

Decision 99-11-027 November 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

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

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

OPINION

By this decision, we adopt special interim procedures for the return of NXX codes, and for the allocation of codes in the 310 area code. The adopted procedures are responsive to the petition filed on August 12, 1999, jointly by MediaOne Telecommunications of California, Inc., AT&T Communications of California, Inc., NEXTLINK California, Inc., ICG Telecom Group, Inc., Firstworld Communications, Inc., WIRELESSCO, L.P., and NEXTEL of California, Inc. (Joint Petitioners) seeking to establish an emergency pool of central office codes from the 310 area code. We anticipate that additional procedures will be necessary to facilitate more efficient number utilization as we go forward with number pooling implementation. These interim procedures are merely a starting point.

Parties' Positions

This joint petition requests that the Commission immediately order the establishment of emergency procedures designed to allocate half of the remaining central office codes left in the 310 Numbering Plan Area (NPA) to an emergency pool for immediate allocation to those carriers who can meet stringent requirements that establish imminent need for the codes.

Joint Petitioners propose that the remaining 310 codes be placed in a second pool, the "remainder pool." Codes in the remainder pool would also be allocated on a needs-based test using the existing 310 NXX lottery procedures. Carriers requesting participation in the 310 remainder pool lottery would need to submit documentation to establish they meet the same imminent exhaust criteria specified in the Emergency Procedures. In order to preserve the existing lottery procedure as much as possible and simplify administration, Petitioners have not proposed to make any changes to the number of codes allocated per month or to the percentages of codes allocated to initial and growth categories. However, Joint Petitioners would not object to a single category for the remainder pool lottery.

Joint Petitioners assert that adoption of the emergency procedures would serve the public interest. Carriers have an immediate need for 310 codes that is not being met by the lottery process or area code relief. Demand for 310 codes vastly exceeds the monthly allotment. Additionally, the North American Numbering Plan Administrator (NANPA) has reported that over eighty central office codes were assigned to carriers from the 424 NPA before it was temporarily suspended. Joint Petitioners argue that without access to 310/424 numbers, some carriers cannot enter the marketplace, while others are in danger of running out of numbers to serve customers.

Joint comments were filed by GTE California Incorporated (GTEC), Pacific Bell, Paging Network of Los Angeles, Inc., The Telephone Connection of Los Angeles Inc., Mobilemedia Communications/Mobilecom, AirTouch Communications, Inc., and Pacific Bell Wireless ("Joint Commenters") in opposition to the petition filed by the Joint Petitioners. The Joint Commenters argue that, if adopted, the allocation procedures proposed by the Joint Petitioners will disadvantage certain industry segments in the allocation of codes, and will

result in a chaotic situation, only hastening code exhaust and defeating the purpose of the lottery.

The Joint Commenters claim the proposed emergency procedures would discriminate against carriers seeking growth codes, and tilt the eligibility for NXX codes to carriers seeking "initial" codes. In fact, Joint Commenters argue the proposed requirements would almost guarantee that no established carrier could qualify for growth codes. The Joint Commenters further argue that the petition was improperly filed under Rule 46 of the Commission's Rules of Practice and procedure. Rule 46 of the Commission's Rules of Practice and Procedure states:

"Petitions are functionally equivalent to written motions. The requirements of Rule 45 apply to petitions, except when these rules provide different or more specific requirements for certain types of petitions. (See rule 47 on petitions for modification, Rule 53 on petitions to intervene, and Rule 84 on petition to set aside submission.)."

The petition here seeks to replace the current lottery procedure in the 310 NPA with the emergency procedures proposed by Joint Petitioners. The Joint Commenters claim this would amount to a modification of Decision (D.) 98-05-021 and D.96-09-087, each of which contemplated the continuation of the current lottery procedures in the 310 NPA pending implementation of the 424 overlay. Thus, Joint Commenters argue that the requirements of Rule 47, rather than Rule 46 would apply.

