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Decision 95-08-052 August 11, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIRTOUCH COMMUNICATIONS, a California Corporation, Complainant, vs. PACIFIC BELL, a public utility, Defendant.	Case 94-09-058 (Filed September 30, 1994) ORIGINAL
MCI TELECOMMUNICATIONS CORPORATION, Complainant, vs. PACIFIC BELL, a public utility, Defendant.	Case 95-01-001 (Filed January 3, 1995)

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[1] Each central office code represents 10,000 telephone numbers. Each NPA contains 7.9 million codes available for assignment.

OPINION

By this decision, we resolve the consolidated complaints of AirTouch Communications, Inc. (AirTouch) and MCI Communications, Inc. (MCI) (collectively complainants) against Pacific Bell (Pacific). The complainants alleged that Pacific acted in an unjust and anticompetitive manner in developing a proposed "overlay" plan to relieve the impending depletion of telephone numbers available due to customer growth in the region of Los Angeles served by the 310 area code. The 310 area code was created in late 1991 as the product of a geographic split of the 213 area code. The map in Attachment 1 shows the area served by the 310 area code in relation to adjacent area codes. After careful consideration of the facts at hand, we adopt a plan which would split the 310 area code as the most appropriate relief measure. We further direct the parties to our local exchange competition rulemaking and investigation (R.95-04-043/ I.95-04-044) as the most appropriate forum to explore alternative solutions to the numbering problems in California.

I. Introduction

Telephone numbers throughout the United States are composed of a three-digit area code, a three-digit central office NXX code,[1] and a four-digit line number. Codes for each Numbering Plan Area (NPA or area code) are assigned by Bell

[1] Each central office code represents 10,000 telephone numbers. Each NPA contains 7.9 million codes available for assignment.

Communications Research, Inc. (Bellcore), which currently serves as administrator of the North American Numbering Plan (NANP). Within each geographic area, the predominant local exchange carrier (LEC) traditionally has administered the assignment of NXXs within NPAs.

As the largest local exchange carrier in California, Pacific serves as the code administrator of the 310 NPA. In this role, Pacific assigns central office codes to itself as well as other carriers, including cellular carriers, paging companies, and others needing telephone numbers within the 310 area code. Carriers that have been assigned central office codes use these codes to distribute telephone numbers to their customers. Pacific is also responsible for forecasting the projected exhaustion of numbers available for assignment within California's area codes. After determining that the exhaustion of numbers available for assignment within the 310 area code was imminent, Pacific filed a proposed plan (Original Plan) with the Commission on August 17, 1994 to implement a new NPA in the Los Angeles area.

Traditionally, area code assignments have been confined to unique geographic regions. When the pending exhaustion of available numbers within an area code is anticipated, the territory served by this area code has been split into two or more separate regions, one of which retains the existing area code number and the others convert to new area codes. In recent years, an alternative approach to implementing new area codes has been under review and study whereby a new area code would "overlay" the same territory currently being served by an existing area code.

Pacific's Original Plan proposed that a new area code, 562, be introduced as an overlay of the same territory covered by the existing 310 area code. Pacific propounded that implementation occur in two phases. Phase I, beginning September 1995, would have required that carriers which interconnect at the tandem switch level (tandem carriers)[2] initially take new NXXs in the 562 NPA. Phase II would have expanded the overlay area code to include those carriers which interconnect at end offices.[3] Phase II was originally proposed to occur no later than September 1997, but Pacific subsequently revised this date to October 1996.

The Original Plan proposed that any NXX codes in the 310 area code assigned to tandem carriers after July 14, 1994, would be "conditional codes." NXX codes so designated could be taken back from tandem carriers if they were needed by end office carriers prior to the implementation of Phase II. Numbers taken back from tandem carriers would be replaced with numbers from the 562 area code or another area code if appropriate.

II. Procedural Background

AirTouch filed a complaint on September 30, 1994 objecting to Pacific's Original Plan and alleging that the plan was anticompetitive. On November 7, 1994 Pacific formally responded to AirTouch's filing, denying that its plan was

[2] Tandem carriers include AirTouch and a number of other wireless carriers.

[3] Carriers that interconnect at end offices include the incumbent LECs.

anticompetitive and requesting that the Commission dismiss the complaint with prejudice. In its complaint, AirTouch objected to the conditional assignment of NXX codes, the take-back plan for such codes, and the delay between Phase I and Phase II. AirTouch believed that any overlay plan should allocate NXX codes on a first-come, first-served basis and be competitively neutral. A prehearing conference was held December 16, 1994, followed by an administrative law judge (ALJ) ruling on January 5, 1995 establishing a schedule for discovery and evidentiary hearings.

MCI also filed a formal complaint against Pacific on January 3, 1995, with additional objections to Pacific's call for an overlay in the Original Plan on the grounds the plan was anticompetitive with respect to prospective local exchange competitors. On February 3, 1995, Pacific made a filing answering MCI's complaint and requesting that the cases dealing with its plan for the 310 area code be consolidated. On February 16, 1995, an ALJ ruling consolidated Case (C.) 95-01-001 with C.94-09-058. The ruling included MCI's complaint and Pacific's answer as pleadings in the formal file of C.94-09-058.

Pursuant to the ALJ's ruling of February 16, technical workshops were conducted on February 22 and March 1, 1995 in an attempt to either reach consensus on the issues or narrow parties' differences. The ruling incorporated MCI's issues into the technical workshops to the extent they differed from those raised by AirTouch.

During the technical workshops, Pacific shared information with workshop participants purporting to show that there would only be enough 310 NXX codes to last until October 1996. Pacific also provided material in support of its position

that October 1996 was the earliest date by which it could commit to completing work on updates to its operational support systems that would be necessary before Phase II could begin. Based upon this information, Pacific proposed to revise its Original Plan so as to implement both Phase I and Phase II on the same date in October 1996. Although the workshops did not resolve all parties' disputes, they were useful in narrowing differences.

Following the conclusion of the technical workshops, a duly noticed Settlement conference was convened by Pacific and AirTouch. On March 22, 1995, Pacific and AirTouch jointly filed a motion for the Commission to adopt a proposed Settlement Agreement (Settlement), which is provided in this decision as Attachment 2. The Settlement called for adoption of a revised overlay plan which would resolve all disputes between Pacific and AirTouch. Paging Network, Inc. (PageNet) also joined in the Settlement, and agreed to be bound by its terms. Nextel Communications, Inc. (Nextel) agreed not to oppose the Settlement. GTE of California, Inc. (GTEC) also supported the Settlement. MCI and the rest of the active intervenors opposed the Settlement.

Evidentiary hearings were conducted from March 20 through April 7, 1995 and April 17-18, 1995. In addition to the defendant and complainants, testimony was served by the following intervenors: California Cable Television Association (CCTA), Teleport Communications Group (TCG), AT&T Communications (AT&T), PageNet, and GTEC. The Commission's Division of Ratepayer Advocates (DRA) and Nextel conducted cross-examination, but offered no testimony. Sprint Communications (Sprint) and Cox Enterprises, Inc. (Cox), also filed briefs opposing the

Settlement and advocating a split. Opening briefs were filed on May 5, 1995 and reply briefs on May 12, 1995.

A. Motions

We wish to address several motions that have been filed with the Commission while this matter has been under consideration. We affirm the ALJ's ruling regarding the admittance of testimony related to number portability into this proceeding, and we deny GTEC's appeal of this ruling. The evidence regarding number portability was pivotal in the ALJ's proposed decision. We also formally deny CCTA's motion on behalf of the Area Code Relief Coalition to reopen the period for *ex parte* communications in this proceeding.

Finally, we affirm the ALJ's ruling regarding the joint motion by Pacific and GTEC to also reopen the period for *ex parte* communications or to hold an *en banc* hearing. We agree with the ALJ that three of the four exhibits submitted in the joint motion did not in fact constitute *ex parte* contacts. We shall pursue in a future proceeding sanctions against AT&T for what we believe did constitute a violation of the *ex parte* ban. However, we warn Pacific and GTEC that we did not fail to notice that their joint motion was filed after the alternate order was made public when the companies had adequate notice to do so beforehand. Further, despite their dire predictions of number exhaustion, both remedies sought by the companies in their joint motion would have resulted in additional time taken prior to the Commission adopting a relief plan.

III. Overview of Parties' Positions

All parties agree that a new area code must be implemented to provide a sufficient supply of telephone numbers, given the impending exhaustion of available numbers in the 310 area code. Parties dispute, however, the proper method to implement the new NPA. At the submission of this consolidated matter, parties' positions had converged into two opposing coalitions. One coalition supported the revised overlay plan as sponsored under the Settlement, while the other favored a geographic split of the 310-area code territory.

AirTouch and Pacific jointly propose adoption of the Revised Plan as set forth in the Settlement, arguing that it eliminates the alleged anticompetitive problems in the Original Plan. In addition to AirTouch and Pacific, the Settlement is supported by PageNet, Nextel, and GTEC.

The Original Plan required that tandem carriers begin using numbers from the new area code one to two years before any end office carrier would be assigned an NXX code from the new area code. A dialing disparity would thereby have resulted because tandem carriers' customers residing within the 310 area code would have had to dial 10 or 11 digits to reach a 310 number for a significant period prior to the same requirement being imposed on end-office carriers. Further, under the Original Plan, every cellular number taken back by Pacific would have required a customer to return his or her cellular telephone to have a different number programmed. This would have been a labor-intensive process that would have increased costs for tandem carriers. According to AirTouch, wireless customers would

also have incurred costs, including costs to notify their customers (and other callers) of the changed number, and to change stationery, business cards and other materials. These additional inconveniences to wireless customers was alleged to place wireless carriers at a competitive disadvantage relative to wireline carriers.

The Settlement between AirTouch and Pacific resolved the former's concerns by eliminating the conditional assignment, take back and segregation of NXX codes that were features of the Original Plan. Although the Original Plan's imbalance was not eliminated with the Revised Plan, the sponsors argued that the imbalance would be mitigated since all carriers, i.e., incumbent LECs, wireless carriers, and competitive local carriers (CLCs)[4], would begin to assign all new growth to the 562 area code at the same time. Further, the Code Administrator, Pacific, would agree to make NXX codes in the 310 area code available on a first-come, first-served, nondiscriminatory basis to all carriers which requested them. The Revised Plan would open the 562 area code at the tandem switch level by September 2, 1995, but carriers would only be asked to take NXX codes from the new area code on a voluntary basis. The Revised Plan would also provide measures in the event of premature exhaustion of numbers in the 310 area code, and propose a method to disseminate information to the public concerning the activation of the 562 area code.

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[4] CLC refers to a common carrier who is issued a Certificate of Public Convenience and Necessity, effective on January 1, 1996 pursuant to D.95-07-054, an order adopted on July 25, 1995 in R.95-04-043/I.95-04-044 setting forth rules for competitive entry into the local exchange market.

The remaining parties, composed mostly of CLCs, opposed the proposed overlay plan and favored adoption of a geographic split of the 310 area code to resolve the NXX code exhaustion problem. Specifically, in addition to MCI, other supporters of the geographic split were CCTA, TCG, AT&T, Sprint and Cox, as well as DRA. These parties contended that while the Revised Plan was an improvement over the Original Plan, the Revised Plan did nothing to address the competitive concerns of prospective CLCs. The CLCs agree that a new area code is needed to address the impending exhaustion of available 310 NPA codes, but believe that the overlay plan would be anticompetitive, unpopular with customers, and risky to implement before 310 code exhaustion occurs. They advocate adoption of a geographic split creating a new 562 code as the best means to solve the 310 code exhaustion problem. They argue that a geographic split would be the most logical alternative because it is competitively neutral, fair, easy for customers to understand.

In the event the Commission approves an overlay, however, MCI advocates that service provider number portability and mandatory 1+10-digit dialing[5] be concurrently instituted as measures to mitigate the anticompetitive aspects of the overlay plan set forth in the Settlement. CCTA believes that while these measures could potentially mitigate the anticompetitive features of an overlay plan, their effectiveness would depend upon the

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[5] Mandatory 1+ 10-digit dialing would require all subscribers with either a 310 or a 562 NPA to dial 10 digits, i.e., the 7-digit local exchange number plus the 3-digit NPA for all calls. Subsequent references to 10-digit dialing in this order refer to 1+ 10-digit dialing. That is, the prefix "1" must be dialed before the 10-digit number.

timeliness of implementation. DRA agrees that number portability must be available prior to the implementation of an overlay, but does not believe that interim number portability is a feasible solution at this time. DRA focused more on measures the Commission should consider to protect customers, whichever relief alternative was adopted.

IV. Framework for Evaluating and Selecting An NPA Relief Solution

In evaluating the arguments in favor of alternative NPA relief plans, we shall apply criteria which are consistent with applicable state law and promote the public interest. Because the original plan has been superseded by the plan submitted in the Settlement, we shall focus our evaluation on the Revised Plan as compared to a geographic split.

The selected plan must conform to Public Utilities (PU) Code § 451[6] regarding prohibitions against prejudicial treatment as to rates, service, or facilities. The plan should minimize cost, inconvenience, and confusion among affected customers. The adopted plan should also be consistent with §§ 2887 and 7930-7932 regarding new area codes. The plan should be competitively neutral and not favor one class of service providers at the expense of another. To the extent that anticompetitive impediments are found, we shall consider whether mitigating measures could be adopted to overcome such impediments. The plan must assure that implementation can occur prior to exhaustion of available 310 NXX codes.

