

Decision 00-05-025 May 4, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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

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

O P I N I O N

I. Introduction

By this decision, we address the Petition to Modify Decision (D.) 00-01-023, as filed by the City of San Diego (City). We also address the City's "Emergency Motion" seeking deferral of further implementation of both phases of the previously approved area code relief plan for the 619 area code. In the interests of addressing the City's pleadings expeditiously, the assigned Administrative Law Judge (ALJ) issued a ruling on March 1, 2000, shortening the time for responses to the City's Petition, and calling for responses both to the Petition and to the Motion by March 9, 2000.

As decided herein, we deny the City's Petition to Modify D.00-01-023, seeking to reinstate permissive dialing of the 858 area code and to implement a seven-digit overlay as interim relief in the San Diego region. In D.00-01-023, we denied the Petition to Modify D.98-06-018, as filed by Robert Kuczewski, seeking to reverse the previously approved relief plan and to impose a seven-digit overlay for the San Diego region. In D.98-06-018, we adopted a 619 numbering

plan area (NPA) relief plan for the San Diego region to be implemented in two phases. In Phase 1, a new 858 NPA was authorized in the northern region, with permissive dialing of the new 858 area code beginning on June 12, 1999, and mandatory dialing beginning on December 11, 1999. In Phase 2, a new 935 NPA was authorized for the eastern region, with permissive dialing to begin on June 10, 2000, and mandatory dialing to begin on December 9, 2000.

As explained below, we find that it is too late to reverse the first phase of NPA relief, as proposed by the City. The 858 NPA, created in Phase 1, shall thus remain in effect. We also determine, however, that the second phase of the 619 NPA should be deferred, at least temporarily, to provide additional time to give further consideration to the use of number pooling and other conservation measures to extend the life of the 619 NPA. Thus, we grant the City's "Emergency Motion," in part, to the extent it seeks a deferral of the second phase of relief in the 619 NPA. We decline, however, to grant the City's request to implement a seven-digit overlay.

Parties filing comments either in response to the ALJ ruling or to the pleadings of the City, or both, in addition to the City, included Pacific Bell (Pacific), GTE California Incorporated (GTEC), a joint group of parties representing competitive local carriers,¹ the Cellular Carriers Association of California (CCAC), the Office of Ratepayer Advocates (ORA), the Utility Consumers' Action Network (UCAN), and Robert M. Kuczewski.

¹ The joint commenters include the California Cable Television Association (CCTA), AT&T Communications of California, Inc. (AT&T), MCI WorldCom, Inc. (MCIW), Time Warner Telecom California L.P. (TW), NEXTLINK of California, Inc. (NEXTLINK), ICG Telecom Group, Inc. (ICG), GST Telecom California, Inc. (GST), and Pac-West Telecomm, Inc. (Pac-West), (collectively, Joint Commenters).

II. Parties' Position

A. Position of the City

The City petitions the Commission to modify D.00-01-023 to return to the 858 NPA permissive dialing period and implement a seven-digit overlay as a temporary relief measure to allow sufficient time to explore and implement other less disruptive area code relief in the San Diego region. The City claims that mandatory dialing of the 858 area code was implemented prematurely. D.00-01-023 denied the Petition for Modification of D.98-06-018 filed by Kuczewski (Kuczewski Petition). The Kuczewski Petition asked the Commission to modify D.98-06-018 which implemented a geographic split in the 619 NPA in two phases. Kuczewski had proposed a seven-digit overlay and asked the Commission to suspend implementation of mandatory dialing in the newly created 858 NPA (Phase 1 of the 619 Decision).