Joint Commenters contend that the petition should be rejected because it does not satisfy the requirements of Rule 47. Rule 47(b) requires that a petition for modification "must propose specific wording to carry out all requested modifications to the decision." The Petition here proposes no specific wording changes to D.96-09-087 or D.98-05-017. It does not let parties know the relief it requests would modify previous decisions. Additionally, parties are given

30 days to respond to Rule 47 petitions for modification, not the 15 days allowed by Rule 46.

While the Commission's Office of Ratepayer Advocates (ORA) supports the adoption of the proposed criteria for obtaining NXX codes in the 310 NPA, ORA does not support the establishment of an "emergency pool" and a "remainder pool" for NXX codes.

ORA argues that while an "emergency pool" of NXX codes would be in the interest of the telecommunications industry, the telecommunications industry's interests may not correlate with the public interest in this case. ORA contends Petitioners and other parties have not demonstrated that customers in the 310 NPA are unable to access the telecommunications network because of the rationing of NXX codes in the 310 NPA. In fact, customers have access to over 7 million telephone numbers in the 310 NPA alone.

ORA also recommends that the Commission reduce the allotment of rationed NXX codes in the 310 NPA lottery from six to four per month.¹ Although this reduction will not satisfy the demand of carriers for NXX codes in the 310 NPA, ORA believes it will serve the public interest by providing the Commission with additional time to resolve the current controversy regarding the 310 NPA.

Discussion

We agree with Petitioners that emergency procedures are needed for allocating the remaining NXX codes in the 310 NPA. The need for emergency procedures is particularly acute in view of the recent action taken by the Commission suspending the planned implementation of the 310/424 NPA

¹ Since the filing of ORA's comments, the 310 NPA lottery allotment has been reduced to 2 codes per month per D.99-09-067.

overlay relief plan in D.99-09-067. In conjunction with suspending that plan, we committed to undertaking various measures to extend the life of the 310 NPA through more efficient utilization of existing NXX codes through number pooling and related measures. In view of the very limited number of remaining NXX codes within the 310 NPA which have not been assigned, it is imperative that interim procedures be implemented to assure that the remaining codes are utilized in the fairest and most efficient manner pending implementation of number pooling.

The Federal Communications Commission (FCC) issued an order on September 15, 1999, granting the petition of this Commission for delegation of additional authority pertaining to area code relief and NXX code conservation measures. As part of the delegated authority, this Commission is now authorized to direct the NANPA to reclaim codes which have not been placed into service in a timely manner. The FCC also authorized the Commission to hear and address claims to obtain NXX codes outside of the rationing process. The FCC order thus delegates to us the authority to hear and address the substance of the Joint Petitioners' request to establish a separate emergency pool of NXX codes outside of the monthly lottery rationing process. The FCC order also delegates authority for this Commission to require carriers to submit utilization data in connection with requests for numbering resources, and to require minimum "fill" rates before obtaining NXX codes.

We disagree with the Joint Commenters' argument that the emergency allocation procedures as proposed by the Joint Petitioners should not be adopted because the proposal was filed under Rule 46 instead of Rule 47. In particular, the Joint Commenters claim that the actions proposed in the Petition would modify D.96-09-087, which instituted the lottery, and D.98-05-021, which authorized the 310/424 NPA overlay relief plan. We find no basis to conclude

that adoption of emergency code allocation procedures for the 310 NPA along the lines proposed by Petitioners requires a modification of D.96-09-087. OP 4 of D.96-09-087, stated: "In the event a lottery is conducted, it shall be administered according to the procedures applied in the State of Massachusetts..." That decision set in motion a process to deal with then-pending implementation of the 310/562 NPA geographic split relief plan. Since then, that relief has been concluded, and a new relief plan, the 310/424 NPA was initiated and is now suspended. Nothing in D.96-09-087 addressed how conditions might evolve as subsequent relief plans become necessary, nor specified how the details of number allocation might change over time. The proposed emergency allocation procedures would not eliminate the ongoing conduct of the lottery process as initiated in D.96-09-087. Instead, additional measures for allocating codes beyond the regular lottery could be instituted prospectively. There is nothing in D. 96-09-087 that constrained the Commission from developing additional measures to address efficient number utilization on a prospective basis.