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[6] Unless otherwise noted, all code section citations refer to the California Public Utilities Code.

The selected relief plan should be consistent with the policies of the Federal Communications Commission (FCC). On December 5, 1994, TCG filed a petition with the FCC seeking a declaration that geographic splits are to be favored as the solution to threats of NXX-code exhaustion. The relationship between state and federal jurisdiction over NPA relief programs was subsequently addressed in the FCC's January 12, 1995 Declaratory Ruling and Order, In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois (FCC 95-19) (the Ameritech decision). In that case, the FCC considered an overlay NPA relief plan proposed by Ameritech in the Chicago suburban area. The FCC stated in its order:

> "The Communications Act establishes a dual regulatory system over telephone service by granting to the [FCC] the authority to regulate 'interstate and foreign commerce in wire and radio communication,'[8] while reserving to the states 'jurisdiction with respect to . . . intrastate communication service . . .'[9] Thus, we recognize that the states have a role and certain interests in regulating numbering resources. For example, NARUC noted in a Resolution adopted in November, 1994 that 'NPA overlays, boundary realignments and splits may involve many state specific variations in local dialing patterns that may be responsive to local geographic circumstances or certain local customer expectations. . . . [and that] State commissions are uniquely positioned to

See In Re Pacific Bell Area Code Numbering Plan, FCC IAD File No. 94-104.

[8] 47 U.S.C. § 151.

[9] 47 U.S.C. § 152(b).

understand, judge and determine (those) local circumstances and customer expectations ...[10]

"We may preempt intrastate regulation when (1) the matter to be regulated has both interstate and intrastate aspects; (2) preemption is necessary to protect a valid federal regulatory objective; and (3) state regulation would negate the exercise of our authority because regulation of the interstate aspects of the matter cannot be severed from regulation of the intrastate aspects." (Order at 6.)

Accordingly, while the Ameritech decision does not preempt state action in approving NPA plans, if we adopted a relief plan at odds with federal regulatory objectives, our order could be preempted and declared unenforceable. The plan we adopt herein must be consistent with the principles enunciated in the Ameritech decision. We address this issue further in Section VI.B.3 below.[11]

V. Reasonableness of the Settlement in Relation to Pacific's Original Plan

The proposed Settlement, jointly sponsored by Pacific, AirTouch, and PageNet, must be evaluated under Article 13.5 of

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[10] A copy of the National Association of Regulatory Utility Commissioners (NARUC) resolution was filed as an *ex parte* presentation with the FCC.

[11] We are also mindful of the fact that Senate Bill 652, which was passed by the Senate, contains provisions that would ban the implementation of area code overlays. This bill is presently undergoing consideration in H.R. 1555, the companion legislation now before the House of Representatives.

the Commission's Rules of Practice and Procedure which sets forth the provisions governing stipulations and settlements. As stated in Article 13.5, Rule 51.1(e): "The Commission will not approve stipulations or settlements, whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Comments on the proposed Settlement were filed on a consolidated basis, with opening and reply briefs on May 5 and May 12, 1995, respectively. Because of the need for an expedited schedule in this matter, evidentiary hearings on the contested issues underlying the Settlement were held prior to receipt of formal comments on the Settlement. We shall address the reasonableness of the Settlement in two stages in terms of its resolution of issues raised in (1) the original allegations in the AirTouch complaint regarding Pacific's Original Plan; and (2) the MCI complaint. In order to reach a conclusion in the first stage, we must deal with the Original Plan. Here we conclude that the Original Plan is anticompetitive and violates the standards set forth in the FCC Order. By calling for tandem carriers to start getting numbers in the 562 area code prior to any other carrier, and by assigning 310 NXX codes to tandem carriers on a conditional basis subject to take-back, the Original Plan would have resulted in unreasonable discrimination. AirTouch and other wireless carriers connected at the tandem switch, as well as their retail and wholesale customers, would have borne the costs involved in surrendering existing numbers and going through the process of reprogramming equipment, changing over to new numbers, and informing callers of the new number.

The Settlement between AirTouch and Pacific addressed those portions of the Original Plan which were offensive to the complainant. Specifically, the Settlement eliminated the take-back provision, and required that all carriers be required to assign new customers to the 562 area code at the same time, regardless of whether their interconnection was at the tandem or end office. We find the Settlement reasonable in this stage.

As to the second stage, we note that, while the Revised Plan embodied in the Settlement resolved the dispute the between AirTouch and Pacific, it was not an all-party settlement. The Revised Plan was contested by MCI, other prospective CLCs, and DRA. Accordingly, we cannot rely on the criteria for all-party settlements in resolving this dispute. Instead, we must evaluate the revised overlay plan on its substantive merits, in light of the record developed in evidentiary hearings as discussed below. On this basis, we find that the Settlement is not reasonable in light of the whole record, is not consistent with the law, and is not in the public interest. Accordingly, we reject the Settlement's call for an overlay area code.

VI. Evaluation of NPA Relief Alternatives

A. Customer Service Impacts

1. Positions of Parties

One criterion in selecting a relief plan is the plan's effects on customer service. The plan should minimize costs, inconvenience, and confusion to the consumer. Also, it should not be unfairly discriminatory. Parties disagree concerning which plan is best for customers, and what customers might

actually prefer. Pacific claims that customers served by the 310 area will be more adversely affected by a split, and will therefore favor an overlay solution.

Pacific witness Gwen Moore testified regarding negative customer reaction to a geographic split. Ms. Moore has personal knowledge of the region encompassed by the 310 area code since she represented communities within this region as a former member of the California State Assembly. Moore states that public opposition was tremendous at the time of the creation of the 310 area code through a geographic split of the 213 area code in 1991 because of the disruptions the split caused. Pacific argues that another split in this part of Los Angeles County following so soon after the 1991 split will be met with significant opposition. Pacific warns that a split of the 310 area code would create highly contentious boundary disputes that would divide not only cities but even neighborhoods. A split would also require approximately 2.4 million customers in the geographic area to be served by the new 562 area code to undergo the expense and inconvenience related to a change in their telephone numbers only four years after undergoing a similar process. In support of its claim that customers prefer an overlay, Pacific offered the results of an informal poll conducted by Moore. Moore also provided letters of support for the overlay from elected representatives from four of the districts represented by the area affected by the plan.

GTEC notes that several international facilities scattered throughout the 310 area code would be subject to number changes if a split is adopted. A split would also require more

extensive telecommunications equipment reprogramming to read the new area code than required by an overlay plan. Alarm companies would incur the expense of visiting thousands of customers to reprogram dialers. Cellular telephones requiring number changes would have to be individually reprogrammed.

Proponents of a geographic split plan argue that Pacific has overstated the customer problems associated with a split and failed to acknowledge the negative impacts on customer service that an overlay would impose. They argue that any negative customer reaction attributed to splits is due more to Pacific's poor handling of the implementation of the 213/310 split than to the concept generically.

TCG claims that the overlay plan in the Settlement would be discriminatory by creating a dialing disparity among customers within the same local area. Customers accustomed to dialing only seven digits for local calls may be confused by having to dial 10 digits. Confusion could also occur because the same residence or office might have to use two area codes if it wanted additional lines. CCTA claims that if customers object to a split because it creates two area codes in the same city, customers will be even more concerned about having two area codes in the same household under an overlay scheme. CCTA claims that no credibility should be assigned to Moore's informal survey of customer opinion because it was not scientifically conducted, was biased, and had an insignificant sample.

Proponents of a split also claim that the overlay plan would deprive customers of choice in the selection of local exchange service providers. Existing customers with 310 numbers

would not be able to change local carriers unless they were willing to give up their numbers and accept a new number with the 562 area code.

TCG presented the results of an opinion poll conducted by Southern New England Telephone Company (SNET) which indicated a customer preference for a geographic split in comparison to an overlay among Connecticut customers. The study found that 54% of residential customers and 60% of business customers believe that a geographic split would be the fairest option. The study concluded that the underlying benefit of a split is that it would offer a solution that is clear, logical, and easy to understand. TCG inferred from the SNET study that Los Angeles customers would likewise prefer a split for similar reasons.

Pacific (Moore) disclaimed the conclusions of the SNET poll by noting that the poll was not relevant to a decision dealing with the best approach to a new area code plan for the region with the 310 area code because of demographic differences between Connecticut and the west side of Los Angeles. Further, in contrast to Los Angeles, Connecticut customers surveyed have never been through the problems of an area code split, and, since Connecticut does not have multiple area codes, its residents do not have regular experience with 10- or 11-digit dialing in their local areas. Pacific argues that Los Angeles customers do understand 10-digit dialing because of the proximity of several area codes in the Los Angeles Basin.

2. Discussion

No matter which relief plan is adopted, the new 562 area code must be instituted and assigned to some segment of the

customer base. The institution of the new area code will necessarily involve some cost or disruption to those calling into or out of the new area code. We conclude that both the overlay and the split have their problems in terms of customer service impacts, although the problems differ in nature, timing and distribution among the customer population.

a. Splitting of Local Communities

Negative customer reaction to a 310/562 geographic split might be more pronounced because of the area residents' recent memory of the 213/310 split in 1991. The problems encountered in completing that the 213/310 split were severe enough to prompt the California Legislature to enact §§ 7930-7932 of the PU Code to minimize negative impacts of future NPA relief plans. Moreover, as a result of the public meetings held by Pacific in accordance with those sections of the PU Code, customers were led to believe that an overlay, instead of a split would be used to introduce the 562 area code. We also point out that any split plan must avoid dividing communities of common interest, as called for in § 2887(a). The population density in the region may make the drawing of new boundary lines in the same area even more contentious this time around.

As to the overlay plan's effects on the local communities, this type of relief plan avoids the contentiousness associated with the drawing of new area code boundaries. However, sometime after its implementation, the overlay plan leads to a much less quantifiable, yet we believe no less controversial, division *within* the communities. In this

instance, rather than well-defined area code boundaries, customers with new area codes could be scattered over the present territory served by the 310 area code. Neighbors in the same buildings, and competing business down the street from each other could have different area codes. Indeed, under the overlay plan, a customer could face the prospect of having two different area codes at the same location if he or she wanted to add a second line at a later date. A multi-occupant building could be assigned numbers in a different area code as new lines were added.

We are also cautious with the implementation of a plan that would be so radically different from the present manner of dealing with area code relief. If the overlay plan for the 310 area code is adopted, we could in fact be dividing communities where only one area code is in effect from those where two area codes have been implemented. Those at the boundary line between the 310 and 213 area code would now be faced with the unwieldy situation of a third area code across the street.

Both the split and overlay schemes have the potential to divide local integrated communities with the institution of a new area codes. With the split, this division is known at the outset. With the overlay, the duality of area codes within a single community will grow over time and eventually become pervasive throughout the present 310 area code as the 562 code is assigned to new customers. One possible solution to this problem might be for all customers in multi-occupant buildings to mutually agree to convert all lines in the

building to the new 562 area code, but this would require customers to forfeit one of the claimed benefits of the overlay, namely, that existing customers do not have to change their area code from 310 to 562.

Constraints on Customer Choice of Carrier

More compelling in our view is the conclusion we have drawn that the overlay plan contained in the Settlement could constrain customers' opportunities to benefit from local exchange competition. Under this type of area code relief, a customer would likely have no choice of alternative providers unless they agreed to change to the 562 area code, particularly if true number portability is not available. Moreover, new business customers moving into the 310 area code's territory would have an incentive to choose Pacific or GTEC over their competitors because Pacific's and GTEC's customers, the new businesses' potential clients, are now, and for a long time to come under an overlay scheme, would be entrenched with 310 area code. On the other hand, if the 310 area code were split, customers would not have to change their area code to change providers. In this scenario, customers would be free to select the most competitive alternative based on price and service quality, not the area code assigned to the service provider.[12]

c. Dialing Disparities

Although the split has a more immediate impact on a greater number of customers, it provides a more uniform treatment

[12] In the recently adopted D.94-07-054, we ordered Pacific and GTEC to provide interim number portability employing remote call forwarding and direct-inward-dial trunks.

of both existing and new customers than the overlay scheme proposed in the Revised Plan in terms of dialing disparities. Except for calls that cross the newly created boundary lines, customers after a split will dial the same number of digits for the same call that their neighbors are required to dial. Even along the area code boundary lines, customers will know in which instance they may need to dial 10 digits to complete nearby calls.

In the case of the overlay, the instant after the plan is instituted, there will be no dialing disparities. However, the initial advantages which existing customers enjoy under the overlay are gained at the expense of new customers who will bear a disproportionate burden of the dialing disparities associated with the introduction of the new 562 area code. Not only will such customers have to dial extra digits for the majority of their local outgoing calls, but they will have to deal with the resistance of incoming callers to dialing the new area code. In addition, if the new customer is a business which relies on the recognizability of the 310 area code to attract prospective customers, this business could suffer economic loss by being relegated to an area code which would be initially underpopulated and less familiar. Customers might incorrectly perceive that a number with a 562 area code reflects a more distant or less desirable area, and might choose not to call the business establishment based on this sentiment.

