) As we explained in D.96-08-028, *supra*:

In D.95-08-052, we concluded that for any overlay to be acceptable, all calls within the local calling area should be subject to dialing consistency whether customers subscribe to a CLC [i.e., competitive local carrier] or an LEC. We explained ... that under the national dialing plan established by the NANP, all calls between NPAs within the U.S. require the dialing of 11 digits, i.e., 1+area code+local number. Since a new overlay area code would be relatively underpopulated in comparison to the preexisting area code, these customers assigned to the new code would have to use 1+10-digit dialing more often than customers served by the old code since the majority of local numbers would be in the old area code. Further, since CLCs would be more dependent on the new area code for number assignments, this burden would fall more heavily on their customers. This result would be unduly discriminatory. *Accordingly, we found that mandatory 1+10-digit dialing for all local calls within the affected region should be required for an*

overlay relief plan in order to promote consistency in dialing patterns irrespective of the customer's area code.
(67 Cal.P.U.C.2d at pp. 372-373, emphasis added.)

Contrary to TCLA's assertion, we have never found that 1+10-digit dialing is prohibited. In addition, TCLA also argues that the imposition of a "1" preceding a 10-digit dialing scheme is a disparity between and among different classes of carriers. Further, TCLA claims that it is not a technologically and competitively neutral scheme. Specifically addressing the issue of dialing disparity, D.05-08-040 requires 10-digit dialing in the overlay area as required by FCC rules and Commission decisions. The challenged decision treats all wireline carriers similarly. D.05-08-040 provides:

Wireline customers and service providers in California are accustomed to, and have conformed with, the 1+10-digit dialing plan for any call to a different area code. With an overlay, wireline customers will still be required to dial the "1+" preceding the 10 digits, even within the same area code. To the extent that wireless customers currently do not dial the "1+" preceding 10-digit calls, they will continue in the same manner after the overlay takes effect. Thus, the overlay will simply continue area code dialing protocols that already exist with respect to wireline and wireless carriers. Given the impending exhaust of the 310 area code, consideration of the implications of a policy change from 1+10-digit to 10-digit only dialing, cannot reasonably be accomplished within the limited time available to implement the PEP for the 310 area code overlay.... (D.05-04-080 at 49.)

Although TCLA asserts that wireline carriers are at a competitive disadvantage under a 1+10-digit dialing requirement vis a vis wireless carriers, it provides no support for the proposition, and its declaration that customers provided with a choice between placing calls from wireless or wireline carriers "will likely favor the technology that allows them to dial the fewest digits possible" is speculative

at best, and among other things, does not take into account any differences between wireline services and wireless services.⁴

In addition, TCLA ignores the pending petition for modification filed by Mr. Carlson before we issued D.05-08-040. D.05-08-040 is very clear that we will consider the “dialing pattern changes relating to the “1+” prefix requirement for 10-digit dialing...through the [p]etition for [m]odification of D.96-12-086 submitted on August 3, 2005.” (D.05-08-040 at 55, Conclusion of Law No.12.) While TCLA asserts that Mr. Carlson’s petition concerns statewide policy on overlay dialing patterns, and not the 310 NPA exclusively, certainly the 310 area is included. TCLA argues that given the overlay implementation schedule, action on the dialing pattern changes relating to the “1+” prefix should be expedited; however, that is a policy matter, not a legal one. As TCLA’s petition and motion to strike portions of the PacBell/Verizon response to its application for rehearing make clear, the matter raises factual questions that were not raised in the Joint Parties’ petition to modify D.00-09-073, and not at issue prior to the comment phase leading to D.05-08-040, that are a subject of the Carlson petition for modification, and that require resolution prior to any changes in policy. TCLA has not established that the Commission has abused its discretionary power, failed to proceed in a manner required by law and/or acted in excess of its powers and jurisdiction, or otherwise erred in its decision to address this issue in our pending consideration of the Carlson petition for modification.

We have reviewed each and every allegation of error raised by TCLA and find no merit in any. Accordingly, the application for rehearing of D.05-08-040 and the motion to strike portions of the PacBell and Verizon response are hereby denied.