The City argues that a new area code should not be required until after the Commission has conducted audits of number usage, number availability has been determined, number conservation and pooling instigated, number allotment methodology and procedures have been revamped, the report submitted to the Legislature as mandated under the "Consumer Act,"² and other less disruptive number relief measures implemented. The City expresses concern that relief plans have been implemented in the absence of a comprehensive code utilization audit being completed for the San Diego region. Before any changes were made in the San Diego region, the City argues that its

² The "Consumer Act" was recently enacted into law as Chapter 809 of the 1999 statutes, and requires that this Commission conduct an audit, obtain code utilization data on a statewide basis, and submit a study to the Legislature before July 1, 2001.

citizens should have been afforded an opportunity to review and benefit from the studies mandated by the Consumer Act.

The City also notes that since the 619 NPA relief plan was adopted, the Federal Communications Commission (FCC) granted the Commission's petition to implement number conservation (FCC Ruling).³ The FCC Ruling included authority to institute 1,000 block number pooling, require the submittal of number utilization data, and reclaim unused and reserved NXX Codes.

The City calls upon the Commission to immediately implement number conservation and number pooling measures in the 619 NPA pursuant to the FCC delegation of authority. Relying on the addition of the 858 NPA, the City claims that the 619 NPA was put near the "bottom of the list" for implementation of the conservation measures. The City asks the Commission to petition the FCC to allow for a temporary seven-digit overlay in the 619 NPA as was done in New York in order to provide the time necessary to implement number pooling and conservation measures to extend the life of the NPA.

The City further argues that the public has been outraged by the addition of the 858 area code which was implemented without the required six months of a public information recording during the permissive dialing period. In view of the Commission's decision to suspend implementation of relief plans in other areas of California and number conservation procedures being implemented therein, the City argues that the public is extremely displeased that San Diego has been forced to deal with a third area code.

³ California Public Utilities Commission Petition for Deregulation of additional authority pertaining to Area Code Relief and NXX Code Conservation Measures, Order, CC Docket Number 96-98, NSD File Number L-98-126, FCC, 99-248, (REL September 15, 1999).

The City further claims that subsequent to D.00-01-023, additional information has come to light about the degree to which citizens in San Diego were outraged by the 858 split and that they support an overlay as an area code relief measure. The Mayor and City Council convened a public hearing on the proposed 935 split, at which citizens raised concerns about the 858 split and the proposed 935 split. In addition, the City has initiated an informal survey where individuals can provide the City with input about their concerns with the 858 split. The City claims the results are overwhelmingly against the 858 split.

The City concurrently filed an "Emergency Motion" seeking a Commission Order to Revert to Permissive Dialing in the 858 Area Code, to Modify the Auction for NXX codes in the 619 Area Code, to Order an Open Season, and to Act on the City of San Diego's Petition to Modify D.00-01-023 (Emergency Motion). Due to the extremely short time before the next auction of NXX codes in the 619 NPA, the City claims there is an unforeseen emergency situation requiring immediate Commission action, where time is of the essence. (See Rule 81(f).) Therefore, the City requests that the Commission immediately take all steps necessary to give customers in the current 858 NPA the option to obtain their old telephone number in the 619 NPA and to implement a seven-digit overlay.

The City understands that there are fewer than 20 NXX codes in the geographic area covered by the 619 NPA. These remaining NXX codes (as well as the NXX codes that were released as a result of the 858 split) are being allocated to carriers under a lottery process overseen by the Commission. In order to assure that customers who were part of the original 858 split have the option to return to the 619 NPA, the City argues, it is imperative that new customers in the 619 NPA not be assigned the numbers held by the original 858 customers. This would mean that NXX codes in existence in the 619 NPA at the

time of the 858 split would not be reallocated in the 619 NPA until a seven-digit overlay could be implemented.

The City, by its motion, also requests that customers who were in the 619 NPA at the time of the 858 split be given the option to revert back to the 619 NPA through an "open season" process whereby the original 858 customers are given a one-time opportunity to switch back to the 619 NPA. The City recommends that the Commission order that the open season begin within 15 days of Commission approval and that the open season not exceed 60 days in duration. By granting customers the option to return, the customer decides if the benefits that they perceive from retaining the 619 NPA would outweigh the potential costs and confusion of undergoing yet another change in NPA.