We conclude that customers will inevitably suffer the drawbacks resulting from having to dial additional digits under either relief plan we are considering for the 310 area

code. Under a split, residents who previously dialed seven digits may be forced afterward to dial 10 digits for the same call. We note, however, that over time the overlay scheme will attain similarly undesirable results. In fact, the overlay plan will introduce a different, less predictable dialing disparity. For those with the new 562 area code will be few and far between at the onset. These customers will be forced to dial 10 digits for essentially every call they make. Whereas under the geographic split, geography determines whether a customer must dial 7 or 10 digits, under the overlay, dialing patterns will be dictated by chronology, i.e., whether a customer initiates service before or after 310 code exhaustion.

d. Customer Opinion Surveys

Another indicator of which plan would be preferred by the public at large is the result of opinion surveys of customers. Pacific's evidence showing that customers predominantly favor an overlay plan for the 310 area code was offered through witness Gwen Moore. Moore's evidence was composed of her personal involvement in the 1991 split of the 213 area code that created the 310 area code, an informal survey, and letters sent from various public officials in the affected 310 area. We recognize the value of Ms. Moore's personal experience given her distinguished and lengthy tenure as a member of the California Legislature where she served as chair of the Utilities and Commerce Committee. She also has experience with constituents residing in the territory served by the 310 area code. We are thus persuaded that there was considerable public resistance encountered during the 213/310 split.

However, we have concluded that we cannot rely on Ms. Moore's informal survey as an indication of aggregate customer opinion. The survey was not conducted scientifically, was not statistically reliable, and only elicited responses from 132 people out of the 2.4 million customers in the 310 area code.

We are also reluctant to rely on the SNET survey offered by TCG as evidence of customer preference for a geographic split. While it is a statistically and scientifically reliable poll of consumers in Connecticut, the SNET survey cannot simply be extrapolated to apply to public in the Los Angeles area affected by the 310 area code. The differences between the customer populations in the two areas must be recognized in weighing the significance of the SNET findings. Connecticut customers have no experience with an area code split, much less with the attendant problems of repeatedly redrawing boundary lines in a relatively short time span. Further, Connecticut customers are not generally accustomed to 10-digit dialing for local or short-haul calls on the level prevalent in the Los Angeles basin where several area codes cover the same metropolitan area. Given Los Angeles customers' greater familiarity with 10-digit dialing and relatively fresh memories of the problems of the 213/310 split, they may be less receptive to a geographic split than the Connecticut population. Nonetheless, the SNET study's findings should not be discounted entirely. Connecticut customers' reasons for preferring a split still have some applicability to Los Angeles customers.

DRA has proposed that a timely and scientifically objective survey of ratepayers' preferences in the 310 area code

be conducted to help determine an appropriate solution. Such a survey would be informative. However, we cannot, and will not, wait for the results of such a survey to delay the implementation of a relief plan for the 310 area code. We will order that such a survey be conducted in our ongoing local competition rulemaking, R.95-04-043.

e. **Conclusion**

In summary, we conclude that regardless of which relief plan is adopted, a certain amount of customer disruption, dialing of extra digits, and cost is inevitable. We are left with the imperative to pick between two alternatives, knowing that in either case public reaction may not be altogether favorable. The overlay plan will separate communities over the long run, as subscribers sign on for telephone service whose telephone numbers are assigned the 562 area code. Even after a careful drawing of boundaries, the split plan will divide certain communities immediately; residents will receive different area code assignments sometimes depending on which side of the street they live. The overlay plan submitted in the Settlement could hamper the development of competition in the local exchange market, particularly if new carriers are assigned NXX codes in the new area code, while incumbent carriers keep using the 310 area code. The split's effect on the development of competition should not be significant. In terms of dialing disparity, the overlay's effect will be temporal in nature, while the split's effect will be geographical; in either case, some customers will have to dial more digits than others for essentially the same phone call.

Unfortunately, we cannot rely on the limited evidence presented regarding customer preference to establish whether a majority of customers would favor either an overlay or a split. We conclude, on balance, that splitting the 310 area code to accommodate the 562 area code would present less severe disruptions to the extent this plan: (1) is similar to what the people of California have experienced thus far; (2) is more predictable in defining how dialing disparities will occur, and (3) would not segregate an area in the Los Angeles basin already for different treatment than the rest of the state, particularly when the effects on residents and businesses of the overlay plan are unknown and would be relegated to those wishing to move into the area to live and work. Any potential disruption that may result from the creation of a new geographic split can be mitigated through an effective public awareness program consistent with PU Code § 7930, and through Commission monitoring of the implementation.

B. Feasibility of Implementing NPA Relief Plan Prior to Exhaust

The selected relief plan must be one which can be implemented prior to exhaustion of 310 NXX codes. Accordingly, it is important to determine (1) how much time remains before exhaustion is likely to occur, and (2) whether either a split or an overlay could be completed before exhaustion occurs.

1. Expected Time Before Exhaustion Occurs

a. Positions of Parties

Pacific's latest forecast is for an exhaustion date of October 1996. A number of intervenors believe that more time

is available. DRA believes that with appropriate conservation measures and strict adherence to Central Office Guidelines, exhaustion is not likely to occur until 1998. DRA's late-filed Exhibit 43 shows that a number of assigned codes have low utilization rates, indicating that considerable number inventories are available for assignment. Conservation measures could be undertaken to extend the availability of 310 NXX codes, such as code-sharing and assigning numbers to carriers in less than 10,000-number blocks. Pacific, as the Code Administrator, has not undertaken a timely audit of whether effective utilization of code assignment is occurring in California (Tr. 1414-1415).

Pacific argues that it is other code holders, not itself, which bear responsibility for the premature exhaustion situation which has developed. Although the Central Office Code Utilization Survey (Utilization Survey) guidelines require code holders/applicants to provide forecasted code requirements to the Code Administrator, compliance has been relatively poor. Pacific states that the general lack of compliance makes it difficult for the Code Administrator to know if assigned codes have actually been used. In preparing its forecast of 310-NXX code usage for 1995-1999, Pacific included Utilization Survey forecast data from Pacific and six other code users. The forecast also considered increased demand for new service offerings and for the entry of new local exchange competitors.

TCG, among others, disputes Pacific's claim that lack of information from future competitors has exacerbated the problems with predicting the exhaustion date for the 310 area.

code. TCG did not become a code holder until late 1994, long after Pacific declared a jeopardy situation in this area code. Since TCG was not asked by Pacific until June 1994 to provide an estimate of its expected NXX usage, TCG doubts that such an estimate was critical to Pacific's earlier forecast.

AT&T claims that Pacific's "jeopardy" forecast is speculative and inflated, motivated by Pacific's desire to induce a panicked approval of its overlay plan as the only possible relief alternative. AT&T notes that Pacific's 310 Utilization Survey forecast shows a huge sudden one-time jump between 1994 and 1995 from 65 to 105 NXX codes, yet provides no explanation for half of the increase. The other half of the increase is attributed to requests of CLCs. AT&T argues that it is uncertain whether any CLCs will be able to enter the market as early as 1995 and have need for 310 NXX codes.

AT&T believes it would be realistic to eliminate demand posited in Pacific's "jeopardy" forecast for CLCs and CATV in 1995, and thus reduces by at least half the demand projected for 1996. By smoothing the demand for non-CLC codes and adjusting projections for CLC demand, the number of codes slated to be used in 1995 would be reduced by about 30, and in 1996 by about 15. At the adjusted current growth rate of about 70 codes per year, this would provide over seven additional months prior to code exhaustion.

AT&T asserts that an extension in the exhaustion date of seven months is conservative, given the likelihood that the actual time when CLCs will begin to actively compete in the market will be after 1995.

b. Discussion

We conclude that Pacific's forecasted exhaustion date is unreasonably short, and that it is realistic that the use of NXX codes in the 310 area code can be extended until the fourth quarter of 1997. Even Pacific concedes that conservation measures not yet implemented could extend the period prior to exhaustion for seven to nine months beyond the current projection of October 1996, and additional measures could be implemented, with the cooperation of the industry, to delay the exhaustion date even farther (Tr. 1478, 86/Bennett). We agree with AT&T that Pacific has failed to provide a clear explanation for approximately half of its revised forecast of NXX demand between 1994 and 1995. Lastly, with the adoption of D.95-07-054, we enabled facilities-based competition to begin in some fashion by January 1, 1996. We also committed to issuing rules for resale-based competition to begin March 1, 1996. Still, we expect that the first stages of competition will be slow in developing. Significant competition for the LECs will likely come later. All these factors argue against Pacific's overly conservative expectation that 310 NXX codes will run out by the fourth quarter of 1996.

2. Time Required to Implement Relief Plans

Another critical consideration in whether a relief plan solution can be implemented prior to code exhaustion is to determine how long each plan will actually take to be implemented.

a. Position of Parties

Pacific argues that there is insufficient time to implement a geographic split prior to its projected exhaustion date of October 1996. Pacific's witness Mahoney testified that the shortest time from the start of technical work to implementation of a split has been 22 months, based upon Pacific's last three geographic splits. Mahoney estimates that any attempt to shorten the time would yield savings of no more than a month. Pacific's 22-month estimate excludes time needed to determine the boundaries of the split, which could take months in its view, and for any public notice requirements. On the other hand, Pacific estimates that implementation of an overlay could be completed by the fourth quarter of 1996. This date takes into account Pacific's forecast of time needed to develop, code, test and place into production the necessary changes to make an overlay fully operational.

As explained by Pacific's witness Mahoney, the changes required to accomplish a split differ from the changes required in an overlay. A geographic split requires conversion of all affected records in both the new and old area codes that are held in the databases, down to the telephone number line record level. The changes associated with an overlay encompass enabling the network to recognize more than one area code in a specific geographic area. Pacific claims that while approximately 100 systems would require conversion to accommodate a split, only 40 application systems would require conversion for an overlay.

Pacific asserts that it would be impossible to implement a geographic split at this point and still comply with the statutory requirements under the PU Code. Pacific claims that under § 7930, public notice would be required 24 months prior to the implementation of the split. In addition, § 7930(b) requires that public meetings be held in the affected area within six months after giving the 24-month notice. According to Pacific, these code sections must be interpreted to require that subscribers know the nature of the proposed relief plan for the area code in question before they can be expected to comment on its potential impact. Based upon Pacific's projected exhaustion date of the fall of 1996, exhaustion would occur before the 24-month advance notice period could elapse.

PU Code § 7930(c) requires that affected subscribers and the Commission receive written notice containing the specific geographic area affected by the new area code at least 15 months prior to its implementation. Assuming an exhaustion date of October 1996, Pacific questions whether under the proposed geographic split the 15-month public notice can be given in time. Lastly, § 7931 provides for a six-month permissive dialing period during which the network will recognize calls dialed to the new area code using either the old or the new area codes. If a geographic split is the relief implemented, only those NXX codes not yet in use in the 310 area code can be assigned to customers in that area code during this period. If 310 codes exhaust or nearly exhaust before the implementation of the split, Pacific warns that it may have to deny codes in both

the old and new area codes or violate the permissive dialing period.

For the record, Pacific noted that it provided customer notice of its original overlay plan for the 310 area code in March 1994. Pacific also conducted three public meetings in the 310 area within six months of its March 1994 notice. Pacific claims that it, in its efforts to comply with §7930, had provided to subscribers in the 310 area notice of only the overlay plan and the measures available to mitigate any disruption in service. Customers were not told a geographic split was an option and thus were not able to comment on it.

Opponents of the overlay claim that Pacific is too pessimistic in its estimate of implementation time needed for a split and too optimistic in its estimate of time required for an overlay. CCTA estimates it would take approximately six weeks to program a split into the switches serving the 310 area code. While claiming the equivalent schedule for an overlay is not as accurately known, CCTA estimates it would take at least 25% longer to adjust the switching machine translations for an overlay than for a split. CCTA also faults Pacific for failing to take into account the time required to change databases to provide for permissive dialing under the overlay plan. CCTA estimates that drawing an area code boundary line should take no more than four to six weeks. AT&T's witness Mosley is currently involved in negotiations for 619 area code relief planning and testified that an allocation of two weeks for the completion of this process would be generous, and that time could be cut in half." (Tr. 792.)

TCG disputes Pacific's 22-month estimate for technical implementation of a split as inconsistent with estimates used by other LECs. For example, Ameritech estimated it could implement a split in 16 months. Southern Bell was recently required to implement a split in the Miami area despite an estimated code exhaustion date of November 1995.

AT&T states that if this Commission acts expeditiously in this case, it can order that the parties undertake geographic line drawing in workshops to commence August 15 and to be completed by September 15. If no agreement on geographic boundaries is reached by then, alternative recommendations for a resolution could then be submitted to a panel comprised of the original parties and representatives of "the local jurisdictions" within the 310 area code. The Commission could further order that notice to the public pursuant to PU Code § 7930(c) be issued by no later than October 1. This would, under the statute, imply that implementation could not begin prior to January 1, 1997. AT&T believes a geographic split could be accomplished in the 15-month interval the statute prescribes between boundary announcement and commencement of permissive dialing of the new NPA. This is, at most, three months beyond Pacific's current projection of 310 code exhaustion. As stated above, however, because of inclusion of unsubstantiated future demand from CLCs and the unexplained and anomalous "bump" in demand projected for 1995, AT&T argues that the projected exhaust date is at least seven months premature. In addition, AT&T believes that prompt implementation of conservation measures could extend the period during which 310 NXX code assignments are available even further.