⁴ Commission Rules of Practice and Procedure, rule 86.1 cautions applicants for rehearing that vague assertions to the record or law without citation will be accorded little attention.

THEREFORE, IT IS ORDERED, that

1. The application for rehearing of Decision 05-08-040 filed jointly by The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC, is denied.

2. The motion by The Telephone Connection of Los Angeles, Inc., and The Telephone Connection Local Service, LLC, to strike portions of the joint response of Pacific Bell Telephone Company and Verizon California, Inc., to its application for rehearing is denied.

This order is effective today.

Dated November 18, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
SUSAN P. KENNEDY
JOHN A. BOHN
Commissioners

EXHIBIT C

**Draft Decision of ALJ Pulsifer, Opinion on Petition for Modification, Agenda ID #5108,
Rulemaking 95-04-043, Investigation 95-04-044, Mailed November 15, 2005**

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 15, 2005

Agenda ID #5108

TO: PARTIES OF RECORD IN RULEMAKING 95-04-043 AND
INVESTIGATION 95-04-044

This is the draft decision of Administrative Law Judge (ALJ) Thomas Pulsifer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at [http://www.cpuc.ca.gov/PUBLISHED/RULES PRAC PROC/44887.htm](http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm). Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:sid

Attachment

Decision DRAFT DECISION OF ALJ PULSIFER (Mailed 11/15/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

OPINION ON PETITION FOR MODIFICATION

I. Introduction

By this decision, we address the Petition, filed on August 3, 2005, by Douglas F. Carlson, to Modify Decision (D.) 96-12-086. Specifically, Carlson seeks to modify the dialing requirements in D.96-12-086 applicable to calls originating in, and destined to, telephone numbers in the geographic area served by an overlay. Under D.96-12-086, customers were required to dial the prefix "1" followed by the three-digit area code and seven-digit line number for all such calls (commonly referred to as 1+10-digit dialing).¹ Carlson seeks modification of

¹ The "1" preceding the 10 digits signals that the following three digits will be an area code rather than a central office prefix. For calls involving telephone numbers of some wireline carriers, their networks within California are currently configured to require that the "1" prefix be dialed preceding the 10 digits. The "1" prefix is not mandated by the Federal Communications Commission, but reflects the protocol currently used by the telecommunications industry within California. The networks for wireless carriers

Footnote continued on next page

D.96-12-086 to eliminate the requirement that the prefix "1" be dialed before the area code and seven-digit line number for calls within an overlay region.

Carlson describes his proposed modification as 10-digit dialing (as opposed to 1+10-digit dialing). Carlson seeks to have this proposed modification incorporated into the implementation of the 310/424 area code overlay that was previously approved by D.05-08-040, as well as for prospective area code overlays within California.

Comments in support of Carlson's Petition were filed by the California Association of Competitive Telephone Companies (CALTEL). Comments in support were also filed by the Telephone Connection of Los Angeles and The Telephone Connection Local Services, LLC (collectively, TCLA). TCLA concurrently filed a motion to reopen the evidentiary record relating to the 1+10-digit overlay dialing requirement for areas subject to overlays. A response in opposition to the TCLA motion was filed jointly by Pacific Bell Telephone Company dba SBC California (SBC) and Verizon California Inc. (Verizon). A separate joint response in opposition to TCLA was filed by Verizon Wireless and T-Mobile.

We decline to adopt this proposed modification for purposes of the 310/424 overlay, but leave open the possibility of adopting the proposed modification for future overlays implemented within California. We provide for parties to file an additional round of comments on this issue, as outlined below

currently do not require that the prefix "1" be dialed preceding a 10-digit-dialed number. In the discussion in this decision, references to 10-digit dialing should be understood as recognizing the "1+" prefix for calls involving some wireline telephone numbers.

as a basis for rendering a final decision on the applicability of 10-digit dialing to future overlays.