B. Positions of Other Parties

Kuczewski is the responding party who completely supports all of the measures requested by the City in both its Petition and its Motion. With the exception of Kuczewski and the City, all other parties filing comments agree that reverting to permissive dialing in the 858 NPA is not feasible at this late date. Even Pacific, which otherwise is supportive of a seven-digit overlay, concedes that no numbering resources remain with which to reverse the Phase 1 NPA relief plan. Reinstating permissive dialing would delay area code relief from taking effect and would prevent carriers from assigning any new numbers in the 858 NPA provided as a result of the 619/858 NPA split. Federal rules, however, require the Commission to implement area code relief when necessary to avoid code exhaustion. Aside from the lack of numbering resources, parties argue that it would be disruptive and confusing for the public if the proposed "open season" were instituted where there would be no way to predict if a neighbor had reverted to the 619 or was in the 858 NPA.

Parties express differing views, however, concerning the feasibility of deferring the second phase of the 619 NPA relief plan. Pacific and UCAN both support the deferral of the Phase 2 implementation. Pacific believes that the additional NXX codes made available as a result of the Phase 1 relief implementation will probably lengthen the life of the 619 NPA to over two years, and that number pooling would lengthen the time even further. ORA proposes to defer the Phase 2 schedule at least until the Commission can examine the data from the code utilization study scheduled for June 1, 2000, and base any further decision regarding Phase 2 on the best data available.

The CCAC and the Joint Commenters oppose any deferral of the Phase 2 schedule for 619 NPA relief, arguing that the City's Petition is deficient both on procedural and substantive grounds. These parties argue that number pooling cannot be implemented soon enough to meet the strong demand for numbering resources in the San Diego region. These parties argue that because the Commission has already committed to implement three number pooling trials in the 310, 415, and 714 NPAs, respectively, during the year 2000, a pooling trial could not be initiated in the 619 NPA before the spring of 2001 at the earliest. The FCC has required that successive number pooling trials in different metropolitan regions be implemented on a staggered basis. The parties argue that many other NPAs will exhaust sooner than will the 619 NPA, and require number pooling on higher priority basis than does the 619 NPA. In any event, these parties argue that a number pooling trial that may be instituted sometime next year is not a substitute for relief that is needed now in the 619 NPA. By the time a 619 NPA number pooling trial could be inaugurated, the parties argue, the few remaining unassigned NXX codes would not be sufficient to yield a significant NPA life extension. The joint parties argue that the three-way split

should be implemented without delay to provide for an adequate supply of number resources so that consumers may have their choice of carrier.

The City filed a third-round reply on March 13, 2000, in opposition to the comments of the joint parties. The City argues that the joint parties mislead in stating that the 619 NPA is behind several other NPAs in the queue for implementation of number conservation measures. The City believes that until full implementation of the 310 NPA pooling trial, implementation of other pooling trials is on hold. Given the imminent exhaustion of the 619 NPA absent the implementation of the three-way geographic split, the City argues that the 619 NPA should be the very next NPA to implement any and all possible number conservation measures. The City disagrees with the joint parties that consumers will benefit from the splitting of the 619 NPA which it views as premature or unneeded. The City supports a delay in implementing the three-way split to provide an opportunity for any and all tools to be used to address the critical shortage of NXX codes in the 619 NPA.

III. Discussion

A. Procedural Issues

Aside from the substantive merits of any issues raised by the City, we find that its Petition to Modify is procedurally defective in failing to comply with the requirements of Rule 47 which requires the petitioner to include specific wording to carry out all requested modifications to the decision. Also, allegations of new or changed facts must be supported by an appropriate declaration or affidavit. The City fails to comply with these procedural requirements. Moreover, although the City describes its pleading as a Petition to Modify D.00-01-023, the requested relief would in effect entail a modification of D.98-06-018, issued in June 1998, wherein the 619 NPA relief plan was adopted. In its justification for

the proposed modifications, the City focuses its arguments on alleged changed circumstances since the issuance of D.98-06-018. Yet, the City fails to explain why it could not file its Petition within one year of the issuance of D.98-06-018. Rule 47(d) states that a petition for modification must be filed within one year of the decision proposed to be modified, or else provide an explanation why it could not have been filed sooner.