Moreover, opponents of the proposed overlay dispute Pacific's interpretation of PU Code §§ 7930-7932 that institution of a geographic split at this point would make it impossible to comply with the statutory deadlines for advance notice. CCTA notes that the § 7930 provides for public notice of a proposal for area code relief. It does not require that subsequent modifications be publicly noticed or additional public hearings be held to discuss them. If § 7930 meant that only the exact plan finally adopted must be noticed 24 months in advance of implementation, then the Revised Plan could not be adopted either since it was not discussed in the public meetings, according to CCTA. Lastly, CCTA observes that § 7930 is directed toward "telephone corporations," not the Commission itself.

Discussion

There is reasonable uncertainty as to whether either the geographic split or the overlay could be implemented prior to Pacific's projected exhaustion of October 1996. Given our conclusion above that the exhaustion date can realistically be deferred until the fourth quarter of 1997, there should be enough time to complete either an overlay or a split, given a focused and efficient effort to achieve that goal. We will analyze the physical and legal requirements posed by the two relief plans.

Because an overlay has never been implemented in California, there is uncertainty as to the actual time required to institute an overlay of the 562 area code. As recently as the beginning of 1994, Pacific believed it would take until the end of 1997 to complete the necessary software work to implement an

overlay. Pacific's current estimate is October 1996. This large fluctuation in the completion date calls into question the precision of Pacific's forecast. In the Settlement, parties have provided for contingency measures, assuming that the overlay forecast could fall behind schedule.

The operational support systems of Pacific and GTEC will not currently accommodate an overlay, but would require their computer-based systems to be modified and tested. As estimated by Pacific, the total time required for database reprogramming to implement an overlay for 30 central offices is approximately 2,700 hours. This compares to 7,200 hours of reprogramming time for a split. Even if Pacific's estimates for an overlay are too optimistic, there remains a considerable margin of difference between the estimates. (Pacific Reply Brief, pp. 13-14.)

We further conclude that Pacific's 22-month estimate for technical implementation of a split is unduly pessimistic. There are achievable time savings by adding extra resources to expedite the split even if, at some point, diminishing returns set in. We conclude that Pacific is too conservative in expecting that only one month could be saved by optimizing staff resources. CCTA witness Collins stated, although the actual staffing situation in the 310 offices is unknown outside of Pacific Bell (Exh. 13, p. 44:10-12.), it could take six weeks for the switch reprogramming to implement a split, based on data provided by Illinois Bell.

Accordingly, we determine that Pacific should be able to accomplish the technical implementation of a split

significantly sooner than 22 months, given the experience in other cases. Although Pacific has not previously accomplished a split in less than 22 months, none of those prior splits were done under the time constraints of a declared "jeopardy" situation. Moreover, given Pacific's recent implementation of a previous split in the same geographic region, the learning curve would work to economize the need for time. In the case of the overlay, which Pacific was motivated to implement, Pacific was ingenious enough to find ways to expedite the schedule by a full year. Likewise, we expect it could also find ways to reduce the projected time to implement a split, given the proper motivation.

The experience has shown that it would likely be difficult to get consensus on boundary lines in a 310/562 split. However, the fairly recent drawing of the 213/310 boundary lines could be used to cut through unnecessary preliminaries because participants are already familiar with the process. Moreover, the evidence presented regarding the split of the 619 area code argues for a shorter, rather than longer, time allocation for boundary drawing.

Still, we remain concerned over the risk of potential delays that could result from a protracted boundary drawing dispute. No party has yet offered testimony proposing any specific boundary line. Given the recent past experience with the 619 area code, however, we believe that the boundary lines for a 310/562 split can be drawn within a few weeks, if a focused and aggressive approach is undertaken by the Code Administrator. The time needed to draw the line must be added to any estimate of time for technical implementation, the advance

notice requirements we adopt herein, and the 6-month permissive dialing period. Nonetheless, we conclude that with an efficient implementation schedule coupled with rigorous enforcement of number conservation measures, an area code split can be completed prior to the exhaustion of NXX codes in the 310 area code.

We conclude that the statutory provisions of PU Code §§ 7930-7931 do not legally foreclose the Commission from ordering its own implementation of a geographic split if the Commission finds that it is in the public interest to do so. These code sections prescribe actions with which telephone utilities, and not the Commission itself, must comply in proposing to establish new area codes. The schedule requirements set forth in the statutes are keyed to the *proposal* of a telephone corporation to establish a new area code. The statutes do not address what, if any, subsequent notice requirements may be called for in the event the Commission finds the telephone corporation's proposal unacceptable and orders a different plan to be adopted. It would be unreasonable to construe the statutes as legally binding the Commission to adopt a telephone corporation's area code proposal merely because the corporation had not noticed the Commission's adopted plan in its initial proposal. A Commission decision authorizing a different plan from what was originally proposed does not restart the statutory clock triggering a repeat of the statutory notices. We do recognize the critical importance of public involvement and notification of area code relief measures as intended by §§ 7930-31, whichever plan is approved. Our adopted procedures as outlined below shall ensure these goals are met.

We also recognize that Pacific's prior actions of serving notice of its NPA original relief proposal, and holding public meetings within six months thereafter, constituted its compliance with these code sections. At those public meetings, Pacific disclosed that its overlay proposal identified the geographical area to be served by the new area code, and discussed mitigation measures. Since these meetings occurred at least 15 months prior to the proposed commencement of use of the new area code, customer notice requirements in § 7930(c) were met. We further note that the overlay plan which Pacific now proposes does differ significantly from the plan which was presented in the public meetings held pursuant to § 7930. Accordingly, any claimed legal violation attached to adoption of a split would be an equal infirmity to adoption of Pacific's revised overlay proposal.

3. **Effects on Competition**

a. **The Planning Process to Develop a Relief Plan**

Another criterion for selecting a relief plan involves its effects on the introduction of local exchange competition. Parties claimed that Pacific's role as an incumbent LEC facing impending local exchange competition created a conflict of interest with its duty as Code Administrator to develop a fair and equitable relief plan.

1. **Positions of Parties**

Opponents of the overlay plan have charged that Pacific's actions as Code Administrator in developing its proposed relief procedure have consistently indicated an intention to disregard the competitive interests of CLCs and to

unilaterally move forward with the overlay plan despite CLCs' The CLCs in particular complain that they were unfairly excluded from the area code relief planning process. As the Code Administrator, Pacific followed the Industry Carriers Compatibility Forum (ICCF) Central Office Code Assignment Guidelines (Guidelines) in proceeding with relief planning.[13] Pacific began relief planning meetings for the 310 area code in June 1993. An interdisciplinary relief team of GTEC and Pacific was formed to develop and study relief alternatives. The team developed criteria for relief measures and held a series of industry meetings. On December 2, 1993, Pacific and GTEC held a meeting for all 310 NXX code holders where both overlay and geographic split options were discussed, but with primary focus on the overlay option. Although no consensus was reached at the December 1993 meeting, Pacific and GTEC issued a public announcement in March 1994 recommending an overlay plan, with all new wireless growth codes interconnected at the tandem to be assigned to the new 562 area code. On June 9, 1994, the Code Administrator held a "Jeopardy" Meeting.[14] Additional industry

[13] The ICCF Guidelines were not released to the industry for use until October 1994, but Pacific used a July 1993 draft version in developing its 310 overlay plan. The ICCF's final version of the Guidelines for NPA relief planning was not issued until December 1994, after Pacific's August 1994 filing with the Commission of its overlay relief plan.

[14] A "jeopardy" NPA condition, as defined under the ICCF Central Office Code Assignment Guidelines, means that the forecasted and/or actual demand for NXX resources is expected to exceed the known supply during the planning/implementation interval for relief.

meetings were held on June 22-23 and July 13, 1994, to discuss relief alternatives for the 310 area code. No consensus was reached among meeting participants as to the appropriate relief alternative. On June 23, 1994, the NANP administrator, Bellcore, notified the industry of impending exhaustion of numbers in the 310 area code. Pacific defends as reasonable its actions to forecast the expected exhaust date of the 310 area code and to plan relief measures. The ICCP Guidelines provide that "affected parties" have the right to participate in NPA exhaust planning. "Affected parties" are defined in the Guidelines as those entities which have applied or received NXX assignment within the affected NPA. Since MCI, AT&T, and CGTA had no 310 NXX code assignments in 1993 or 1994, Pacific maintains it was not required under the Guidelines to invite them to the relief planning meetings. TCG did not become a code holder until late 1994, after Pacific had submitted its plan to the Commission.

Although the industry meetings did not produce a consensus on a relief plan, Pacific believed that additional meetings would continue to end in an impasse. Accordingly, instead of pursuing further meetings, Pacific chose to file its relief plan with the Commission.

2. Discussion

Regarding the initial planning process for the 310 area code relief, we believe that Pacific's dual role as an incumbent LEC and as the Code Administrator created at least an appearance of a conflict of interest in the selection of a competitively neutral relief plan. This is especially so given

the emphasis upon the introduction of competition into all facets of California's telecommunications industry announced by Governor Wilson in his State of the State Address to the Legislature in January, 1993. Indeed, by the time Pacific began to explore the issue of area code relief we had held two in a series of full panel hearings devoted to the introduction of competition and in reaction to the charge to this Commission given by the Governor. Notwithstanding these clear portents of meaningful change, Pacific appears to have exercised its authority as Code Administrator in a manner which gave it an inherent advantage over prospective CLCs in controlling the course of the relief planning process and in fashioning a plan that favored itself and other incumbent LECs over competitors. Pacific's original relief plan was clearly anticompetitive in its discriminatory treatment of wireless carriers, and provided evidence that Pacific was not acting with competitively neutral motives in its role as Code Administrator. It was only after the issuance of the Ameritech decision rejecting provisions very similar to those in Pacific's original plan that Pacific agreed to eliminate the most obviously anticompetitive features of its overlay plan. At the very least, Pacific's competitive advantage inherent in its role as Code Administrator warrants enhanced scrutiny of Pacific's alleged claims that the revised overlay is now competitively neutral.

b. Competitive Fairness of the Relief Plans

i. Positions of Parties

Opponents of Pacific's overlay plan claim that this plan would grant Pacific and GTEC an unfair advantage over CLCs with respect to competition for the business of both existing and

new local exchange customers. They argue that area-code overlays place a disproportionate burden of "solving" number shortages on the new entrants to the industry. Pacific's overlay plan would be implemented within months of the Commission's announced date for commencement of local exchange competition, January 1, 1996.

In our November 1993 report entitled Enhancing California's Competitive Strength: A Strategy For Telecommunications Infrastructure (Infrastructure Report), we stated our intention of opening all telecommunications markets to competition by January 1, 1997. The California Legislature subsequently adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994) expressing similar intent. On July 24, 1995 we adopted interim rules that will permit facilities-based entry by January 1, and resale-based entry by March 1, 1996.

When local exchange competition begins, existing customers of incumbent LECs will have the option of purchasing local exchange services from CLCs. Overlay opponents claim, however, that customers wishing to subscribe to a CLC's service would have to replace their number in the 310 area code with a number in the 562 area code. This would mean having to dial additional digits to call to any 310 number as a condition of changing service providers, assuming the overlay scheme in the Revised Plan were imposed. Potential competitors also argue that a customer who wanted to switch service providers would lose the advantage of the established recognition and geographic link associated with the previously assigned 310 telephone number. Such drawbacks would discourage customers from choosing a CLC as

their provider of local exchange services and would fundamentally undermine the introduction of local exchange competition.

Another criticism concerning the overlay is that it creates an unfair distribution of burdens between CLCs and incumbent LECs' customers arising from dialing disparities. Incumbent LECs' existing customers will keep their existing numbers and experience little or no inconvenience in their own dialing patterns by virtue of the creation of the overlay area code. New customers will be required to accept numbers in the new 562 overlay area code, and will bear the inconvenience and confusion related to the assignment of a new area code and the resulting dialing disparity. New local exchange competitors would have to convince a potential customer not only to change carriers, but also to change area codes and to dial additional digits to complete many, if not most, calls. TCG complains that competitors would also bear the burden and customer inconvenience caused by the reprogramming PBXs and IXC/LEC switches to ensure that calls are properly routed to the new area code.

Pacific posits that new entrants to the local exchange market will not suffer a significant competitive disadvantage as a result of the overlay plan. According to Pacific's witness, Moore, because growth is rapid in the 310 area, any dialing disparity attributable to an underpopulated 562 area code will only be temporary. Further, the 310 area code was created recently and is surrounded by the 213, 714, 818, and 909 area codes. To the extent they regularly dial to these areas, residents are already used to dialing 1 plus 10 digits for calls. Since dialing must continue to be toll free, Moore claims there

are little practical or competitive effects due to a dialing disparity.

TCG disputes Pacific's claim that the dialing disparity experienced by competitors will be short-lived or have little practical effect. TCG states that after the proposed overlay begins, Pacific still will have many "warehoused" numbers in the 310 code, and thus it is questionable that Pacific will have to assign its own customers to the 562 code any time soon. TCG also claims that Pacific will keep for its own customers 310 numbers that become available when customers move out of the area. Accordingly, TCG believes the negative impact of the segregation of Pacific's customers and competitors' customers into separate area codes will persist for many years.

Pacific disputes the CLCs' statements that only incumbent LECs will have access to 310 NXX codes, while new entrants will be assigned numbers in the 562 area code. Under the Settlement, 310 NXX codes will be assigned on a first-come, first-served basis without regard to whether that carrier is a wireline, wireless or new CLC entrant. Pacific claims that CLCs will have the same access to 310 codes as any other carrier, including itself.