We conclude that several ideas proposed by the Joint Petitioners are useful in developing appropriate emergency allocation procedures for the 310 NPA. We shall therefore adopt interim procedures applicable to the 310 NPA for (1) return of NXX codes that have not been used; (2) establishment of an emergency pool of NXX codes; and (3) prescription of utilization and needs-based criteria to be met as a basis for subsequent assignments of NXX codes. While the procedures we adopt herein shall apply only to the 310 NPA at this time, we intend to consider broadening the applicability of these rules to other NPAs in a subsequent order.

Return of Previously Assigned NXX Codes

We shall adopt the Petitioners' proposed rules for the return of previously assigned NXX codes in the 310 NPA with certain modifications, as set

forth in Attachment A. These rules call for the return to the NANPA of any previously assigned codes that have not been placed in service within six months of the assignment effective date. For any subsequent codes assigned after the effective date of this decision, the codes must be placed in service within three months of the assignment date or of the effective date of this decision, whichever is later, unless technical difficulties exist beyond the carrier's control.

We shall delegate responsibility to the TD to monitor the volume of NXX codes that are returned pursuant to this order and to make a determination concerning how the returned codes can most effectively be utilized among carriers in consultation with the NANPA.

Establishment of a Special NXX Code Pool

We agree that a separate pool of NXX codes should be established for priority assignments outside of the regular lottery process. We conclude that an emergency pool should be established to make codes available on a priority basis to those carriers meeting the imminent exhaust criteria in Attachment A, and with a preference granted to carriers that had previously been assigned NXX codes in the 424 NPA in anticipation of the opening of the overlay. Although we have suspended the 424 NPA overlay, we recognize that a number of carriers had obtained NXX codes in the 424 NPA, expecting to be able to offer numbers to their customers from those NXX codes upon the scheduled activation of the 424 NPA overlay. To mitigate the disruption to prospective customers relying on those carriers that previously obtained NXX codes in the 424 NPA, we stated in D.99-09-067 that such carriers shall be given an opportunity to apply for a priority assignment of NXX codes from the remaining 310 NPA inventory. (Decision at 16).

As noted previously, since over 80 NXX codes in the 424 NPA were assigned to carriers before the activation of the NPA was temporarily suspended,

it is not possible to provide these carriers with replacements for all of the NXX codes they were previously assigned. As of the August 18, 1999, lottery, only 51 NXX codes remained unassigned in the 310 NPA. In D.99-09-067, we stated that one NXX code would be withheld in each of the 16 rate centers in the 310 NPA where demand is demonstrated. We must also reserve sufficient NXX codes for subsequent lotteries to prevent total code exhaustion of the 310 NPA before number pooling and related conservation measures can free up additional numbering resources.

In D.99-09-067, we reduced the monthly lottery allotment in the 310 NPA from 6 to 2 codes per month. Although we expect that some additional codes may subsequently become available through the return of unused codes, we cannot at this time determine precisely how many additional codes may become available through returns. We conclude that it is prudent to withhold at least 27 codes for lottery rationing to continue in the 310 NPA while our initiatives for number pooling and related measures are being implemented.² By adding the 16 NXX codes designated for number pooling--one for each rate center in the 310 NPA--we arrive at a total of 43 NXX codes that are committed. This leaves a total of 8 remaining unassigned codes at this point. We shall designate these 8 codes as a special pool for priority assignment. Consistent with existing lottery rules, the 8 codes shall be allocated 5 for initial and 3 for growth codes.

As a basis for assigning the special pool of codes among the carriers, we shall require that carriers meet the needs-based utilization criteria as proposed by the Joint Petitioners with modifications and set forth in

² 2 of the 27 codes were issued to carriers in the September 1999 lottery.

