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Decision 99-12-051 December 16, 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.

FORMAL FILE COPY

(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

By this decision, we grant the Petition of the Office of Ratepayer Advocates (ORA), asking the Commission to halt implementation of all of the currently pending area code overlays that were previously approved by various Commission decisions. We likewise grant the City of Berkeley's "Petition to Modify D.99-04-024," to halt start-up of the 510/324 NPA overlay and the related 1+10-digit dialing requirement, and the City and County of San Francisco's and the County of Marin's (the Counties) jointly filed Petition to Modify Decision (D.) 99-04-025, to halt start-up of the 415 NPA overlay and the related 1+10-digit dialing requirement. A plan to develop a staggered schedule for implementing additional number pooling trials and related measures are instituted to address impending code exhaustion. We shall suspend the currently scheduled implementation dates for the institution of mandatory 1+10-digit dialing and for the opening of the overlay area code in each of the affected Numbering Plan Areas (NPAs) (i.e., in the 408, 415, 510, 650, 714, and 909 NPAs) where overlays have been approved. We do so in recognition that 1+10-digit dialing and the

prospect of overlay area codes caused significant customer confusion and inconvenience in the 310 NPA. As a result, we ordered a halt to the implementation of the 310/424 NPA overlay by Decision (D.) 99-09-067. We conclude that similar considerations warrant a halt to the remaining NPA overlay plans that have previously been approved by the Commission, as identified in the pleadings above.

We continue to remain cognizant of the need to assure timely availability of scarce numbering resources, and to implement NPA relief as necessary to achieve this goal. Nonetheless, the concerns raised in the ORA petition justify taking a more critical look concerning industry claims of NXX code exhaust in the NPAs currently scheduled for overlays. We seek to put an end to inefficiencies in the manner by which numbers are currently assigned in blocks of 10,000, irrespective of the actual utilization of the numbers. We believe the public interest demands the steps we order here, specifically, an accounting of what numbers are actually in use in each of these NPAs and the exploration of 1,000-block pooling before we set a date for further area code relief.

Today's decision takes the first step of suspending the overlay plans. Subsequent work is needed to explore, develop and implement the necessary alternative plans of action for more efficient use of number resources in each affected NPA in order to defer the need for new area codes at this time. We must assess to what extent number pooling and other alternative remedies can defer the need for new area codes in each of the affected NPAs. We also establish a procedure for adopting a backup relief plan in each of the affected NPAs, as required by the FCC. We intend to implement on an expeditious basis alternative number preservation measures for each of the NPAs, taking into account the need for a staggered implementation schedule while keeping code exhaustion constraints in view. Accordingly, we direct the assigned ALJ to issue

a ruling within 10 days of this order, soliciting comments from parties regarding further measures needed to implement the programs we initiate herein for each of the affected NPAs.

I. Procedural Background

On September 20, 1999, ORA filed an "Emergency Motion to Suspend Implementation of Mandatory 1+10-digit dialing in the 408, 415, 510, 650, 714, and 909 NPAs. ORA requests that the Commission reevaluate the timing of and the need for area code relief in each of those NPAs.

On September 21, 1999, Mayor Shirley Dean of Berkeley, on behalf of various groups,¹ filed a separate "Petition to Modify D.99-04-024," to halt start-up of the 510/324 NPA overlay and the related 1+10-digit dialing requirement. On October 6, 1999, the City and County of San Francisco and the County of Marin jointly filed a Petition to Modify D.99-04-025, to halt start-up of the 415 NPA overlay and the related 1+10-digit dialing requirement.

An Administrative Law Judge (ALJ) Ruling was issued on October 13, 1999, consolidating the above pleadings and setting a common response date for each of the pleadings. Comments on the consolidated pleadings were filed on October 21, 1999.

¹ Petitioners include Mayor Shirley Dean of Berkeley, California on behalf of the City of Berkeley, California; Addison-Acton Neighborhood Association; Bananas, Inc.; Bateman Neighborhood Association; Claremont-Elmwood Neighborhood Association; Community Association of North Berkeley (CAN-B); 1200 Campus Group; Dwight/Hillside Neighborhood Association; El Dorado Neighborhood Association; Fulton-Russell Neighborhood Association; Fulton Street Block Organization; 1200 Block of Josephine Street; Live Oak/Cordonices Creek Association; Maybeck Twin Drive Association, Inc.; Neighborhood Watch Group of 280 California; Page Street Neighbors; Panoramic Hill Association; 100 Parker Neighborhood Watch Group; Solano Avenue Association; Stonemountain & Daughter Fabrics; and Valley Street Block Association.