II. Timeliness of Filing

Rule 47(d) requires a petition for modification to be filed within one year of the effective date of the decision proposed to be modified. Carlson's petition was filed over eight years after the issuance of D.96-12-086. Carlson argues, however, that his petition should be considered timely filed because the Commission is only now implementing the first overlay, as ordered for the 310 area code in D.05-08-040. In D.01-11-043, the Commission directed that "decisions regarding 10-digit dialing should be made in the context of the circumstances that exist at the time an overlay is implemented." (D.01-11-043 at 9.) Carlson thus argues that his petition for modification relating to 10-digit dialing is timely filed in view of the currently pending implementation of the 310/424 area code overlay.

In view of our previous directive in D.01-11-043 that decisions regarding the 10-digit dialing issue should be made in the context of circumstances that exist at the time that an overlay is implemented, we shall accept Carlson's Petition as timely filed, and resolve it on the merits of the issues raised therein.

III. TCLA Motion to Augment the Record

In support of the Carlson Petition for Modification, TCLA filed a motion to reopen the record in order for the Commission to receive the following additional materials:

1. A North American Numbering Plan Administration (NANPA) Report showing that the majority of Numbering Plan Areas (NPAs or area codes) subject to overlays in North America utilize 10-digit dialing.

2. A Declaration of Scott Sarem, Vice President of Strategic Relations at Mpower Communication Corp., stating that Mpower's switching equipment allows for the use of 10-digit dialing within the 310 NPA.
3. A Declaration of Marc O'Krent, President of TCLA, regarding customer perceptions about 1+10-digit dialing.

SBC and Verizon argue that TCLA's motion is procedurally flawed in failing to articulate a legal standard by which to measure the merits of the motion. SBC and Verizon argue that the legal standard normally used to reopen an evidentiary record is the discovery of new evidence that could not be offered during the proceeding. By contrast, they argue, the additional materials that TCLA seeks to introduce are not "newly discovered" and could have been presented during the course of this proceeding.

Verizon Wireless and T-Mobile likewise oppose the TCLA motion to reopen the record. TCLA characterizes its motion as seeking to "reopen" the evidentiary record to receive evidence regarding the 10-digit dialing issue. A "reopening" of the record, however, implies that the record has been "closed." Although the Commission has issued D.05-08-040 implementing the 310/424 area code overlay, the underlying proceeding R.95-04-043 in which statewide area code issues are addressed remains open. Moreover, the Carlson Petition addresses 10-digit dialing on a statewide basis even though the immediate focus of the Petition is on the 310/424 area code overlay currently being implemented. Thus, the Commission decision on the 310/424 overlay did not close the record or preclude consideration of additional evidence relating to generic statewide dialing policies.

We therefore interpret TCLA's intent as seeking to augment the open record in R.95-04-043 rather than to "reopen" a closed record. Interpreted in this

manner, we grant TCLA's motion. There is no need, however, for a ruling formally "admitting" the TCLA attachments into the record under technical rules of evidence. There were no evidentiary hearings or separately marked exhibits underlying D.05-08-040 in which the 310/424 overlay was adopted. More generally, rulemaking issues relating to numbering and area code relief matters have routinely been addressed through written comments without formal hearings. The Commission relied only upon written comments filed by parties as the basis for D.96-12-086, as well as for D.05-08-040. Likewise, since the materials that TCLA seeks to add to the record are attached to the TCLA motion, those materials are already incorporated as part of those comments which are in the formal file in R.95-04-043.

Thus, we take into account the additional information presented in TCLA's attachments, as appropriate, in ruling upon Carlson's Petition to Modify. On a similar basis, we shall also consider countervailing statements made in the pleadings of SBC and Verizon concerning technical and consumer-related issues that would be involved in converting switches from 1+10-digit dialing to 10-digit dialing. We also take into consideration comments made by Verizon Wireless, Nextel of California, Inc., Sprint, Cingular Wireless, and T-Mobile.

IV. Parties' Positions

Carlson's general recommendation is for the Commission to modify D.96-12-086 to eliminate the 1+10-digit dialing requirement prospectively for all overlays on a statewide basis. Alternatively, Carlson proposes that the Commission could limit the applicability of the 10-digit dialing requirement only to the current 310/424 area code overlay, and then evaluate the results before applying the policy more broadly to future area code overlays.