Parties are also in dispute over whether Pacific's overlay plan complies with the standards set forth in the January 12, 1995 order of the FCC regarding the proposed relief plan by Ameritech of Illinois. In the original Ameritech overlay plan, wireless carriers would have been denied access to the 708 area code. This plan required wireless carriers to take back from their subscribers and return to Ameritech all previously

assigned numbers with a 708 NPA. The plan also called for segregating wireless carriers into a separate area code for future number assignments. The FCC found that all of these provisions constitute unreasonable discrimination under § 202(a) of the Federal Communications Act and unreasonable practices under § 201(b) of the Act.

While Pacific's original relief plan had provisions similar to the Ameritech plan, Pacific claims that its revised overlay proposal, as embodied in the Settlement with AirTouch, has removed the offending provisions for take-backs and exclusion of certain classes of carriers from access to NXX codes in the 310 area code. Because the Settlement calls for NXX code assignments to be made to all carriers on a first-come, first-served basis, Pacific asserts that its revised plan does not violate the standards set out in the FCC's Ameritech decision and is not anticompetitive.

2. Discussion

A distinguishing characteristic of Pacific's relief plan for the 310 area code when compared to past or future plans is that it will be implemented concurrently with competition within the local exchange market. The actual effects of the overlay plan on local competition would be influenced by the relative timing of 310 NXX code exhaustion compared with the timing for the development of competition for basic service. As announced in D.95-07-054, we will enable competition to begin by early 1996; however, competition will likely take some time to fully mature. Hence, the implementation of the adopted relief plan will likely occur at a time when competition will be taking

a stronger foothold in California. Here we conclude that the overlay plan as proposed in the Settlement would be anticompetitive, and that a geographic split would be more competitively neutral. This conclusion is very important in light of the timeline discussed above and the fact that we have been charged with the mandate to move forward aggressively to institute competition in telecommunications markets.

The federal standards by which to evaluate the competitive impacts of NPA relief plans are set forth in the Ameritech decision, cited above. In particular, this decision provides that: "The timely availability of numbers is essential if new providers are to enter and new services are to appear in the telecommunications marketplace. Unavailability of numbers, or an unreasonable allocation of available numbers, could prevent or discourage consumers from taking new services." (Order at 9, emphasis added.) The overriding principle in evaluating the competitive implications of any relief plan, as stated by the FCC, was that: "the optimal balance must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction." (Order at 35.)

Modifications to Pacific's Original Plan adopted in the Settlement resolved some of the problems in that plan. Nonetheless, the new plan still has an anticompetitive effect on new local exchange competitors, particularly in the market for existing customers of the incumbent LECs. Pacific's overlay scheme provides for an equitable method to assign NXX codes within the 562 area code, but it does not address the inherent

inequity created in the relative allocation between the 310 and 562 NPAs. In this respect, it does not provide a level playing field in the competition between incumbent LECs and new CLCs for the embedded 310 customer base.[15] By making no change to the existing numbers with area code 310, the overlay plan creates disparities which advantage existing 310 code customers relative to new 562 code customers, as we discussed previously. Hence, this plan remains discriminatory, for its implementation would result in a competitive advantage for incumbent carriers which presently are the exclusive local service providers.

Adding to our concerns is the fact that incumbent LECs, through sheer inertia, will retain custody of existing 310 NXX codes. Although the 562 NXX code could be assigned on a first-come, first-served basis to all competitors, including LECs, once in place, the assignment of telephone numbers from such codes would only apply to new customers under the Revised Plan. Depending on whether CLCs are able to reserve 310 NXX codes prior to their exhaustion, some CLCs may be able to assign few of their customers to the existing area code once the CLCs enter the local exchange market. Based upon current projections, however, the number of 310 NXX codes available to CLCs would be nominal, at best. CLCs would mainly be dependent on the 562 area code for their assignments of NXX codes. By contrast, the vast majority

[15] As discussed in Section VII, we conclude that, while the anticompetitive aspects of the proposed overlay might be mitigated by imposing additional conditions such as number portability and mandatory 10-digit dialing, it would be premature to impose those measures as part of the area code relief plan under consideration here.

of the incumbent LECs customers will continue to be served through the 310 area code.

We hold that some of the same reasons why customers would be resistant to changing their area code if a split were implemented would also make them resistant to changing their numbers to receive service from a new competitor. CLCs will have to overcome customer resistance to the burden of reprogramming customer premise equipment, paying for new stationery, etc. With a thinly populated 562 area code, many customers may not feel it is worthwhile to foot additional expenses or deal with any other concerns.

The practical effect of limiting the 562 area code to new growth will be to discriminate unfairly against those new market entrants for whom all or a majority of their NXX assignments will be from the new area code. Accordingly, the disparity in the desirability of codes between the 310 and 562 area codes violates the FCC's criterion that "any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction." (Order at 35.)

The dialing disparity under the proposed overlay could be expected to last for some time, which could further handicap CLCs' ability to compete in the market. Pacific's witnesses conceded that it would take four to six years for half of the 562 NXXs to be assigned (Tr. 1190-91; Tr. 1330-31). Pacific's forecasts indicate that by the time a 562 overlay is fully populated, wireless carriers and CLCs will have been assigned 75% of the 562 codes to Pacific's and GTEC's 25%. Meanwhile, Pacific

and GTEC will still have 85% of the 310 codes. (Exh. 11/ Fitts at 10-11; Exh. 29/Bennett.) Although new NXX assignments will be made on a first-come, first-served basis for new growth under the overlay plan proposed in the Settlement, Pacific and GTEC can largely circumvent this constraint since they will have a substantial inventory of 310 numbers from which assignments to new customers can be made even after the 310 area code has technically been exhausted. (Tr. 90-92; Tr. 525)

VII. Adopted Relief Plan

We conclude, given all our concerns with the proposed overlay, that we must order Pacific to implement the 562 area code by splitting the territory of the 310 area code. We nevertheless remain intrigued by the overlay plan and would like to consider it in the future. We will order parties to submit comments in the local exchange competition rulemaking, R.95-04-043, addressing what our generic, state-wide policy should be for the numbering problem in California. The evidence presented in this case shows that, because of the continuing growth within the Los Angeles Basin, the need for additional area codes will continue to increase. Within the past 10 years, the number of area codes in the Los Angeles area has increased from 3 to 6 and will increase again from 6 to 9 within the next three years. We also note the 619 area code is being split, and that there are plans to introduce additional area codes in the Bay Area and Southern California.

We recognize that the geographic split would at the start create more costs and disruption to many current customers with 310 numbers than would an overlay. However, the potential disruption and confusion that the overlay of the new 562 area code would cause, as well as the anti-competitive effects it would create, negate any benefits to be gained by not disrupting the existing customers at the onset. We are not ready to support the overlay today because we cannot adopt a plan that would create pervasive dialing disparities between neighbors, could threaten the economic development of an area already smarting from the demise of California's defense industry by creating a system of dialing patterns that could be unattractive to new business ventures, and could put in jeopardy the development of local exchange competition in this area. Our analysis of the likely timeline for exhaustion of NXX codes in the 310 area code, and of the time needed to implement a split, indicates that Pacific should have sufficient time to divide the region served by the 310 area code into two subregions to accommodate the new area code. We expect that the drawing of boundaries could become a highly charged procedure. We shall order Pacific to convene a meeting of the stakeholders and representatives of the local jurisdictions within the 310 area code by August 21, 1995 to discuss the issue of boundaries. We shall require Pacific to report to the assigned ALJ on the progress or results of these discussions on or before August 31, 1995. If at that time the issue remains unresolved, we shall order Pacific to file by September 14, 1995 all of the viable alternatives for boundary drawing to the ALJ. The ALJ will take

one round of comments due September 29, 1995 on the various alternatives, and will prepare a draft decision for Commission consideration soon thereafter. We further direct Pacific to proceed with all other aspects of the implementation of an all services split of the 310 area code.

As stated in Paragraph 22 of the Settlement, "In the event the Administrative Law Judge or the Commission rejects or changes this Agreement or individual terms of portions of it, the Agreement shall be null and void and shall be withdrawn from the proceeding, unless all parties signing the Agreement agree otherwise." Since we are not adopting the overlay plan submitted in the Settlement, we shall treat the Settlement as withdrawn, consistent with Paragraph 22.

VIII. Generic Issues to be Explored in the Local Exchange Competition Rulemaking

As we stated previously, we are interested in developing a state-wide policy that can be applied uniformly to resolve the continuing, and apparently worsening, problem of numbering resources. We would like to consider all possible solutions, including area code overlays. To further this end, the following topics should be addressed by the parties in comments to be submitted, or workshops to be held, in R.95-04-043.

A. Number Portability as a Mitigating Measure

Should the Commission approve an overlay plan for resolution of the 310 NXX-code exhaustion, MCI proposed that the Commission require the simultaneous introduction of permanent

service provider local number portability (SPLNP) in the affected area to alleviate the anticompetitive aspects of the overlay. SPLNP is the ability of customers to retain the same number as they change from one service provider to another, (e.g., from the incumbent LEC to a competitive local service provider).[16]

MCI believes that permanent SPLNP can be implemented using existing network technology. MCI believes that current 800 database architecture, presently used by LECs to provide their own 800 service, could be adapted to provide SPLNP on a state-wide or subregional basis. Under the schedule suggested in the proposed Interim Rules issued in R.95-04-043 on April 26, 1995, a database architecture mechanism for providing SPLNP similar to MCI's proposal would be designed, developed and deployed, on a full scale-trial basis, by Summer, 1996, "with permanent implementation of a database solution to occur as soon thereafter as possible."[17] Meanwhile, in the interim rules on local exchange competition we adopted with D.95-07-054, we included a provision for reciprocal interim number portability utilizing remote call forwarding or equivalent means until a permanent solution is available.

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[16] SPLNP is distinguished from two other types of number portability which are not at issue here: service portability and location portability. Service portability is the ability of customers to retain the same telephone number as they change from one type of service to another. Location portability is the ability of customers to retain the same telephone number as they move from one permanent physical location to another.

[17] R.95-04-043, Appendix A, p. 11.

On the other hand, because of the present uncertainty as to when permanent SPLNP will become available, CCTA did not advocate adoption of a specific statewide number portability solution in this proceeding. Pacific and GTEC each presented testimony on the costs and technical barriers to implementing permanent number portability at this time. Pacific and GTEC state that permanent service provider portability will not be available for three to four years. Pacific argued that interim number portability will allow customers to switch to a CLC and keep their existing numbers under an overlay plan.

DRA disagrees with Pacific's claim that interim number portability is a solution to mitigate the anticompetitive effects of an overlay. In addition, interim number portability solutions, which rely on the use of call forwarding capabilities, effectively double the use of numbers because a new number must be assigned in the new provider's central office (CO) while retaining the customer's former number in the LEC's CO (Exh. 44, p. 5; Exh. 46, p. 4).

Because CCTA did not advocate a specific form of number portability in this proceeding, it did not respond in detail to the testimony of GTEC and Pacific regarding the high costs of implementing permanent number portability. CCTA contends, however, that GTEC's estimate of a $1.6 billion cost to implement a <u>nationwide</u> number portability solution (Tr. 1613/25-26) is irrelevant to what is before the Commission here. According to GTEC witness Little, GTEC's cost estimate is based upon a nationwide geographic number portability solution that would allow a customer to port a number from New York to Los Angeles,

and not on the much more modest, regional service provider solution at issue in this proceeding. (See also, Exh. 63 (under seal) at 6, § 4.2.)

We conclude that implementation of at least interim SPLNP is a necessary condition to mitigate the anticompetitive risks of an overlay. However, we recognize that it is premature at this time to assume that permanent SPLNP will be in place in time to lessen the anticompetitive features of an overlay, were one adopted today in place of a split. We shall address the implementation of permanent SPLNP in R.95-04-043/I.95-04-044 along with its role in plans for future overlays. We advise the parties that we are not inclined to consider interim number portability solutions an adequate substitute for permanent SPLNP. For example, we are concerned with the increased risk of premature exhaustion of NXX codes due to double assignment of numbers required for remote call forwarding capabilities. We also do not believe such interim measures serve as a satisfactory way to place the CLCs on par with the incumbent LECs when and if overlays are implemented in the future.

B. "Warehousing" of NXX Codes

TCG is not satisfied that first-come, first-served code assignments under the proposed overlay will assure fairness in carriers' ability to compete for new customers. We are also concerned about incumbent LECs, or for that matter other established carriers, hoarding numbers in existing area codes and thus gaining an advantage if we ever implement an area code overlay. To mitigate this risk of LECs "warehousing" of NXX codes in the event that an overlay is adopted for some future

relief plan, it is essential that the Code Administrator enforce rigorous code conservation measures and require unused or excess codes to be returned for reassignment to others in accordance with Code Administrator Guidelines. It is also important that code conservation measures be identified and enforced as part of the implementation of the adopted split to ensure that NXX-code exhaustion is postponed until after the permissive dialing period is finished.