Although these procedural deficiencies provide a basis for considering a summary dismissal of the Petition to Modify, we conclude that public policy considerations warrant our substantive consideration of the City's Petition and accompanying motion in view of the heightened concern over area code issues within the 619/858 NPAs.

Since the Petition seeks modifications affecting both the first and second phases of the 619 NPA relief plan, we shall address the merits of the Petition separately in terms of each relief phase separately. The Petition raises both the issue of whether each of the relief phases should be deferred and whether a seven-digit overlay is an appropriate interim solution to address the code exhaustion problem.

B. Proposed Deferral of Phase 1 (858 Area Code Implementation)

As a basis for its requested modification, the City claims that the Commission did not have adequate information about the level of customer dissatisfaction with the 858 split at the time of either D.98-06-018 or D.00-01-023. The City claims that additional information has come to light about the degree to which San Diego citizens are "outraged by the 858 split and support an overlay as an area code relief measure." As support for this claim, the City makes reference to public hearing convened by the Mayor and City Council on the planned 619/935 NPA split. The City claims a "significant number" of citizens

attended the public hearing and raised concerns about both the 858 and 935 NPA splits. The City also makes reference to its own "informal survey" where it claims individuals expressed "overwhelming" opposition to the 858 split.

In D.98-06-018, we acknowledged the fact that both splits and overlays have disruptive effects, and that any method of introducing a new area code will not be popular with customers who are subject to such disruptions. Nonetheless, we carefully weighed the offsetting impacts, including consideration of customer preferences, in concluding that a geographic split was preferable to an overlay for the 619 NPA at that point in time.

The fact that certain customers have expressed displeasure in recent public meetings and surveys with the 858 NPA split thus does not negate any of the findings of either D.98-06-018 or D.00-01-023. Rather, it merely confirms our previous findings regarding customers' general dislike of further proliferation of more new area codes. To the extent that the public input provided by the City has a message, we perceive that it is customers' dislike of splits, rather than pervasive public support for an overlay in the 619 NPA, either of the ten-digit or the seven-digit version.

In a series of decisions beginning particularly with D.99-09-067, wherein we suspended the 310 NPA overlay, we have been progressively taking positive steps to stem the proliferation of new area codes within California through the use of number pooling and other aggressive conservation measures. Yet, the decision as to whether, or to what extent, a particular area code relief plan is needed--or can be deferred--must be assessed based upon the unique situation facing each NPA. Although we have been delegated additional authority by the FCC to pursue various number conservation initiatives to maximize the lives of existing NPAs, we are still obligated to provide for timely area code relief when necessary to avoid code exhaustion. The FCC clearly stated that its delegated

grants of authority "are not intended to allow the California Commission to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief ... the California Commission continues to bear the obligation of implementing area code relief when necessary, and we expect the California Commission to fulfill this obligation in a timely manner." (FCC Order ¶ 9.)

With respect to Phase 1 of the 619 NPA relief plan, we conclude that it is simply too late to reinstate permissive dialing for the 858 NPA without causing code exhaustion. The premise underlying the City's proposed deferral of Phase 1 is that a code utilization study, number pooling, and related number conservation can be used to extend the life of the 619 NPA to the point that the 858 NPA implementation can be reversed. Yet, such conservation measures can only have an impact where at least some unassigned codes remain available which can be used more efficiently in order to extend the remaining life of the NPA. With the final implementation of the 858 NPA completed as of March 2000, there are no remaining unassigned NXX codes in the 619 NPA to replace numbers now designated for the 858 NPA. As a result of the Phase 1 split, approximately 276 NXX codes became available for assignment in the 619 NPA. Yet, these NXX codes can be assigned from the 619 NPA on a going forward basis only because they have been reclaimed by opening the 858 NPA. Likewise, the City's proposal to modify the lottery to ration only one code every other month would not provide for the reversal of Phase 1 implementation since no 619 NPA codes remain available for the lottery except through the creation of the 858 NPA split.