II. Parties' Positions

In addition to the petitioning parties and ORA, responsive comments were submitted by Pacific Bell (Pacific), the Cellular Carriers Association of California (CCAC), and group of commenters representing competitive local carriers (Joint Commenters), and other independent competitive local carriers. Comments were also filed by The Utility Reform Network (TURN) and the City of Los Angeles.

Specifically, Mayor Dean in her Petition seeks to have the Commission delete the requirement that the 510 NPA overlay relief plan take effect on July 15, 2000. Also, Mayor Dean requests the Commission to delete the requirement that mandatory 1+10-digit dialing take effect in the 510 NPA on April 15, 2000. Additionally, Mayor Dean requests that the number of central office codes (NXX codes) awarded in the 510 NPA lottery be reduced from nine to six per month. Prior to adding a new area code in the 510 NPA, Mayor Dean asks the Commission to examine the extent of actual utilization of NXX codes and implement appropriate measures that may mitigate the need for area code relief. ORA fully supports the Petition to Modify Decision 99-04-024.² ORA recommends that the Commission grant Mayor Dean's Petition in its entirety.

The Counties, in their Petition to Modify Decision 99-04-025, request that the Commission delete the requirement that the 415 overlay relief plan take effect on April 1, 1999; that the Commission delete the requirement for mandatory 1+10-digit dialing to take effect on July 22, 2000; and that the Commission delete

² On September 20, 1999, ORA filed an Emergency Motion to Suspend Implementation of Mandatory 1+10-Digit Dialing in the 408, 415, 510, 650, 714, and 909 NPAs as well to request that the Commission reevaluate the timing of and the need for area code relief in those NPAs.

the requirement that a new area code be activated on October 21, 1999. Additionally, the Counties seek to establish a 415 NPA preservation plan; condition future area code relief of the 415 NPA on a comprehensive audit of NXX code holders; and establish a process for the allocation of NXX codes in an emergency situation. Finally, the Counties have requested that the Commission seek authority from the Federal Communications Commission (FCC) to waive the mandatory 10-digit dialing requirement for the implementation of an overlay area code.

In general, ORA supports the Counties' Petition; however, ORA does not support the elimination of mandatory 10-digit dialing in an all-services overlay area code. If the Commission implements an overlay area code in California, competitive neutrality, customer equity and education concerns demand that all calls be made using the same dialing pattern. ORA recommends that the Commission grant the Counties the specific relief sought regarding the modification of D.99-04-025, but reject their proposal to seek a waiver from the requirement for mandatory 10-digit dialing in overlay area codes.

TURN and the City of Los Angeles also supports the suspension of the overlay plans for the reasons cited in the filed pleadings of the Petitioners and ORA.

The Joint Commenters³ oppose the Petitions to halt the previously ordered overlays, and believe that the Commission should proceed with the overlays it has already ordered. Joint Commenters argue that, although the effectiveness of

³ The Joint Commenters include AT&T Communications of California, Inc. (AT&T), Qwest Communications Corp., MediaOne Telecommunications of California, Inc., Optel Telecom, Inc., ICG Telecom Group, Inc., NEXTLINK of California, Inc., and MCI WorldCom, Inc. (Collectively, the "Joint Commenters.")

number conservation methods should be fully evaluated, the Commission should not bring area code relief to a halt while this evaluation is being done. In the event the Commission chooses not to implement the planned overlays, the Joint Commenters urge the Commission expeditiously institute a plan for a geographic split in each of the affected NPAs with the establishment of a firm implementation date for each new NPA. Joint Commenters recommend no further number pooling trials be implemented in California at this time beyond the 310 and 818 NPAs due to concerns that additional trials would jeopardize the reliability of the public switched network.

CCAC does not necessarily oppose the requests to reevaluate the NPA overlay decisions, but believes each decision must be individually reevaluated on its own merits. If relief of a particular NPA cannot be delayed without curtailing carriers' access to numbering resources on an equitable and nondiscriminatory basis, then CCAC claims that area code relief must be implemented as required by law. Pacific takes a similar position.

III. Discussion

A. Suspension of Overlays

The pleadings before us require the weighing of two countervailing interests. On the one hand, federal law requires us to implement area code relief when necessary, and for the sake of promoting competition, to make numbering resources available to telecommunications carriers efficiently and expeditiously so those carriers can offer service. On the other hand, we are charged with protecting consumer interests and minimizing the adverse affects that may result from the creation of new area codes regardless of whether it is achieved through overlay or split. When the Commission adopted each of the overlay plans that have been approved, it recognized the importance of minimizing the adverse

impacts of introducing yet another new area code. The Commission believed at the time that an overlay with 1+10-digit dialing appropriately balanced those tradeoffs. We acknowledged that however a new area code is introduced, through overlay or split, it would be disruptive to customers. We revisit our earlier conclusions on this issue with a heightened sense of how those disruptions affect customers.