C. Mandatory 10-Digit Dialing

A number of opponents of the overlay propose that in the event that the Commission adopts an overlay, it should impose mandatory 10-digit dialing in the home area code as a condition of approval. (TCG, Op. Br. at 28; see also, MCI Op. Br. at 29 and Cox Op. Br. at 7 (supporting 10-digit dialing together with carrier number portability).) DRA supported 10-digit dialing in its opening brief (Id. at 11-12) "as a means of alleviating some of the anticompetitive impacts of the overlay proposal." The ICCF NPA Code Relief Planning Guidelines (12/16/94) (attached to the Direct Testimony of MCI Witness DiTirro (Exh. 2) as "Exhibit AJD-3) provides that ". . .mandatory 10-digit dialing is recommended for all NPAs covered by the NPA coincident with the implementation of an overlay." (Id. at 7, § 5.3.) The discussion at pages 14-16 in MCI's opening brief is also a strong endorsement of requiring 10-digit dialing on a mandatory basis. As MCI notes, the June 30, 1993, Bellcore Overlay Impact Analysis (Exh. 26) provides that:

> "To alleviate customer confusion and the number of misdialed calls, it may be appropriate to recommend complete 10-digit

> dialing for intra- and inter-NPA calls with the introduction of the overlay. To delay mandatory 10-digit dialing with a phased-in approach may cause more customer confusion and a greater number of misdialed calls as identical (Central Office) Codes are assigned. (Id. at 3.)

Nextel also endorses the concept of mandatory 1+10-digit dialing, but believes that to be most successful, a new dialing protocol should be introduced simultaneously across the entire nation. Nextel proposes that the Commission initiate a rulemaking to consider adoption of 10-digit dialing on a statewide basis.

Pacific opposes the imposition of mandatory 1+10 digit dialing as a condition of an overlay. Pacific claims that such a change in the statewide uniform dialing plan is unnecessary because interim number portability will permit existing customers to retain their number when changing local carriers. Pacific also claims that such a change would be confusing and unpopular with customers. GTEC also opposes adoption of mandatory 1+10 digit dialing if it is applicable only to the 310 and 562 area codes. GTEC argues that it would disrupt the statewide dialing plan and would have a negative impact on all customers residing or working in the 310 NPA geographical area as well as visitors to the area. Such an imposition would put both 310/562 NPA users at a significant disadvantage relative to other state subscribers and would cause mass confusion, according to GTEC.

We believe that mandatory 1+10-digit dialing for all calls should be a condition of implementing an overlay. This dialing pattern, if made mandatory and complementary to the

requirement for local number portability would mitigate dialing disparity for all customers regardless of their area code. However, we share the LECs' concerns with mandatory 1+10-digit dialing being imposed only on a regional basis. We shall ask the parties to submit in R.94-04-043 comments on whether and when mandatory 1+10-digit dialing should be imposed on a state-wide basis.

D. Appointment of New Code Administrator

Several parties have complained about conflict-of-interest problems related to Pacific's dual role as Code Administrator and a competitor in the local exchange market. Pacific has also indicated that it does not want to continue in the role. We agree that the appointment of a neutral party as Code Administrator would allow for a more aggressive, but fair, enforcement of the reporting requirements and code utilization guidelines. We direct CACD to convene a workshop of industry participants as soon as practicable in order to coordinate the selection process of a new Code Administrator. The selection process shall be coordinated with the FCC in conjunction with CC Docket 92-237 in which the FCC is exploring these issues. CACD is directed to submit the results of the workshop on or before March 1, 1996, and to do so in the local competition docket, R.94-04-043.

E. Code Conservation Measures

The Settlement between AirTouch and Pacific (Item 12) provided for measures to help assure conservation of 310 NPA telephone numbers. In addition to these measures, we shall direct that an independent audit of Code Administrator compliance

with conservation measures as specified in the Guidelines be conducted. We shall also order that the matter be a subject of technical workshops as set forth in the order below.

IX. Section 311(e) Comments

Several parties to this proceeding filed comments to the alternate proposed decision pursuant to PU Code §311(e). We have incorporated several of the recommended changes where appropriate and we have not acted on other comments which we found to lack merit; we shall not elaborate further on them here. We will, however, address certain specific recommendations below.

We agree with AirTouch's call for an accelerated schedule for the boundary drawing process. We have modified the decision to reflect the proposed schedule, and we have added a procedure that will enable us to become involved in case the meeting between stakeholders and community leaders fails to result in a consensus. We will partially adopt AirTouch's recommendation that the public meetings to be held pursuant to §7930 of the PU Code be conducted in a timetable shorter than that suggested in the original alternate decision. We believe that September 30, 1995 may be too soon to allow Pacific Bell to provide consumers with appropriate notification of the public meetings through bill inserts; October 31, 1995 is a more reasonable deadline. We have also placed a definite deadline of February 1, 1997 for the commencement of permissive dialing. Finally, congruent with the theme of a faster pace aimed at avoiding any unnecessary risk of NXX code exhaustion, we shall

order CACD to submit its report to us on conservation measures and comportment with ICCF Guidelines within 90 days from the effective date of this decision, as opposed to 150 days. We believe that these changes also address some of the concerns raised by the Allied Personal Communications Industry Association of California, DRA, and CCTA in their comments.

We endorse DRA's call for CACD to conduct a workshop with industry participants where the issue of selecting an independent Code Administrator can be explored. We ask CACD to file a report in R.94-04-043 on or before March 1, 1996. In accordance with DRA's recommendation, we will also direct CACD to oversee the survey process that will be undertaken in the local competition proceeding to establish customers' preference between area code splits and overlays. These changes to the alternate decision should allay some of CCTA's concerns as well.

We are persuaded by the comments of CCTA and others to acknowledge that mandatory 1+10-digit dialing will create an undue burden on alarm companies which would be required to reprogram dialers. This industry is well-advised, however, to begin programming their dialers now in anticipation of some future date when this Commission may adopt overlays as the most appropriate policy to address numbering issues in California.

Findings of Fact

1. As Code Administrator, Pacific assigns central office codes in the 310 area code and is responsible for forecasts of NXX code exhaustion within an area code.

2. On August 17, 1994, Pacific filed a proposed plan with the Commission to relieve the forecasted exhaustion of 310 NXX

codes by implementing a new 562 area code over the same area currently served by the 310 area code.

3. A new 562 area code is needed to relieve the impending exhaust of available 310 NXX codes.

4. AirTouch and MCI filed complaints against Pacific following the announcement of Pacific's plans for the 562 overlay.

5. Pacific executed a Settlement of disputes with AirTouch and PageNet, but the Settlement did not resolve separate issues relating to landline CLCs raised in MCI's complaint, and was contested by MCI and other intervenors.

6. The overlay plan proposed in the Settlement eliminated provisions for conditional code assignments, forced take backs of 310 NXX codes from tandem-based interconnectors carriers, and segregation of tandem carriers to the 562 area code.

7. The Revised Plan would apply the overlay of the 562 area code on the existing 310 service area to all telecommunications services and carriers on a first-come, first-served basis.

8. Pacific plans to make available numbers in the 562 area code at the tandem switch level no later than September 2, 1995, on a voluntary basis.

9. A 310/562 geographic split is a more competitively neutral solution than the revised overlay proposed in the Settlement.

10. A geographic split is generally more comprehensible to customers than an overlay.

11. Customers served by the 310 area code will, on balance, likely suffer more adversely under an overlay in comparison to a geographic split.

12. The development of local exchange competition could be slowed if an overlay plan is adopted.

13. Public opposition was strong at the time of the creation of the 213/310 area code split in 1991 because of the disruptions caused by the splitting of local communities.

14. A split would require approximately 2.4 million customers in the same region subjected to the 213/310 split to undergo the expense and inconvenience of changing their area codes yet again.

15. Negative customer reaction to a 310/562 geographic split can be expected to be more pronounced because of customers' recent memory of the 213/310 split that occurred in 1991.

16. While the public resistance encountered during the 213/310 split had to do the lack of public involvement in the process, it also was due to the progressively shrinking size of the available area for drawing boundary lines.

17. The further shrinking of the 310 NPA area will make the drawing of new boundary lines all the more contentious to avoid more splitting of communities of common interest.

18. The informal survey conducted by Gwen Moore and letters of support for the overlay from public officials whose constituents lie within the 310 NPA area will not be relied upon as evidence of popular support for an overlay because it was unscientific, and had a statistically insignificant sample

19. The proposed overlay would create a dialing disparity among customers within a local area.

20. The overlay would create dialing disparities between the customers of incumbent LECs and those of the CLCs within the territory now covered by the 310 area code.

21. The confusion created by the overlay due to the pervasive assignment of different area codes to the same residence and office buildings is unacceptable.

22. The overlay would disrupt the longstanding public perception that a unique area code serves a prescribed geographic area, thereby increasing the chances of misdialed or uncompleted calls.

23. Customer confusion would not be eliminated, and could be made worse, by the fact that 310 area code customers are more accustomed to dialing 1+ 10 digits for calls to adjacent areas with different area codes.

24. The implementation of an overlay would create a dialing disparity for new residents and businesses. This disparity may cause undue confusion for new residents and businesses, particularly when these entities are not accustomed to 1+10-digit dialing for all calls, and different area codes for lines in the same location since these characteristics of overlays are not present anywhere else in the state.

25. By instituting a two area code region surrounded by regions where only one area code is used, an overlay could lead to massive confusion and further segregation among different communities in the Los Angeles basin.

26. The proposed overlay would deprive customers of choice in the selection of local exchange service providers unless existing 310 area code customers were willing to forfeit their 310 number.

27. A scientifically conducted opinion poll by SNET indicated preference for a geographic split to an overlay as the fairer option among Connecticut customers by a margin of 54% of residential customers and 60% of business customers.

28. Because of demographic differences between Connecticut and the west side of Los Angeles, the SNET survey cannot simply be extrapolated to apply to the opinions of customers in the Los Angeles 310 area code.

29. The split has a more immediate impact on a greater number of customers, but provides a more uniform treatment of both existing and new customers in the long term in comparison to the proposed overlay.

30. A geographic split would be less confusing to customers and would apportion any burdens more uniformly among existing and new customers than would be true of the proposed overlay.

31. With adjustments for overstatements in forecasted NXX code demand during 1995 and 1996, and by applying appropriate conservation measures and strict adherence to Central Office Guidelines, exhaustion of 310 NXX codes is not likely to occur before the fourth quarter of 1997.

32. DRA's late-filed Exhibit 43 shows that a number of assigned codes have low utilization rates which indicates that a considerable number inventories are available for assignment. DRA's Exhibit shows that of the 546 NXX codes that have been

assigned in the 310 area code, the overall utilization rate is 80.5%.

33. The Code Administrator has not undertaken a timely audit of whether effective utilization of code assignment is occurring in California.

34. Although the Utilization Survey guidelines require code holders/applicants to provide forecasted code requirements to the Code Administrator, the rate of compliance has been relatively poor.

35. In preparing its forecast of 310 NXX code usage for the 1995-1999 period, the Code Administrator included Utilization Survey forecast data from Pacific and six other code users, and considered increased demand for new service offerings and new local exchange competitors.

36. Pacific's 310 Utilization Survey forecast showed a one-time increase between 1994 and 1995 from 65 to 105 codes. Pacific's forecast was premised on new demand during 1995 due to local exchange competition. This forecast was premature.

37. Pacific's Utilization Survey forecast is incorrect inasmuch as it assumed that CLCs would enter the market for basic telephone service in 1995 and does not factor in the delay in exhaust which could be achieved through employing additional code conservation measures.

38. Assuming an exhaust date of the fourth quarter of 1997, it is likely that either an overlay or a split could be completed prior to exhaust assuming an aggressive and efficient implementation schedule was enforced.

39. While there are uncertainties in the implementation schedule for both an overlay and a split, the overlay could probably be implemented somewhat sooner than a split.

40. The shortest time from the start of technical work to implementation of a split has been 22 months based upon Pacific's last three geographic splits, excluding time needed to determine the boundaries of the split.

41. Pacific's estimated date for full implementation of a 562 overlay is October 1996, incorporating the expected time needed to develop, code, test, and place into production the necessary changes, including the five primary systems comprising the critical path of the operational support systems portion of the project.

42. A geographic split requires conversion of all affected records in both the new and old area code that are held in the databases down to the telephone number line record level.

43. The overlay changes encompass the enabling of initial capability to recognize more than one area code in a specific geographic area.

44. While approximately 100 systems would require conversion to accommodate a split, 40 application systems would require conversion for an overlay.

45. An overlay would take 2,700 hours to program all central office switches in the 310 NPA while a geographic split would take 7,200 hours of programming time based on Pacific's estimates.

46. As required under §7930(a) Pacific has already provided public notice in March 1994 of a proposed 310/562 area

code change, more than 24 months prior to the projected implementation of the new area code.

47. As required under § 7930(b), Pacific held three public meetings to discuss 310 area code relief in the affected area within 6 months after giving the 24-month notice.

48. Section 7930(a) requires public notice of a proposal for area code relief, but is silent as to whether subsequent modifications must be publicly noticed or additional public hearings must be held before the Commission may adopt a final plan.

49. Section 7930 compliance requirements are directed toward "telephone corporations," not the Commission, itself.

50. Pacific gave 310-area customers notice of only the overlay plan and applicable mitigation measures, but no plans for a geographic split were disclosed to customers as a prospective alternative solution to area code relief.

51. Section 7930(c) requires that affected subscribers and the Commission receive written notice containing the specific geographic area affected by the new area code at least 15 months prior to its implementation.

52. When a new area code is introduced, § 7931 provides for a six-month permissive dialing period during which the network will recognize calls dialed to the new area code using either the old or new area codes.

53. Assuming a geographic split is the relief implemented, only those NXXs not in use in the old area code can be assigned during the six-month permissive dialing period.