Attachment A. While any carrier meeting the imminent exhaust criteria in Attachment A may participate in the one-time lottery for the 8 NXX codes in the special pool, we shall give a special preference to those carriers that also previously obtained one or more NXX codes in the 424 NPA. The latter category of carriers will be given an additional preference in the one-time lottery for the special pool of 8 codes by increasing their odds of winning a code in relation to other carriers that were not 424 NPA code holders. As we recently prescribed in D.99-10-055, carriers are generally limited in the number of applications for codes that they may submit not to exceed the number of codes to be rationed in a given month. We shall make an exception, however, for carriers that previously obtained codes in the 424 NPA.

Qualifying carriers that obtained one or more codes in the 424 NPA shall be permitted to submit one additional application for each of the codes in the one-time lottery from the special pool. In this way, those carriers will have a greater chance of winning one of the 8 codes in comparison to other qualifying carriers that were only permitted to submit a single application for each of the codes.

Of the carriers remaining eligible after demonstrating compliance with the utilization criteria, we shall direct that a separate one-time lottery be conducted to determine the assignment of the 8 codes, to be conducted concurrently with the scheduled regular lottery for the 310 NPA. The winning carriers shall be able to choose in which rate center the code is used.

Eligible carriers seeking one of the 8 codes from the special lottery must separately specify the number of growth codes versus initial codes they request, and must comply with the relevant Attachment A imminent exhaust criteria for either initial or growth codes as relevant. Only carriers that demonstrate compliance with the imminent exhaust criteria set forth in

Attachment A within 30 days of this order shall be allowed to participate in the special lottery. The scheduling of the special one-time lottery shall coincide with the regular lottery to be held in December 1999.

The codes that are not designated for the special pool shall be assigned to the lottery as part of the "remainder pool" as specified in Attachment A. Any codes that are returned pursuant to the code reclamation process outlined above shall be added to the remainder pool, part of which is allotted at the rate of two codes per month. Carriers applying for codes pursuant to the lottery must meet the same utilization criteria as designated for the emergency pool.

In previous lotteries, we engaged in the practice of automatically assigning carriers that were denied NXX codes in the immediately preceding lottery as being next in line for the drawing of a code in the following month's lottery. We shall discontinue this practice. All carriers will henceforth be required to satisfy the imminent exhaust criteria set forth in Attachment A irrespective of their status in any preceding lotteries. If a carrier fails to satisfy the imminent exhaust criteria, as established in Appendix A, that carrier will not be accorded any priority treatment in a succeeding month's lottery merely because of being denied a code in the prior lottery. In this manner, only those carriers most in need of numbering resources will be in a position to obtain them.

We expect to prescribe in a subsequent decision more detailed criteria for carriers' use of sequential number assignments and fill rates. In the meantime, however, we expect all carriers assigned a code subject to the procedures outlined herein to preserve as many poolable blocks of thousand numbers in their central offices as possible. As a condition of being assigned any

further codes in the 310 NPA, we expect carriers to abide by the following provisions taken from a Minnesota Number Pooling Task Force Report³ that the California Number Pooling Task Force presented for adoption by this Commission⁴:

"All NXX code holders should attempt to provide services in a manner which does not encourage the inefficient use or depletion of telephone numbers in any [California] NPA. In order to accomplish this goal, all persons, including providers of telecommunications services who have accepted assignment of and make use of central office codes (NXXs) in [California], should preserve as many poolable blocks of thousand numbers in their central office codes as possible. This should enhance the effectiveness of thousand-block number pooling, as a number conservation tool, once it becomes practical to implement number pooling in [California] exchanges.

"All NXX code holders are encouraged to assign numbers from thousand number blocks already in use rather than from unused thousand number blocks. This recommendation is not meant to prohibit service providers from meeting customer number assignment."

Future Adjustments to 310 Rationing Scheme

California faces a numbering crisis in the 310 area code. Only prudent management and timely decision making will allow us to effectively manage the number resources available in the 310 area. Today's order establishes certain

³ See the Minnesota Number Pooling Task Force Interim Report, February 11, 1999, Docket P-999/M-97-506

⁴ See the Interim Report of the Number Pooling Task Force, March 22, 1999, issued in this proceeding.

rules governing a special lottery to disburse 8 codes (80,000) numbers in the 310 NPA. Should the Telecommunications Division Director determine, in consultation with the assigned Commissioner, that the public interest warrants, and numbering resources permit, the number of codes disbursed via the monthly lottery may be increased beyond the two codes set in this order.