Likewise, the City's request for an "open season" allowing customers the option to switch back from the 858 to the 619 NPA is not feasible. The City's "open season" proposal presumes that individual customers, each assigned

numbers within the same NXX prefix could choose either the 858 or the 619 as their area code. Yet, under the current programming for the geographic split, each NXX code is assigned to a single rate center, either in the 619 NPA or the 858 NPA. Individual NXX codes cannot be assigned to more than one rate center. Moreover, splitting a rate center between two different NPAs causes serious technical problems and is prohibited by industry planning guidelines. The City's proposal for an "open season" essentially would constitute a form of an overlay where two area codes are assigned within a single geographic area. Aside from all of the other objections to an overlay, either in seven-digit or ten-digit forms, as we discuss below, the open season would produce an inefficient use of scarce number resources by limiting the ability of carriers to assign the same seven-digit number in both NPAs.

The open season would also tend to generate public confusion by creating general uncertainty as to whether a caller's number is still in the 858 NPA or has been changed back to the 619 NPA. A caller would have no systematic way of predicting which of their neighbors had converted back to the 619 or had stayed in the 858 NPA. Moreover, the post-mandatory dialing period for the 858 split was scheduled to end on March 11, 2000. Thus, the 858 NPA conversion is already completed at this point, and beyond the point where it can realistically be reversed. With the end of the mandatory dialing period, customers in the 858 NPA may now be assigned seven-digit numbers also in use by customers in the 619 NPA. Thus, any customer that had been assigned such a number would be unable to change it to the 619 area code since the number would already be in use elsewhere.

C. Deferral of Phase 2 Relief (935 Area Code Implementation)

On the other hand, we conclude that some potential exists for the deferral of the second phase of the 619 NPA relief plan. In D.00-01-023, we directed the ALJ to solicit comments on the prospects for deferring the implementation of the Phase 2 relief plan. Comments were filed in response to the ruling of the ALJ. As a basis for this decision, we consider both the comments filed in response to the ALJ ruling pursuant to D.00-01-023, as well as responses to the City's Petition and Motion.

Parties express differing views concerning the feasibility of deferring Phase 2 implementation. Certain parties object to deferral of the Phase 2 NPA on the basis that there is not enough time to implement necessary conservation measures before codes will exhaust. In particular, parties argue that number pooling could not be implemented in the 619 NPA until sometime during the year 2001 at the earliest, given the requirement to stagger the implementation of number pooling and the already scheduled number pooling trials for the 310, 415, and 714 NPAs. These parties argue that it would be too late to provide meaningful deferral of code exhaustion if number pooling must wait one year or longer.

We are not persuaded that the scheduling constraints involving number pooling implementation are fatal blows to the prospects for deferring Phase 2 of the 619 NPA relief plan. Even assuming a number pooling trial could not begin in the 619 NPA until at least a year from now, preliminary preparations for eventual number pooling could begin immediately. For example, carriers can be ordered to begin preserving uncontaminated thousand-blocks in anticipation of subsequent donations for number pooling. By beginning advance planning now,

the potential number of thousand blocks that may be available for pooling can be maximized.

As a first step, we shall order herein that carriers serving rate centers in the 619 NPA shall within 30 days of this order identify all numbers that have not been used in blocks of 1,000 to the extent those number blocks are less than 10% subscribed. Carriers are directed not to further contaminate 1,000 number blocks by using any numbers in those blocks in cases where the carrier has the option to use other number blocks that are more than 10% subscribed. Carriers that fail to comply with this directive shall be subject to any penalties the Commission may impose.