54. In the geographic split planning process in the 619 NPA, the drawing of a new area code boundary line took approximately five days over a period of six weeks.

55. Ameritech, a Chicago-based RBOC, estimated implementation time for its split at 16 months.

56. Southern Bell was recently required to implement a split in the Miami area despite estimates of NXX-code exhaustion by November 1995.

57. An overlay has never been implemented in California.

58. The operational support systems of Pacific and GTEC will not currently accommodate an overlay, but would require conversion of its computer-based systems.

59. Pacific should be able to accomplish technical implementation of a 310/562 split sooner than 22 months, given the existence of a declared jeopardy situation and the experience with faster implementation in other jurisdictions.

60. The actual staffing resources in the 310 offices which could be dedicated to implementing a split is unknown outside of Pacific Bell.

61. CCTA's position that it would take six weeks for the switch reprogramming to implement a split was based on hypothetical inputs from Illinois Bell, a large BOC operating in a major metropolitan area.

62. The statutory provisions of PU Code §§7930-7931 do not legally foreclose the Commission from ordering the implementation of a geographic split if it is in the public interest to do so.

63. Pacific's prior actions serving notice of its area code original relief proposal and holding public meetings within six

months thereafter constituted compliance with these code sections.

64. The requirements in §§ 7930-31 are directed toward telephone corporations and proposals they make, not toward the Commission or the plan it adopts.

65. It is unreasonable to construe the statutes as legally binding the Commission to adopt a telephone corporation's area code proposal or else to wait an additional 24 months before enacting a different plan found reasonable by Commission order.

66. Public involvement, notification and awareness of area code relief measures should be included as part of any adopted relief program.

67. Pacific's dual role as a local exchange carrier and as Code Administrator creates an appearance of a conflict of interest in developing area code relief plans which are competitively neutral.

68. On December 2, 1993, Pacific and GTEC held a meeting for all 310 NXX code holders where both overlay and geographic split options were discussed, with primary focus on the overlay option.

69. The ICCF Central Office Code Assignment Guidelines (CO Code Guidelines) provide that "affected parties" which have applied for and/or received NXX assignment within the affected area code have the right to participate in NPA exhaustion planning.

70. Since MCI, AT&T, and COTA had no 310 NXX code assignments in 1993 or 1994, Pacific was not required under the Guidelines to invite them to the relief planning meetings

71. The FCC found that an overlay plan proposed by Ameritech in the Chicago area contained provisions which constituted unreasonable discrimination under § 202(a) of the Federal Communications Act, and unreasonable practices under § 201(b) of the Act.

72. The offending provisions of the Ameritech plan were similar to those in Pacific's original overlay plan, e.g., requiring wireless carriers to take back from subscribers and return to Ameritech all previously assigned 708 NPA numbers, and segregating wireless carriers into a separate area code for future code assignments.

73. While the FCC has reserved the right to assert jurisdiction over approval of area code relief plans, it has left it to the states to review and approve such plans based on local considerations as long as the states adhere to federal principles in evaluating the plans.

74. Pacific's Revised Plan removes the offending provisions for conditional code assignments, take-backs, and exclusion of certain classes of carriers from access to certain NPA codes.

75. Although the Settlement calls for NXX code assignments in the existing and new area codes to be made to all carriers on a first-come, first-served basis, the plan still unreasonably discriminates against new prospective CLCs and places them at an unfair anticompetitive disadvantage relative to incumbent LECs.

76. Because the 562 area code will be less familiar and initially underpopulated in comparison to the 310 area code in Pacific's proposed overlay plan, this plan provides preferential treatment to those with a number with the 310 area code.

77. Since incumbent carriers will possess the majority of 310 area codes after exhaustion occurs, the overlay would convey a disproportionate benefit on incumbent carriers at the expense of new CLCs whose customer base will be composed chiefly of NXX code assignments from the 562 area code.

78. The Commission is charged with the mandate to move forward aggressively to institute competition in telecommunications markets.

79. Pacific's dual role as an incumbent LEC and as the Code Administrator gave Pacific an inherent advantage over prospective CLCs in controlling the course of the relief planning process.

80. Pacific's original plan was anticompetitive in its discriminatory treatment of wireless carriers, and provides evidence that Pacific was not acting in a competitively neutral manner in its role as Code Administrator.

81. The federal standards by which to evaluate the competitive impacts of NPA relief plans are set forth in the Ameritech decision, and provide that: "the optimal balance must assure that any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction." (Order at 35.)

82. Pacific's relief plan is scheduled to be implemented during the same general time period during which competition within the local exchange market will be gaining a foothold.

83. Pacific's Revised Plan still has an anticompetitive effect on new landline local exchange competitors by failing to treat them to those with a number with the 310 area code.

assure that the burden associated with introduction of the 562 area code falls evenhandedly on incumbent LECs and new CLCs.

84. Although the 562 NXX codes would be assigned on a first-come, first-served basis to all competitors, including LECs, the assignment of telephone numbers from such codes would only be applicable to new customer lines.

85. The practical effect of limiting the 562 NPA to new growth only is to discriminate unfairly against those new market entrants who will be taking all or a majority of their NXX assignments from the new 562 overlay code.

86. Whether CLCs are able to reserve 310 NXX codes prior to their actual exhaustion depends on when they are able to actively enter the market.

87. The number of 310 NXX codes available to CLCs would be nominal, at best. CLCs would mainly be dependent on the 562 area code for their assignments of NXX codes.

88. The disproportionate burden on new CLCs due to the disparity in the allocation of 310 and 562 codes between incumbent and new CLCs under the overlay plan violates the FCC's criterion that "any burden associated with the introduction of the new numbering code falls in as evenhanded a way as possible upon all carriers and customers affected by its introduction." (Order at 35.)

89. While one of the purported advantages of an overlay is that existing customers will not have to change their area code, this is only true as long as customers do not take their service from a CLC with a 562 code.

90. Some of the same reasons why a customer would be resistant to changing his or her area code due to an area code split would also make him or her resistant to changing his or her area code and number to receive service from a new competitor.

91. Under an overlay plan, CLCs' competing for existing customers whose phone numbers have 310 as their area codes would have to convince those customers that other 310 customers will promptly re-program their customer premises equipment to recognize the new 562 area code, even though it will not be heavily populated for the first several years.

92. The relative underpopulation (and consequent undesirability) of the 562 area code relative to the 310 area code could be expected to last for some time, which could further handicap CLCs' ability to compete for existing customers in the 310 territory.

93. It is expected to take 4-6 years for half of the 562 NXXs to be assigned under the proposed overlay plan.

94. Pacific's forecasts indicate that by the time a 562 overlay is fully populated, wireless carriers and CLCs will have been assigned 75% of the 562 codes to Pacific's and GTEC's 25%.

95. Pacific and GTEC would still have 85% of the 310 codes once the 562 NPA is fully populated.

96. Although new NXX-code assignments will be made on a first-come, first-served basis for new growth under the proposed settlement overlay, Pacific and GTEC could circumvent this constraint to the extent they retain an inventory of 310 numbers from which assignments to new customers can be made even after technical exhaust of the 310 area code.

97. The Commission imposed interim number portability requirements on Pacific and GTEC when it adopted D.95-07-054 in the local exchange competition rulemaking.

98. Permissive 1+10 digit dialing already exists in the 310 NPA geographic area.

99. Because of problems relating to inferior service quality and the increased risk of premature NXX code exhaustion, interim number portability cannot be relied upon to mitigate the anticompetitive features of the 562 overlay.

100. Because of the uncertainty surrounding the timing for implementation of permanent number portability, this measure cannot be relied upon to mitigate the anticompetitive features of the 562 overlay.

101. Because of the disparities with other calling areas and the potential economic harm that such disparities might cause if 1+10 digit dialing were implemented solely in the 310/562 region, this measure cannot be relied upon to mitigate the anticompetitive features of the 562 overlay.

Conclusions of Law

1. This Commission shares jurisdiction with the federal government over the review and approval of NPA relief plans pursuant to the FCC's January 12, 1995 Declaratory Ruling and Order, In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois (FCC 95-19) (the Ameritech decision).

2. The Original Overlay Plan is anticompetitive and violates the standards set forth in the FCC Order by assigning

codes on a conditional basis subject to take back and in a discriminatory manner.

3. To be approved, settlements of contested proceedings must conform to the standards set forth in Article 13.5 of the Commission's Rules of Practice and Procedure.

4. Stipulations or settlements, whether contested or uncontested, should be reasonable in light of the whole record, consistent with law, and in the public interest.

5. The drawbacks to customers inherent in a 310/562 geographic split must be weighed against the potential, largely unfathomable, problems of an overlay.

6. The Settlement, as currently drafted, is not reasonable in light of the whole record, is not consistent with the law, and is not in the public interest.

7. The overlay plan as proposed in the Settlement should be rejected as a means of executing the necessary relief for the 310 area code.

8. The NPA relief plan adopted in this proceeding should be meet the following criteria:

a. be consistent with applicable state and federal law and should promote the public interest.

b. not result in prejudicial treatment as to rates, service, or facilities.

c. be competitively neutral and not favor one class of service provider at the expense of another.

d. assure timely implementation prior to exhaustion of available 310 NXX codes.

minimize cost, inconvenience, and confusion among affected customers.

9. The adoption of a geographic split as set forth in the order below is consistent with state law, is in the public interest, and provides a fair resolution of the AirTouch and MCI complaints.

O R D E R

IT IS ORDERED that:

1. Pacific Bell (Pacific), in its capacity as Code Administrator, is directed to initiate immediate action necessary to institute a new 562 numbering plan area (NPA) through a geographic split of the existing 310 area code. Pacific is directed to start the permissive dialing period no later than February 1, 1997.

2. Pacific shall convene a meeting of stakeholders and representatives of the local jurisdictions within the 310 area code by August 21, 1995 to discuss the issue of boundaries. The meeting participants shall consider previously submitted plans for boundary lines, as well as any new, reasonable plans for drawing the area code boundaries. Pacific shall report to the assigned ALJ on the progress or results of these discussions on or before August 31, 1995. If at that time the issue remains unresolved, Pacific shall file by September 14, 1995 all of the viable alternatives for boundary drawing to the ALJ. The ALJ is directed to take one round of comments, due September 29, 1995, on

the various alternatives, and to prepare a draft decision for the Commission's consideration on the best alternative.

3. Pacific shall convene at least three public meetings by October 31, 1995 to alert the public to the differences between the earlier plan which was presented by Pacific and the final plan adopted in this order and to solicit public comment as described in § 7930. Prospective CLCs and other interested parties shall be permitted to make presentations at the public meetings to assure that parties are aware of the role of local competition in the split plan. Pacific is directed to begin to work immediate with the Commission's Public Advisor's Office to develop an appropriate bill insert that will serve as a way to notify customers of the public meetings to be held pursuant to this ordering paragraph.

4. The Commission Advisory and Compliance Division (CACD) shall be responsible for producing a report that specifically defines number resource management rules for the 310 area code during the period before implementation of the split. The rules will address conservation measures and procedures for assigning NXX codes in the 310 area code that will ensure equitable 310 code availability for all requesters. Carriers that have code assignments in the 310 area code will report utilization rates to the Commission on a quarterly basis. All entities who received NXX code assignments from the California Code Administrator, as well as parties to this proceeding, are hereby ordered to cooperate fully with CACD to develop specific recommendations. Upon notification by CACD, the California Code Administrator is hereby will be permitted to deny new NXX code assignments in the

310 area code to any code holder that CACD determines is not cooperating fully. CACD shall submit a report for Commission adoption within 90 days of the effective date of this order. The report will provide a detailed plan for managing number resources in the 310 area code, and the results of the NXX code holders' compliance with the conservation measures specified in the Industry Carriers Compatibility Forum Central Office Code Assignment Guidelines. Based on the application of the NXX code conservation measures and updated information regarding the implementation of local exchange competition, the Code Administrator shall prepare and submit revised code utilization forecasts to CACD within thirty days of the date of this order.

5. Upon the appointment of a new Code Administrator to be accomplished through the rulemaking on local competition, (R.95-04-043), the responsibility for complying with the directives in this order aimed at the Code Administrator shall be transferred from Pacific to the new Code Administrator.

6. As Code Administrator, Pacific will inform both the CACD and all NXX code holders each month of the number of 310 NXX codes available for assignment and an estimate of the possible exhaustion date as forecasted demand changes.

7. This consolidated complaint proceeding shall remain open for the duration of the implementation period for the 310/562 area code relief plan to permit ongoing Commission monitoring of compliance with this order to resolve any disputes and to permit additional action, if necessary, to avoid premature code exhaust.

8. The ALJ assigned to the Rulemaking on the Commission's own Motion into the Competition for Local Exchange Services, R.95-04-043, shall issue a ruling in that proceeding asking parties to comment on what should the state's policy be with respect to area code relief. The ALJ is directed to address the solutions we have explored herein, i.e., the split and overlay, the modifications necessary to implement overlays in such a manner as to mitigate their effects on competition, and any other issues pertinent to the development of a state-wide policy and framework aimed at dealing with California's exploding number usage.

9. Pacific and GTE-California Corporation (GTEC) are directed to conduct scientific surveys in their service territory aimed at ascertaining the public's acceptance of area code splits, and its readiness for other solutions, such as overlays. The surveys should be designed and conducted by an independent party, with oversight from CACD. CACD and the parties in R.95-04-043 will be given the opportunity to review the written survey before it is carried out. The findings from these surveys will be filed in R.95-04-043, and the parties will be afforded the opportunity to be heard regarding these findings.