Furthermore, the Director of Telecommunications Division, in consultation with the assigned Commissioner, is authorized to decrease the number of codes held in reserve to "stock" the 310 NPA pooling if the Director concludes based on the utilization studies and other data that sufficient 1000 Blocks will be returned to the pool.

The Director of Telecommunications Division, in consultation with the assigned Commissioner, may set aside codes to be disbursed to carriers demonstrating extraordinary need. The Director of Telecommunications Division in consultation with the assigned Commissioner shall establish rules and guidelines determining standards for extraordinary need, and shall consider as criteria: (1) carriers' inability to avail themselves to the 1,000 Block pooling and (2) carriers having been forced to deny service to customers for lack of numbers.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on October 22, 1999 and reply comments on November 1, 1999. We have incorporated the comments, as appropriate, in finalizing the decision.

Findings of Fact

1. Emergency code allocation procedures are needed for the 310 NPA, particularly in view of the recent action taken by the Commission suspending the planned implementation of the 310/424 NPA overlay relief plan in D.99-09-067.

2. The FCC issued an order on September 15, 1999, granting the Petition of this Commission for delegation of additional authority pertaining to area code relief and NXX code conservation measures.

3. As part of the FCC's delegated authority, this Commission may direct the NANPA to reclaim codes which have not been placed into service in a timely manner.

4. The FCC order delegates authority for this Commission to hear and address the Joint Petitioners' request to establish a separate emergency pool of NXX codes outside of the monthly lottery rationing process.

5. The FCC order also delegates authority for this Commission to require carriers to submit utilization data in connection with requests for numbering resources, and to require minimum "fill" rates before obtaining additional NXX codes for growth needs.

6. After the August 18, 1999, lottery, only 51 NXX codes remained unassigned in the 310 NPA.

7. D.99-09-067 prescribed that one NXX code would be withheld in each of the 16 rate centers in the 310 NPA where demand is demonstrated.

8. D.99-09-067 reduced the monthly lottery allotment in the 310 NPA from 6 to 2 codes per month.

9. After subtracting 16 codes to be reserved for number pooling and reservation of codes to provide for continuation of regular lotteries, there remain 8 codes to assign to the special pool as prescribed in Attachment A of this order.

Conclusions of Law

1. The Petitioners' proposed rules for the return of previously assigned NXX codes, with modifications and as set forth in Attachment A, provide a reasonable set of criteria as a basis for reclamation by the NANPA of unused codes.

2. Petitioners' filing under Rule 46 is procedurally acceptable since it is not necessary to adopt modifying language to prior decisions in order to implement emergency code allocation procedures for the 310 NPA prospectively.

3. Petitioners' proposed rules for an emergency pool should be modified to apply to carriers that previously obtained codes in the 424 NPA and to provide other clarifications.

4. An emergency pool of 8 codes outside of the regular lottery process should be established to address the needs of carriers that meet the imminent exhaust criteria set forth in Attachment A and that previously obtained a code in the 424 NPA in anticipation of the overlay relief being implemented.

5. Sufficient NXX codes should be preserved as a remainder pool for subsequent lotteries and to initiate number pooling as prescribed in Attachment A to prevent total code exhaustion before number pooling and related conservation measures can free up additional numbering resources in the 310 NPA.

6. It is prudent to withhold at least 27 codes for regular lottery rationing to continue in the 310 NPA while our initiatives for number pooling and related measures to free up additional number resources are being implemented.