Moreover, there are a number of other measures that can be implemented between now and the time number pooling could be initiated to promote more efficient utilization of number resources. In particular, the various conservation measures that we have adopted for the 310 NPA have the potential to likewise conserve numbers if applied to the 619 NPA. For example, carriers can be made subject to more stringent imminent exhaust and fill rate criteria as a basis to qualify for obtaining additional numbering resources. Carriers can also be required to return any NXX codes that are not going to be utilized within a prescribed timeframe.

As noted above, the Phase 1 split provided approximately 257 NXX codes for assignment within the 619 NPA. With continued rationing through the lottery, coupled with implementation of other feasible number conservation measures, we conclude that the potential exists to defer the currently projected code exhaustion date for Phase 2, at least on an interim basis. The Phase 2 area code has not yet entered into the permissive dialing period. On March 8, 2000, the Commission's Executive Director sent a letter to Pacific pursuant to Rule 48(b), granting a deferral of the deadline for mailing customer notices

concerning the implementation of the Phase 2 split. The Executive Director applied the extension to all carriers in the 619 NPA to continue until further notice from the Commission concerning the status of deferral of the Phase 2 split plan. Thus, customers have not yet received the final notification to prepare for the introduction of permissive dialing for the Phase 2 relief plan.

In the interests of sparing the customers of the 619 NPA with yet another area code before it is really necessary, we conclude that an interim deferral of the Phase 2 area code is both feasible and desirable, and hereby order it. We hope to spare customers of the need to open the 935 code as long as possible through the use of effective number conservation measures. We agree with the City that a study of code utilization will provide a more informed basis upon which to evaluate the need for further NPA relief. We conclude that a more complete assessment of the longer-term prospects for deferring the Phase 2 relief plan can be made after receipt of the number utilization study for the 619 NPA, currently scheduled to be completed by June 1, 2000, in conjunction with consideration of other conservation measures.

The due date for the 619 NPA utilization study was established by the ALJ ruling of January 18, 2000, as part of the statewide schedule for the reporting of NPA number utilization studies pursuant to the statutory requirements of AB 406 (codified as § 7937(a) of the Public Utilities Code). Following our review of the 619 NPA utilization report and after making a further assessment of appropriate scheduling of number pooling in the 619 NPA and other conservation measures, we shall then make a further determination concerning the Phase 2 relief plan. To the extent that we decide to continue to defer the Phase 2 NPA implementation in order to pursue number pooling, we may treat Phase 2 as a backup plan, in accordance with the FCC delegation of authority in its September 15, 1999 Order. The FCC requires that the California Commission

be prepared to implement a backup NPA relief plan prior to the exhaustion of numbering resources in the NPA at issue. (FCC Order § 15.) We remain mindful of this obligation.

Therefore, we hereby grant a temporary suspension of the Phase 2 implementation schedule for the 619 NPA pending our subsequent review of the filing of the code utilization study due on June 1, 2000. Carriers serving in the 619 NPA shall notify their customers within 60 days of this order that the implementation schedule for permissive and mandatory dialing of the 935 area code is suspended by the Commission until further notice.

After receipt and review of the June 1, 2000, utilization study and assessment of potential conservation measures that can be employed, we will make a further determination concerning the potential scheduling of number pooling in the 619 NPA and the prospects for continued deferral of the Phase 2 implementation schedule. We shall issue a subsequent decision or assigned commissioner's ruling providing further guidance to carriers and parties concerning our findings on number pooling, other conservation measures, and the disposition of the Phase 2 relief plan.

D. Proposed Seven-Digit Overlay

We reject the City's proposal, however, to use a seven-digit overlay as an interim solution in conjunction with the Phase 2 deferral. In our denial of each of the two petitions for modification filed by Kuczewski, we have already addressed the reasons why a seven-digit overlay is neither desirable nor feasible as a relief solution for the 619 NPA. In his second petition for modification of D.98-06-018, Kuczewski had argued that the existence of a seven-digit overlay in New York City (New York) calls into question the Commission premise that the FCC would not allow a seven-digit overlay.