In support of his Petition, Carlson claims that no technical or legal barriers exist in implementing 10-digit dialing (rather than 1+10-digit dialing) for calls originating from and destined to telephone numbers within the geographic area served by an overlay. Carlson argues that customers should have the option of dialing 1+10-digits for calls within the overlay region on a permissive basis, but should also have the option not to dial the "1" prefix.

CALTEL expresses general support for Carlson's Petition, but CALTEL is primarily interested in a Commission reevaluation of the statewide 1+10 digit dialing plan for calls initiated on wireline networks, at least insofar as it impedes the ability of any carrier to implement 10-digit versus 1+10-digit dialing in area code overlays. CALTEL claims that constraints with the 1+10-digit dialing only apply to wireline carriers' systems, but not to those of wireless carriers. As a result, CALTEL claims, dialing the prefix "1" is not technologically neutral, and no longer appears to be providing the dialing parity benefits that it was originally designed to ensure.

SBC, Verizon, Verizon Wireless, Nextel of California, Inc., Sprint, Cingular Wireless, and T-Mobile claims that there is no time left to address the 1+10 digit issue for the 310/424 overlay, and that to do so would unreasonably delay implementation of the urgently needed area code change in the 310 NPA. However, they did not provide any evidence supporting this claim. None of them provided actual data or estimates of time, activities, and resources supporting this claimed delay if the prefix "1" was removed. SBC and Verizon further claim that the proposed transition to 10-digit dialing would lead to customer confusion because customers are already accustomed to dialing a "1" preceding calls requiring the area code and seven-digit line number. They also assert that there are technical impediments to transitioning from 1+10-digit to

only 10-digit dialing. Yet, they did not provide any evidence supporting the existence of these technical impediments.

V. Discussion

Although Carlson claims that the added burden of dialing the “1” is the primary reason why the public objects to overlays, he offers no factual support for his contention. Carlson also ignores other characteristics of an overlay other than dialing the prefix “1,” that could have an equal or greater impact on public reaction. For example, irrespective of whether the “1” is dialed, the area code and seven-digit line number must be dialed between and within area codes in the region subject to an overlay. With a geographic split, by contrast, only seven-digit dialing is required for calls within the same area code region. The public therefore must give up seven-digit dialing with an overlay irrespective of whether an extra “1” is to be dialed along with the area code. Also, with an overlay, the public cannot readily identify the affected geographic region with a unique area code. Moreover, customers may object to being assigned a new overlay area code because it may be less recognizable or associated with a less desirable geographic region than would be true with the original area code. By not addressing the extent to which such factors may provide more significant reasons for public objection to an overlay, Carlson fails to show that the dialing of a “1” preceding the area code is the primary reason for public objection to an overlay.

Similarly, the Declaration of Marc O’Krent, attached to the TCLA motion, provides no persuasive evidence that the additional dialing of the prefix “1” is the primary reason that customers object to an overlay. O’Krent merely indicates that customers expressed concerns about the 1+10-digit dialing requirement during the previous attempt of an overlay in 1999. Yet, as noted above, the

overlay meant the loss of seven-digit dialing irrespective of whether or not an additional “1+” was needed to be dialed. Thus, the additional burden of dialing an area code before every number was also a reason for customers to object to an overlay, irrespective of whether the “1+” dialing the prefix “1” was also needed.

In addition, O’Krent claims that there is a customer perception that dialing a “1” indicates that the customer is making a call outside the geographic area. Yet, it is not just the dialing of the prefix “1,” but also the dialing of a different area code that traditionally has signaled to a customer that the call is being made to a number outside the originating caller’s local geographic area.² With an overlay, therefore, customers will need to learn new rules for dialing irrespective of whether the prefix “1” is needed as do customers who find themselves on the boundary of a new area code split.