10. CACD is directed to convene a workshop of industry participants as soon as practicable in order to coordinate the selection process of a new Code Administrator. The selection

process shall be coordinated with the FCC in conjunction with CC Docket 92-237 in which the FCC is exploring these issues. CACD is directed to submit the results of the workshop on or before March 1, 1996, and to do so in the local competition docket, R.95-04-043.

This order is effective today.

Dated August 11, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
Commissioners

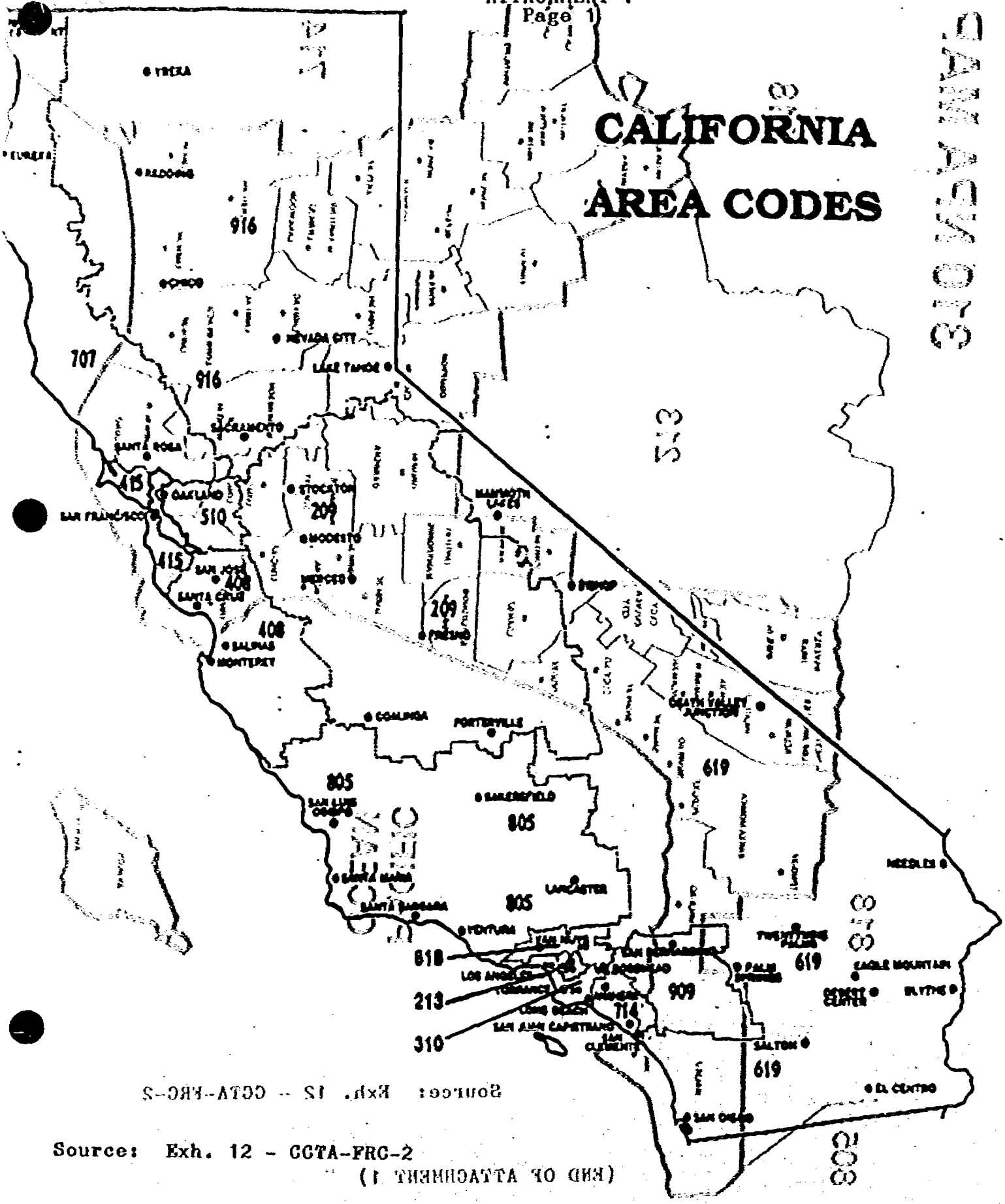
I dissent.

/s/ HENRY M. DUQUE
Commissioner

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY

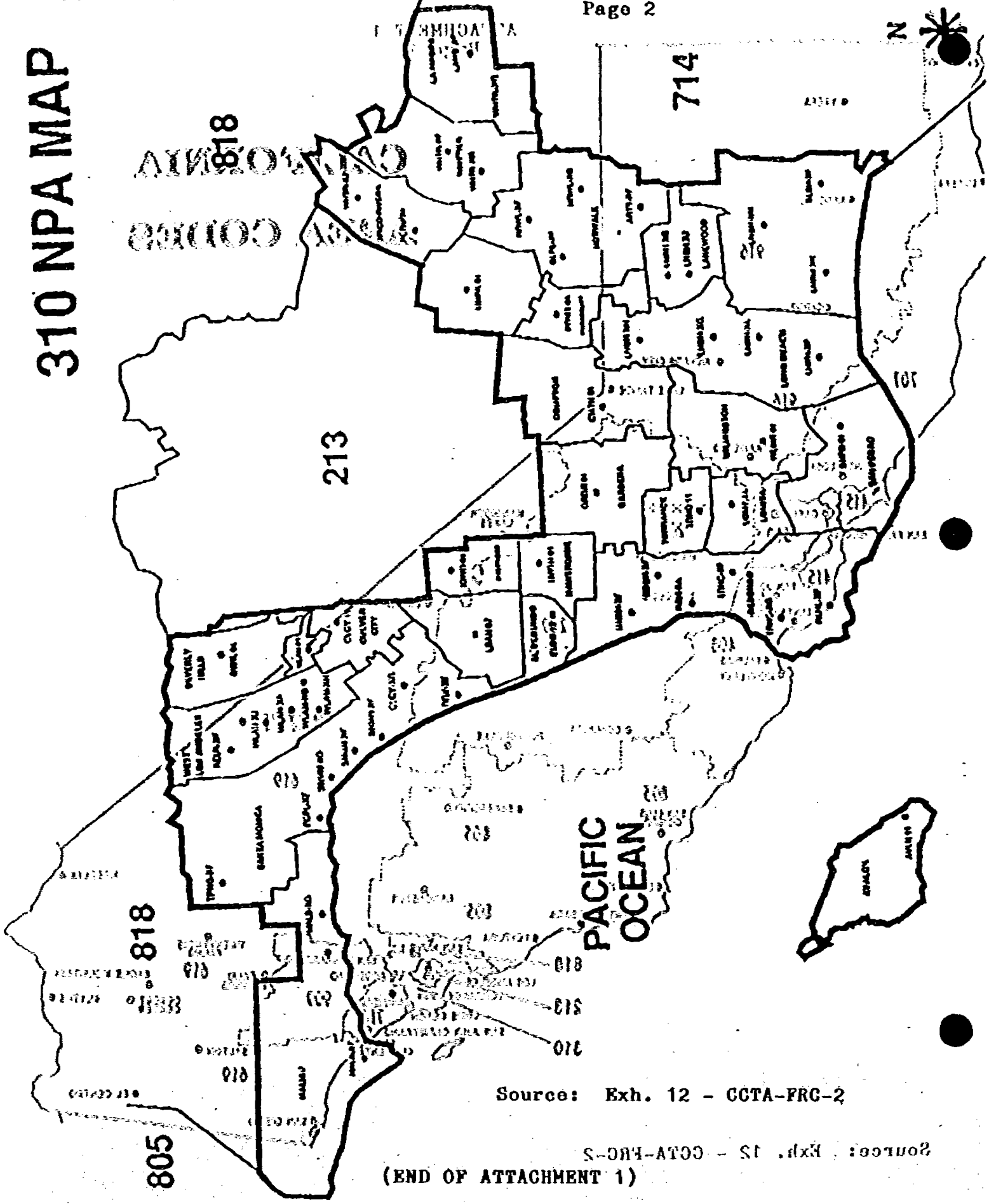
Wesley Franklin

Acting Executive Director



Source: Exh. 12 - CCTA-FRC-2

(END OF ATTACHMENT 1)



Source: Exh. 12 - CCTA-FRC-2

(END OF ATTACHMENT 1)

ATTACHMENT 2

TERMS OF AIRTOUCH/PACIFIC SETTLEMENT

Stipulation and Settlement

As a result of the changes to the Original Plan, including an agreement to eliminate any delay between Phase I and Phase II, Pacific Bell and AirTouch hereby agree as follows:

1. There is an imminent need for additional numbering resources in the Los Angeles area.

2. The new 562 NPA should be implemented as a new growth overlay of the existing 310 NPA geography.

3. The new 562 NPA should be used by all telecommunications carriers.

4. No NXX codes will be "conditional" and no carrier will be required to give up the use of any NXX from which numbers have been assigned to customers.

5. Pacific Bell, as code administrator, will make NXX codes available on a first-come, first served, non-discriminatory basis to all carriers which request them.

6. Pacific Bell will begin assigning its customers to the 562 NPA for new growth as soon as it completes its OSS upgrades, work that must be complete before Phase II.

7. If Pacific Bell determines it cannot complete this work before all 310 NPA NXXs are exhausted, it will promptly inform the Commission and all parties to this Complaint of the cause of the delay, what steps it is taking to address the delay, and how it will provide service to wireline customers.

8. As code administrator, Pacific Bell will request that all carriers voluntarily return unused codes that will not be needed. Pacific Bell will make available to all carriers any NXXs it recovers from its own inventory and other carriers and any reserved NXXs it can release. These NXXs will be available on a first-come, first-served, non-discriminatory basis and Pacific Bell will give 20-days advance notice to all NPA 310 code holders that it is doing so before Pacific Bell may apply for any such codes.

9. As a last resort, all undesirable NXXs (e.g., adjacent area codes and N00 codes) will be available for assignment upon request, but no carrier shall be required to accept assignment of any undesirable NXX.

10. The 562 NPA will be opened at the tandem switch level no later than September 2, 1995 and any carrier may voluntarily apply for NXXs in NPA 562 as of that date without regard to whether there are any 310 NXXs remaining.

11. Pacific Bell will provide appropriate, early publicity to the public concerning the activation of the 562 NPA, its geographic coverage, the fact that calls from NPA 310 to NPA 562 and vice versa do not incur a toll charge, and the fact that this change applies to all telecommunications companies. Subject to Commission approval, such publicity will include billing inserts and media advertising.

12. All applications for remaining NXXs in NPA 310, including those by Pacific Bell, will be administered in accordance with industry guidelines and must be accompanied by a certification that existing 310 NXXs will exhaust within six months. Requests for new growth NXXs must be accompanied by documents showing the carrier's available inventory of 310 NPA telephone numbers, growth history for the prior six months, and projected demand for the next six months. Pacific Bell will deny any NXX requests for NPA 310 that do not satisfy the above requirements.

13. As code administrator, Pacific Bell will inform both the Commission and all code holders each month of the number of 310 NXXs available for assignment.

14. As revised, the Pacific Bell plan is in the public interest and should be adopted by the Commission.

15. Pacific Bell and AirTouch will file a joint motion seeking Commission approval of this Agreement under Rule 51 et. seq. of the Commission's Rules of Practice and Procedure. Each party will use its best efforts and cooperate to obtain the approval of this Agreement by the Commission.

16. The positions taken in this Agreement and the actions taken in furtherance of this Agreement are in settlement of disputed claims and will not be considered for any purpose to be admissions except as expressly provided in this Agreement. Actions taken by either party

pursuant to this Agreement are without prejudice to positions either party has taken or may take in the future.

17. Each party represents that the person signing this Agreement on its behalf is duly authorized by that party to do so.

18. Each party has had the benefit and advice of independent legal counsel in connection with this Agreement and understands the meaning of each term of this Agreement and the consequences of signing this Agreement.

19. This Agreement sets forth the entire understanding of the parties and supersedes any prior agreements, understandings or communications relating to the subject matter of this Agreement. This Agreement may not be changed except in a writing signed by the parties. No representation, promise, inducement, or statement of intention has been made by either party that is not embodied in this Agreement.

20. This Agreement shall be governed by the laws of the state of California.

21. The binding force of this Agreement is expressly contingent upon Commission approval and adoption of this Agreement. In the event that the Administrative Law Judge or the Commission rejects or changes this Agreement or individual terms of portions of it, this Agreement shall be null and void and shall be withdrawn from the proceeding, unless all

parties signing the Agreement agree otherwise. If changes are proposed, such changes will not become effective unless the signing parties agree in writing to accept the modifications.

17. Each party represents that the person signing this Agreement on its behalf is duly authorized by that party to do so.

18. Each party PACIFIC BELL has had advice of independent legal counsel in connection with this Agreement and understands the meaning of each term of this Agreement and the consequences of signing this Agreement.

Dated: _____ By: _____
Name: _____
Title: _____

AIRTOUCH COMMUNICATIONS,
on behalf of AirTouch Paging of
California and Los Angeles SMSA
Limited Partnership

Dated: _____ By: _____
Name: _____
Title: _____

(END OF ATTACHMENT 2)