O R D E R

IT IS ORDERED that:

1. The Petition of MediaOne and others to adopt emergency allocation procedures for the 310 Numbering Plan Area is granted, in part, and denied in part, as reflected in the ordering paragraphs below and in procedures adopted in Attachment A.
2. The interim emergency code allocation procedures set forth in Attachment A to this order are hereby adopted for use in the 310 area code.
3. The special, one-time lottery drawing in December 1999, for the emergency pool as set forth in Attachment A shall apply for 310 NPA code holders meeting the prescribed eligibility criteria who apply within 30 days of this Order.
4. Should the Telecommunications Division Director, in consultation with the assigned Commissioner, determine that the public interest warrants, and number resources permit, the number of codes disbursed via the monthly lottery for the 310 NPA may be increased beyond the two codes set in this order.
5. The Director of Telecommunications Division, in consultation with the assigned Commissioner, is authorized to decrease the number of codes held in reserve to "stock" the 310 NPA pooling if the Director concludes, based on the utilization studies and other data, that sufficient 1000 Blocks will be returned to the pool.
6. The Director of Telecommunications Division, in consultation with the assigned Commissioner, may set aside codes to be disbursed to carriers demonstrating extraordinary need. The Director of Telecommunications Division, in consultation with the assigned Commissioner, shall establish rules and guidelines determining standards for extraordinary need, and shall consider

as criteria: (1) carriers' inability to avail themselves to the 1000 Block pooling and
(2) carriers having been forced to deny service to customers for lack of numbers.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I will file a written dissent.

/s/ HENRY M. DUQUE
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

ATTACHMENT A

**EMERGENCY ALLOCATION PROCEDURES
FOR CODES IN NPA 310**

Return of Codes

1. Any codes assigned prior to the effective date of this decision must be placed in service (i.e. have an active customer) within six months of the assignment effective date. Any codes assigned after the effective date of this decision must be placed in service (i.e. have an active customer) within three months of the assignment date, or the effective date of this decision, whichever is later, unless technical difficulties exist beyond the carrier's control. In the event of such difficulties, the carrier must notify NANPA in writing on or before 90 days documenting an anticipated in service date. In no case, however, will a carrier be allowed to retain a code without placing it in service for longer than six months from the effective date of this decision. Any codes not placed into service in accordance with the timelines specified herein must be returned to the pool except for carriers that are not LNP-capable. At this time, non-LNP-capable carriers will not be required to return codes for use in the pool.
2. The current priority lists will be reviewed by the NANPA to determine the handling of priority numbers assigned to carriers with under multiple Operating Company Numbers (OCNs). Any carrier currently holding multiple priority numbers in the same rate center and the same industry segment issued in any one month as a result of requests under multiple OCNs will relinquish all but one of the priority numbers.
3. As of the effective date of this decision, Lockheed Martin as the NANPA, will begin code reclamation procedures consistent with the requirements specified in Paragraph 1 above. Such reclamation procedures will continue until relief is implemented.
4. Any codes returned will revert to the Remainder Pool or as subsequently determined by the Telecommunications Division.

Emergency Pool

An emergency pool of 8 unassigned codes as of the effective date of these Emergency Allocation Procedures will be established with 5 codes designated for the category and 3 codes for the growth category. If the number of requests exceeds the number of codes in the emergency pool, the codes from the emergency pool will be allocated in a single lottery using the currently lottery mechanism in the 310 area code. The special lottery, however, shall be conducted on a one-time basis only. No priority list will be established for a subsequent lottery. While any carrier meeting the imminent exhaust criteria in Attachment A may participate in the one-time lottery for the 8 NXX codes in the special pool, a special preference shall be given to those carriers that also previously obtained one or more NXX codes in the 424 NPA. Qualifying carriers that obtained one or more codes in the 424 NPA shall be permitted to submit one additional application for each of the codes in the one-time lottery from the special pool. In this way, those carriers will have a greater change of winning one of the 8 codes in comparison to other qualifying carriers that were only permitted to submit a single application for each of the codes. If the number of requests exceeds the number of codes in the emergency pool, the codes from the emergency pool will be allocated in a single lottery using the current lottery mechanism in the 310 area code. The special lottery, however, shall be conducted on a one-time basis only. No priority list will be established for a subsequent lottery. Any of the 8 codes which are not drawn will be reassigned to the Remainder Pool. Carriers may request codes under only one OCN per industry segment, per rate center. NANPA will send notice of the adoption of these Procedures to all 310 code holders and will specify the dates on which carriers eligible to obtain a code from the emergency pool must submit requests to NANPA.