For this reason, the Commission implemented a Public Education Program to make sure customers understand that the dialing of an overlay area code does not mean that a different geographic area is being called. Likewise, the Public Education Program will educate customers that calls within or between telephone numbers with the 310 and 424 area codes, preceded by a “1,” still remain within a single geographic region. Thus, neither the Carlson Petition nor the O’Krent Declaration support a conclusion that “1+10-digit” dialing (as opposed to 10-digit dialing) is the primary reason for customer objections to overlays. Accordingly, we are not persuaded that mere elimination of the prefix “1,” would significantly affect customer opposition to overlays or confusion

² Of course, customers who live near an existing area code boundary have learned through experience that dialing into another area code does not necessarily equate to dialing outside the customer’s local calling area.

about their dialing pattern. In any event, a Public Education Program would still be necessary to facilitate understanding and acceptance of the overlay.

Carlson further argues that, 10-digit dialing (i.e., a three-digit area code plus a seven-digit line number) is more logical and intuitive than 1+10-digit dialing because 10-digit dialing only necessitates the customer to dial the actual telephone number. Carlson argues that dialing the extra "1" preceding the 10 digits, by contrast, may be associated in customers' minds with calls to other area codes and long distance calls. To the extent that Carlson is correct in claiming that customers associate the dialing of a "1" with calls to another area code, callers with telephone numbers with the 310 area code dialing telephone numbers with the 424 area code would expect to dial a "1." Yet, under Carlson's proposed modification, customers with a 310 area code would dial numbers with the 424 area code without dialing a "1." Therefore, eliminating the need to dial the prefix "1" would be counterintuitive and contradictory to the familiar dialing pattern in California. With regards to the claim that customers associate dialing the prefix "1" with long distance calls, this does not apply to California since dialing the prefix "1" coincides with dialing into foreign NPAs, not making toll or long distance calls.

Thus, Carlson's proposed modification would introduce an added layer of complexity into customers' adjustment to the new 310/424 area code overlay. Customers would have to figure out whether dialing the prefix "1" is required depending on the location of the area code being called. If "the called area code" is within the geographic region of the overlay, then the prefix "1" does not have to be dialed. However, if the "called area code" was beyond the overlay region, then it does. Therefore, Carlson's proposed modification would require

customers to sort out alternative rules for dialing area codes depending on the “called area code’s” geographic location.

Carlson also argues that customers may object to a “1+” dialing requirement because it would be perceived as a “regulatory requirement.” The implication of this argument appears to be that customers would view the “1+” requirement as a regulation without any intrinsic purpose. To the extent that customers may have a negative perception about dialing patterns associated with the overlay, the proper vehicle to address this concern is through the Public Education Plan that was authorized in D.05-08-040.

Carlson also claims that 10-digit dialing, not 1+10-digit dialing, is required in nearly every other state that has implemented an overlay. Carlson argues that the Commission can reasonably infer from policies in other states that customers derive a benefit from, and prefer, dialing 10 digits, rather than 1+10-digits. TCLA provided as Attachment A to its motion, a North American Numbering Plan Administration (NANPA) Report showing that the majority of NPAs subject to overlays in North America utilize 10-digit dialing. The Report indicates that 67 out of 74 affected NPAs require only 10-digit dialing.

While we acknowledge the prevalence of 10-digit dialing in the majority of other states where overlays have been implemented, that fact does not, of itself, dictate, which dialing pattern is appropriate for California. Carlson presents no comparison of whether, or to what extent, the circumstances that led to 10-digit dialing in other states apply in California. Without such a comparison, we have no basis to infer that mandatory dialing policies adopted in other states necessarily warrant adoption in California. The specific effects within California of modifying the 1+10-digit dialing must also be considered.

Carlson further argues that requiring only 10-digit dialing (with the option of dialing 1+10-digits on a permissive basis) in California would help to standardize dialing patterns in areas subject to overlays, thereby helping to reduce customer confusion. Within California, however, consumers are already accustomed to 1+10 digit dialing. The Public Education Plan (PEP), with instructions about 1+10-digit dialing has been developed and we anticipate that it will be timely implemented for the 310/424 area code overlay. Thus, it could potentially create more, not less, confusion for customers within an overlay region to start changing the dialing pattern, as already explained by the PEP.