While we recognize that a seven-digit overlay is presently in effect within New York, that fact does not change our previous conclusion in D.00-01-023 concerning the FCC prohibition against overlays absent mandatory 1+10-digit dialing for all calls. The existence of the seven-digit overlay in New York does not indicate that the FCC has reversed its policy prohibiting seven-digit overlays. The New York overlay continues due to a stay that is effective in the State of New York, not the State of California. The circumstances under which the stay was imposed evolved under conditions that are different from conditions in California. Specifically, the New York order implementing the overlay was issued prior to the passage of the Telecommunications Act of 1996 (Act) and the issuance of the FCC's rules implementing the Act. The passage of the Act gave the FCC plenary authority over numbering issues, including policies concerning the creation of new area codes. The New York overlay is currently the subject of an appeal before the US Court of Appeals for the Second Circuit (Court). The New York overlay has been allowed to continue only because the Court issued a stay of the FCC rules, effectively maintaining the status quo in New York while the Court considers the underlying merits of the request to waive the FCC's mandatory 10-digit dialing requirement.

Thus, the unique circumstances permitting the New York overlay to continue do not indicate that the FCC has changed its policy prohibition against seven-digit overlays. Likewise, since California did not have an overlay in effect prior to the passage of the Act, the circumstances that led to the stay of the FCC rules in the State of New York do not apply to California. In any event, nothing concerning the circumstances surrounding the seven-digit overlay in New York leads us to reach any different conclusion that we reached in D.00-01-023 concerning the FCC's mandatory 1+10-digit dialing requirement for overlays and its applicability to California.

Therefore, we deny the City's request for a seven-digit overlay, and instead, shall pursue number pooling and other conservation measures as the appropriate solution for minimizing adverse impacts of NPA relief plans on affected customers.

IV. Comments on Draft Decision

The draft decision of ALJ Thomas R. Pulsifer in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on April 19, 2000 and reply comments were filed on April 24, 2000. We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. D.98-06-018 approved a three-way geographic split for the 619 NPA to relieve impending NXX code exhaustion, resulting in the creation of two new area codes.
2. Permissive dialing of the first of two new area codes (858) began in June 1999, and mandatory dialing is scheduled to take effect in early December 1999.
3. The Commission did not lack sufficient information concerning customers' dislike for the geographic splits prior to adopting D.98-06-018 or D.00-01-023.
4. At this late date in the implementation process, most affected customers in the 858 NPA have likely already undergone the time and expense to incorporate use of the new area code.
5. The proposed "open season" for reverting from the 858 to the 619 area code, if adopted, would create significant customer confusion and would be technically impractical to implement.

6. The FCC has delegated authority to allow the California Commission to engage in number conservation measures, but not to the exclusion of, or as a substitute for, unavoidable and timely area code relief.

7. Permissive dialing of the second of the new area codes (935) is not scheduled to begin until June 2000, and mandatory dialing is scheduled to begin in December 2000.

8. The 619/858 NPA split generated approximately 276 NXX codes for assignment in the 619 NPA.

9. The use of number pooling and other conservation measures have the potential for deferring the need for the opening of the second phase 935 area code as a split of the 619 NPA.

10. An interim deferral of the Phase 2 implementation schedule for the 619/935 NPA split at least until the Commission has an opportunity to review the 619 NPA code utilization report due on June 1, 2000, is in the public interest.

11. Although the City's proposal for an interim overlay would preserve seven-digit dialing for calls within the same NPA, the remaining infirmities of an overlay in terms of customer disruption and anticompetitive dialing disparities would still exist.

12. Present Commission policy and FCC rules both prohibit implementation of an overlay without a requirement for mandatory 1+10-digit dialing.

Conclusions of Law

1. The Petition to Modify D.00-01-023 to reinstitute permissive dialing of the 858 area code and to impose an interim seven-digit overlay should be denied.

2. The Petition to Modify D.00-01-023 does not meet the procedural requirements of Rule 47 by failing to include specific wording to carry out the

proposed modification to the decision and by failing to support allegations of changed facts by an appropriate declaration or affidavit.