All documents regarding requests codes in the emergency pool shall be submitted to the NANPA with copies to the director of the California Public Utilities Commissions's Telecommunications Division.

Imminent Exhaust Criteria

A. Growth Codes

1. For each rate center in which a carrier submits a request, the carrier must supply NANPA with a Month-to-Exhaust form demonstrating, for that rate center, number exhaust within three months.

2. The carrier must also supply to NANPA six months of historic utilization data and six months of forecast data to support the exhaust projections. In presenting its utilization data, carriers must use the INC definitions of numbers in the assigned, reserved, administrative, aging, and available categories. (The utilization data should be provided by rate center, in whole numbers, not percentages.) If the average projected monthly demand is within 15% of the historic utilization rate, a carrier's forecast data will be accepted. If the demand exceeds 15% of the historic utilization rate, the carrier must explain the deviation prior to the NANPA's determination that a carrier's forecast data will be accepted or denied.
3. The carrier must provide documentation to the NANPA demonstrating that all numbers in its reserved status are only those numbers for which the carrier has a legally enforceable written agreement.
4. The carrier must have reduced its aging period to 60 days for residential telephone numbers and six months for business telephone numbers unless a longer period is required by CPUC Decision. The carrier must provide appropriate documentation that it has met this criteria to the NANPA.

B. Initial Code in a Rate Center

1. The carrier must supply to NANPA documentation, by rate center, of a bona fide request to provide service within three months or comparable documentation establishing that the carrier is prepared to market service to customers in that rate center within 3 months.
2. The carrier must also submit to NANPA documentation that within three months of the submission, they will be interconnected and have sufficient operable facilities in the rate center requested.

Remainder Pool

The remaining, unassigned 310 codes as of the effective date of this decision will be placed in the remainder pool. Codes in the remainder pool will be available for allocation to carriers which meet the imminent exhaust criteria specified above. Designated codes from the remainder pool will be allocated using the current lottery mechanism in the 310 area code, at the rate of 2 codes per month. Carriers wishing to participate in the lottery for the 310 remainder pool shall submit requests to NANPA on the dates currently specified for the 310 lottery, together with the requisite documentation to establish imminent exhaust. Carriers may request codes from the remainder pool under only one OCN per industry segment, per rate center. A carrier who already holds a priority number for a 310 code will be allocated a code pursuant to the existing lottery procedures, provided that they submit the requisite documentation to establish imminent exhaust. All documentation regarding requests for initial and growth codes in the remainder pool shall be submitted to the NANPA with copies to the director of the California Public Utilities Commission's Telecommunications Division.

The current priority lists will be reviewed by the NANPA to determine the handling of priority numbers assigned to carriers with under multiple OCNs. Any carrier currently holding multiple priority numbers in the same rate center and the same industry segment issued in any one month as a result of requests under multiple OCNs will relinquish all but one of the priority numbers.

In future 310 NPA NXX lottery drawings, carriers with multiple OCN's are prohibited from applying for multiple 310 NXX codes in the same rate center for the same industry segment using different OCNs, per each lottery category (i.e., initial or growth).

Other

Except as specified above, all current lottery rules and procedures apply for the one-time emergency pool lottery drawing and lottery drawings for designated NXX codes in the remainder pool.