Carlson claims that there are no technical obstacles to implementing 10-digit dialing within the geographic region covered by an overlay. In making this claim, however, he ignores any technical issues that would be involved if affected carriers were required to reprogram existing switches to accommodate his proposal.

The filings by TCLA and CALTEL indicate that at least some carriers would be able to implement 10-digit dialing without any significant technical implementation issues. SBC and Verizon claim that the conversion to 10-digit dialing would pose additional technical issues for them during the overlay implementation. In comments on the Carlson Petition, CALTEL notes that the "1+" dialing constraints only affect wireline carriers, but not wireless carriers. Thus, CALTEL argues that the "1+" dialing plan, no longer appears to be providing the dialing parity benefits that it was originally designed to ensure. Moreover, TCLA attached the Declaration of Scott Sarem stating that the switching equipment of MPower allows its customers within a geographic area served by an NPA to place calls to other numbers within the same geographic

area, using 10-digit dialing with no additional switch programming required (except to eliminate seven-digit dialing), and with no post-dial delay.

SBC and Verizon indicated that they have a number of switches in the 310 area code that would require significant time and resources to implement the required translations to accommodate 10-digit dialing. However, SBC and Verizon did not provide any evidence of the actual number of switches in the 310 area code that would require the translations. They also did not support with evidence the claim that the translations would need significant time and resources to complete. Without this type of evidence, there can be no conclusion that the required translations to accommodate 10-digit dialing would actually require significant time and resources.

As stated in D.99-09-067, the need for customers in California to dial the prefix "1" before an area code is a function of the manner in which incumbent local exchange carriers (ILECs) programmed their networks when the industry had to begin using area codes without a "0" or "1" as the middle digit. The prefix "1" needs to be dialed before an area code is dialed to address the existence of "conflict codes" (i.e., area codes and prefix codes assigned the same digits). To resolve these conflicts without requiring, the dialing the prefix "1," the ILECs contend, mandatory 1+dialing, a call timing delay of four to eight seconds would have to be programmed into the affected switches to allow the completion of the call during the Permissive Dialing Period. SBC and Verizon express concern that the claimed call timing delay would add to the reprogramming already required for calls to accept 10-digit dialing, and could increase system busy times, thus creating additional cost and potential customer confusion. However, SBC and Verizon did not provide factual support of the

extent of the increase in system busy times, added cost, and potential customer confusion.

In summary, we conclude that a modification of the 1+10-digit dialing pattern specifically for the 310/424 area code overlay has not been shown to be warranted. The risk of prolonging the implementation of the 310/424 area code overlay and creating more customer confusion during the implementation phase prevails over the potential advantages identified by Carlson. In addition, Carlson presents no analysis of the impacts that his proposal would have on customers of carriers required to make switch translations, particularly within the shortened time frame within which the 310/424 area code overlay is to be implemented.

Moreover, aside from the immediate concerns of the 310/424 area code overlay, we are not persuaded, based on the current state of the record, that carriers should be required at this time to incur the costs due to implementing 10-digit dialing for possible future overlays. We shall solicit an additional round of concurrent comments as to whether changes in the statewide dialing pattern should be modified for any subsequent, proposed area code overlays in California. Such comments shall be due 20 working days from the effective date of this order and shall provide more detailed and documented support for claims made. We shall issue a final decision on Carlson's Petition for Modification with respect to future overlays other than the 310/424 overlay in a subsequent order.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

VII. Comments on Draft Decision

The draft decision of ALJ Thomas Pulsifer in this matter was mailed to parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. In D.96-12-086, customers were required to dial the prefix “1” followed by the three-digit area code and seven-digit line number for all calls within an overlay region (referred to as 1+10-digit dialing).

2. Douglas Carlson’s Petition for Modification of D.96-12-086 seeks to eliminate the necessity to dial the prefix “1” before the area code and line number for calls within an overlay region (referred to as 10-digit dialing).