3. Aside from its procedural defects, the Petition to Modify is not justified on substantive grounds.

4. It is too late in the relief planning process to suspend implementation of mandatory dialing of the new area code (858) without causing immediate code exhaustion in the 619 NPA in violation of federal rules.

5. The Emergency Motion of the City should be granted, in part, to the extent it seeks a deferral of Phase 2 of the adopted 619 NPA relief plan, as provided for in the order below.

6. The second phase 619/935 NPA implementation schedule can be at least temporarily deferred to allow for a more complete assessment of alternative options without causing immediate code exhaustion in violation of federal rules.

7. While the Commission is required to implement timely NPA relief to prevent code exhaustion, the Commission must also assure that numbers are being utilized as efficiently as possible before determining the timing and necessity of subsequent area code splits.

8. The Commission should temporarily defer the 935 area code implementation to provide time to review 619 NPA code utilization study due on June 1, 2000, and to determine the prospects for number pooling, and other conservation measures to extend the life of existing numbering resources in the 619 NPA.

9. The Commission has previously determined in D.99-09-067 that number pooling offers a means of significantly extending the life of an area code by making more efficient utilization of existing numbering resources.

10. A subsequent decision or assigned commissioner's ruling should address the prospects for further deferring the schedule for permissive and mandatory dialing for 935 area code.

11. The proposed seven-digit overlay has not been shown to be in the public interest and should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of the City of San Diego (City) to Modify Decision (D.) 00-01-023 to reinstitute permissive dialing of the 858 area code on an "open-season" basis and to impose an interim seven-digit overlay is denied.
2. The currently adopted mandatory dialing of the 858 numbering plan area (NPA) shall remain in effect.
3. The Emergency Motion of the City is granted, in part, to the extent that it seeks a deferral of the second phase implementation of the 619 NPA relief plan.
4. The previously adopted schedule for the second phase of 619 NPA relief as set forth in D.98-06-018 is hereby suspended until further notice.
5. Carriers serving in the 619 NPA shall notify their customers within 60 days of this order that the implementation schedule for permissive and mandatory dialing of the 935 area code is suspended by the Commission until further notice.
6. All LNP-capable carriers serving rate centers in the 619 NPA shall:
 - (a) within 30 days of this order identify all numbers that have not been used in blocks of 1,000 to the extent those number blocks are less than 10% subscribed and report this information to the Telecommunications Division Director; and

- (b) prevent further contamination of 1,000 number blocks by using any numbers in those blocks in cases where the carrier has the option to use other number blocks that are more than 10% subscribed.

7. Ordering Paragraph 6 shall not apply to non-LNP-capable carriers since they cannot be compelled to participate in a pooling trial at this time. LNP-capable carriers that fail to comply with these directives shall be subject to any penalties the Commission may impose.

8. The Commission shall issue a subsequent decision or assigned commissioner's ruling following receipt and review of the code utilization study for the 619 NPA, scheduled for release on June 1, 2000, further addressing subsequent measures for dealing with the NXX code shortage in the 619 NPA.

9. In all other respects, except as noted in the ordering paragraphs above, the emergency motion of the City is denied.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
Commissioners

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

R.95-04-043/I.95-04-044

D.00-05-025

Commissioner Henry M. Duque, dissenting:

On April 10, 2000, the director of this Commission's Telecommunications Division wrote to the North American Numbering Plan Administrator to reduce the number of codes allocated to the monthly code lotteries in an 18 area codes throughout the state. This administrative action will severely constrain the availability of numbers for cellular phone companies and their customers. Among these codes was the 619/935.

Within this context, it is clear that today's decision, which delays the planned split of the 619 area code, is just another step in the majority's broad policy of rationing numbers. Thus, the order of the majority substitutes rationing in the guise of conservation for needed number relief. The majority's order is therefore poor policy and transgresses federal and state law and regulation.

For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

May 4, 2000

San Francisco