(END OF ATTACHMENT A)

Henry M. Duque, Commissioner, dissenting:

The order of the majority develops "Imminent Exhaust" and "Initial Code" criteria for allocating eight of the 47 remaining NXX telephone prefixes left in the 310 area code. These criteria are sensible, and, for example, give preferences to those carriers who have a "bona fide request to provide service within three months or comparable documentation establishing that the carrier is prepared to market service to customers in that rate center within three months." Thus, if a carrier meets this screening criterion or one of the other criteria contained in the appendix to the majority's order, it is virtually a certainty that the unavailability of phone numbers has already denied or will soon deny a customer's choice of carrier.¹

Despite its elegant determination of who really needs telephone numbers, the majority's decision continues draconian rationing even for those carriers who meet its eligibility criteria. This becomes particularly clear when considering the facts in this proceeding. As a consequence of today's order of the majority, those carriers who meet the proposed criteria must participate in a lottery that contains only eight telephone prefixes. This "eight" stands in sharp contrast to the demand for codes. In July alone, 77 applications for codes in the 310 went unmet. In addition, carriers planning to offer service have already received 81 codes in the 424-overlay area code, which is no longer available. Although it is unclear how many of these 156 requests for codes would meet these new rationing criteria, denying a code to any carrier who meets these criteria is poor policy, for it holds development of the state's telecommunications infrastructure hostage to a government-created number shortage.

The majority's decision also fails to comport with Federal law and FCC regulation. The FCC's regulations:

" . . . generally require that numbering administration: (1) facilitate entry into the telecommunications marketplace by making telecommunications resources available on an efficient and timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications technology over another."²

¹ This is the legal precondition for the exercise of pooling authority by this Commission. The Federal Communications Commission's (FCC) grant of authority states:

"Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources."

This text is found at: In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, Order, CC Docket No. 96-98, FCC 99-248 (rel. September 15, 1999), paragraph 9).

² This text is quoted from In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, Order, CC

In particular, the FCC's pre-conditions for the lawful exercise of the pooling authority delegated to California are very clear. The FCC's order delegating authority warns:

"Thus, the California Commission, to the extent it acts under the authority delegated herein, must ensure . . . that numbering resources are made available on an efficient and timely basis . . ."³

By making carriers who meet the stringent rationing criteria eligible for a lottery that contains only eight prefixes, rather than providing the carriers with numbers, it is clear that the proposed order fails to make numbering resources "available on an efficient and timely basis."

The FCC further cautions:

"The grants of authority herein are not intended to allow the California Commission to engage in number conservation to the exclusion of, or as a substitute for, unavoidable and timely area code relief. While we are giving the California Commission tools that may prolong the lives of the existing area codes, the California Commission continues to bear the obligation of implementing code relief when necessary, and we expect the California Commission to fulfill this obligation in a timely way."⁴

Unfortunately, the majority's order restricting the number of telephone prefixes offered to a paltry eight substitutes number rationing – not even number conservation – for timely area code relief.

It is perhaps unfortunate that the very rationality of the criteria contained in the majority's order gives a sensible veneer to an irrational policy. NEXTLINK has already told the Commission that it has had to cancel contracts with business customers because of its inability to provide numbers. A truly sensible, rational and legal policy would provide telephone numbers to any carrier that meets the criteria set forth in the appendix to the majority's order.

Thus, for reasons of policy and law, the Commission policy should grant telephone numbers to any carrier that meets these stringent criteria. If we cannot do this, if there are insufficient telephone numbers to meet the demand of carriers that satisfy these criteria, then the Commission should simply declare the 310 area code exhausted and pursue a back-up plan now. Our policy should be one of providing numbers, not of developing rationing schemes.

Docket No. 96-98, FCC 99-248 (rel. September 15, 1999), paragraph 2. The underlying regulations are at 47 C.F.R. § 52.9.

³ Ibid., at paragraph 8. The FCC's order includes footnote 27 citing regulatory and statutory support for these requirements. Footnote 27 references include 47 C.F.R. § 52.9(a) and 47 U.S.C § 251(e)(1).

⁴ Ibid., at paragraph 9.

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D.99-11-027

In conclusion, the majority's decision establishes criteria to determine true need for phone numbers yet refuses to make numbers available to all carriers that need them. The decision of the majority simply makes it clear that our current policies fail to provide numbers to carriers who need them and that our policies fail to comport with Federal law and regulation. Unfortunately, despite the hard work accomplished by today's order, it simply repeats the legal errors contained in D.99.09-067, the 424 Suspension Order. For these reasons, I must dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

November 4, 1999

San Francisco