3. Carlson seeks to have the proposed modification at least adopted for the implementation of the 310/424 area code overlay approved by D.05-08-040, even if not adopted prospectively at this time for all future overlays.

4. Because of the manner in which switches are programmed, currently at least some wireline carriers’ systems need 1+10-digit dialing for all calls within an overlay region. Although wireless carriers’ systems are not equally subject to such technical constraints.

5. The need for customers in California to dial the prefix “1” before an area code is a function of the manner in which ILECs programmed their networks when the industry began using area codes without a “0” or “1” as the middle digit. They decided that dialing the prefix “1” would be the preferred approach over experiencing a delay when making calls. Although, they never sought approval from the Commission to implement this approach.

6. Currently, the prefix "1" needs to be dialed to deal with the number of "conflict codes" (i.e., area codes and prefix codes assigned the same digits).

7. To resolve the issue brought on by conflict codes without mandatory 1+ dialing, a call timing delay of four to eight seconds may have to be programmed into affected switches to allow the completion of dialing during the Permissive Dialing Period.

8. The additional switch reprogramming required to implement 10-digit dialing may increase system busy times for calls to affected numbers, thus creating additional cost and potential customer confusion.

9. There is insufficient time left to implement changes in the dialing pattern, 1+10-digit requirements for the 310/424 overlay without unreasonably risking delay or disruption in implementation of area code relief in the 310 NPA.

10. Forced modification of switches to eliminate the prefix "1" requirement could create more problems than it solves, particularly in the 310/424 area code overlay.

11. Carlson's proposed modification would introduce an added complexity into customers' adjustment to the new 310/424 area code overlay since customers would have to figure out whether dialing the prefix "1" dialing is needed depending on where the "called area code" is located.

12. Although 10-digit dialing is employed in the majority of other states where overlays have been implemented, that fact does not, of itself, dictate the dialing patterns for California.

13. Within California, customers are already accustomed to 1+10-digit dialing and the Public Education Plan, with instructions about 1+10-digit dialing, is in the process of implementation for the 310/424 area code overlay.

14. It could potentially create more, not less, confusion for customers within overlay region to start learning new dialing rules since the implementation of the Public Education Plan is already underway.

Conclusions of Law

1. In view of the previous directive in D.01-11-043 that decisions regarding the 10-digit dialing issue should be made in the context of circumstances at the time that an overlay is implemented, Carlson's Petition to Modify D.96-12-086 should be deemed timely filed.

2. The fact that the Commission has issued a decision on the 310/424 overlay does not preclude consideration of additional information relating to prospective statewide dialing pattern.

3. Although TCLA characterizes its motion as seeking to "reopen" the record to receive evidence regarding the 10-digit dialing issue, the record in R.95-04-043 regarding area code policy has not been "closed."

4. Although the Commission issued D.05-08-040 implementing the 310/424 area code overlay, the underlying proceeding in which statewide area code issues are addressed remains open.

5. The motion of TCLA should be granted to the extent it is interpreted as a request to consider the attachments to its motion in addressing the Carlson Petition for Modification as part of the ongoing proceeding in R.95-04-043.

6. The Petition of Douglas Carlson to modify the 1+10-digit dialing requirements has not been shown to be justified at this time. The request to implement 10-digit dialing for the 310-424 area code overlay should be denied, but further consideration should be given to adopting 10-digit dialing for future overlays.

O R D E R

IT IS ORDERED that:

1. The Petition of Douglas F. Carlson to modify Decision 96-12-086 is hereby denied in part, to the extent that it seeks to implement 10-digit dialing for the 310/424 overlay.

2. A final ruling on the petition to modify as it may apply to future overlays is deferred pending further review.

3. Comments shall be due 20 working days from the effective date of this order and shall provide more detailed and documented support for claims made. We shall issue a final decision on Carlson's Petition for Modification with respect to future overlays other than the 310/424 overlay in a subsequent order.

4. The Motion of TCLA is granted to the extent that the requested attachments shall be incorporated as part of the formal file and given appropriate weight in disposing of the Carlson Petition for Modification.

This order is effective today.

Dated _____, at San Francisco, California.

EXHIBIT D

Declaration of Marc O'Krent

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

In the Matter of the Public Utilities)	
Commission of the State of California)	Decision 05-08-040
)	
Order Instituting Rulemaking on the)	
Commission's Own Motion into)	Rulemaking 95-04-043
Competition for Local Exchange Services)	
)	
Order Instituting Investigation on the)	
Commission's Own Motion into)	Investigation 95-04-044
Competition for Local Exchange Services)	

DECLARATION OF MARC O'KRENT

I, Marc O'Krent, hereby declare as follows:

1. I am president of The Telephone Connection of Los Angeles, Inc. and Manager of The Telephone Connection Local Services, LLC. My business address is 9911 W. Pico Boulevard, Suite 680, Los Angeles, California 90035. The statements contained in this Declaration are true of my own knowledge and, if called as a witness, I could competently testify to them.

2. The Telephone Connection of Los Angeles, Inc. is a paging carrier serving the State of California, and the parent of The Telephone Connection Local Services, LLC ("TCLS"). TCLS is certificated by the California Public Utilities Commission ("CPUC") to provide local exchange telecommunications services within the State of California pursuant to Decision Nos. 96-02-072 and 96-09-073.

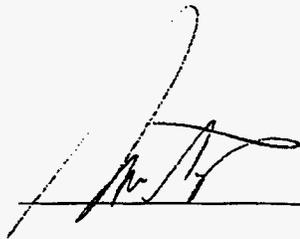
3. I am currently Co-Chair of the "Group C Special Needs Outreach Subcommittee of the 310/424 Public Education Committee" as ordered by the CPUC in the most recent *Overlay Decision*, and am closely involved in the public education part of this overlay. I participated in a

conference call on October 31, 2005, between the Public Education Plan co-chairs and the Group C Special Needs Outreach Subcommittee co-chairs to determine whether existing printed information would have to be modified to reflect that wireless calls would not require 1+10 digit dialing. It was decided during the call that both wireline and wireless dialing plans should be addressed on the posters and handouts. The proposed posters and handouts now include two different versions, one that shows how to make calls using a wireless phone, and the other how to make calls with a wireline phone.

4. In late 1998 and early 1999, I also served as a member of the 310 Numbering Plan Area ("NPA") Public Education Program committee. During that public education campaign, carriers were required to pay for and distribute over 100,000 educational posters. The overall cost for the public education program far exceeded the minimum budget established by the CPUC, and I expect that the minimum budget will again be exceeded to educate the public on the new 310/424 area code overlay.

5. I declare under penalty of perjury that the foregoing is true and correct except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

Dated: November 24, 2005

A handwritten signature in black ink, appearing to read "M. O'Krent", is written over a horizontal line.

Marc O'Krent

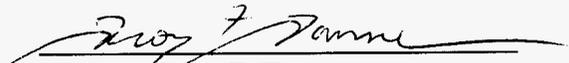
CERTIFICATE OF SERVICE

I, Troy F. Tanner, do hereby certify that, on November 23, 2005, a copy of the foregoing Petition for Emergency Relief, in CC Docket 96-98, regarding CPUC Decision 05-08-040, filed by the South Bay Cities Council of Governments and The Telephone Connection of Los Angeles, Inc. and The Telephone Connection Local Services, LLC, was served by electronic mail and first class U.S. mail, postage prepaid, upon:

Natalie Billingsley
California Public Utilities Commission
Telecommunications & Consumer Issues Branch
505 Van Ness Avenue, Room 4108
San Francisco, CA 94102-3214
nxb@cpuc.ca.gov

Lionel B. Wilson
Helen M. Mickiewicz
California Public Utilities Commission
Legal Division
505 Van Ness Avenue, Room 4108
San Francisco, CA 94102-3214
lbw@cpuc.ca.gov
hmm@cpuc.ca.gov

Steve Larson
California Public Utilities Commission
Executive Director
505 Van Ness Avenue, Room 4108
San Francisco, CA 94102-3214


Troy F. Tanner