The Commission took several steps to solicit the views of the public on their preferences for overlays versus splits. The extent of negative public reaction to an overlay and 1+10-digit dialing, however, was not fully realized, nor was this a salient issue to the local public prior to the Commission's adoption of the 310 NPA overlay in D.98-05-021. The customer resistance and disruption generated by the implementation of 1+10-digit dialing in the 310 NPA suggested that the hardships encountered by the public were greater than those the Commission originally anticipated. Likewise, similar adverse effects could be expected in other overlays scheduled to take effect. Changes in policy and technology are likewise motivating factors warranting reconsideration of our previous decisions approving overlays in the NPAs cited above.

The history of number exhaustion provides a useful backdrop to a reassessment of our overlay decisions. The existing system for assigning numbers is a legacy from an era where one incumbent carrier essentially provided all customers with local service in a given area code. This system does not lend itself to distribution of numbers in a competitive market where numbers are assigned to each of the multiple carriers that need them to serve customers in each relevant rate center. Under the existing system, a carrier wishing to serve only a few customers in an area is allocated telephone numbers in blocks of 10,000 for each rate center in that area. Even if a carrier has more numbers than it needs for one rate center, the carrier cannot use that surplus to meet customers'

needs for numbers in a different rate center. As a result of such requirements, carriers receive significantly more numbers than they need.

The number distribution problem is partly an unforeseen consequence of the Telecommunications Act of 1996 which has promoted an explosion of new services and carriers. The number shortage affects NPAs throughout the state. New area codes have been proliferating within California at an alarming rate. California currently has 25 area codes. Absent the implementation of number conservation measures, the demand for numbers could require the addition of 15 or more new area codes in California by the end of 2002, bringing the total number of area codes to 41.

In considering solutions to the number shortage problem, the FCC has required that if a state commission imposes an overlay, it must also require all customers in the affected geographic area to dial the area code plus the seven-digit number.⁴ The purpose of this dialing requirement is to ensure nondiscriminatory treatment of local service providers whether they issue numbers in the old or the new NPA. The concern is that competitive carriers' interests are compromised if the incumbent carrier's customers need only dial seven digits while the customers of new entrants must dial 10 or 11 digits for calls within the same NPA.

The Commission's previous analysis supporting mandatory 1+10-digit dialing presupposed that for the foreseeable future, numbers would be allocated in blocks of 10,000. The availability of 1,000-block number pooling,

⁴ The need in California for customers to dial "1+" before an area code is a function of the manner in which ILECs programmed their networks when the industry began using NPAs without a "0" or a "1" as the middle digit.

however, could provide significant relief in those NPAs for which overlays were previously approved. On September 15, 1999, the FCC granted the Commission a waiver for authority to conduct mandatory 1,000-block number pooling trials and to require carriers to return unused or underutilized NXX codes. Placing wireless providers into one or more separate NPA's, referred to as a "technology-specific overlay," could further facilitate the access of new wireline entrants to numbers in area codes in current use. The Commission has sought a waiver from the FCC to permit a technology-specific overlay.

In sum, since the Commission issued its decisions instituting overlays and the commensurate 1+10 dialing in each overlay area, we have become more sensitized to the extent that our solution to avoiding an area code split imposes significant burdens on consumers. This burden, in combination with changes in technology and policy, convinces us that our first objective should be to pursue efficient allocation and utilization of numbers. As importantly, we now have authority from the FCC to pursue more efficient number allocation practices that would obviate the need for an overlay. Consistent with that authority, we will implement several measures in the hopes of significantly forestalling, if not eliminating, the need for an overlay or split in each area for which an overlay was approved.

We thus suspend each of the pending overlay relief plans as identified in ORA's motion. In the case of the 909 NPA, the adopted relief plan calls for a two-phased approach with a geographic split for the first phase and an overlay for the second phase. ORA's motion, however, only seeks suspension of overlays. No party has filed a motion seeking suspension of the pending geographic split of the 909 NPA. In comments to the draft decision, various parties proposed that the Commission should only suspend the Phase 2 overlay, but should not suspend the Phase 1 geographic split for the 909 NPA. While we

agree that a geographic split for the first phase of scheduled relief in the 909 NPA should be implemented promptly, we question whether the previously adopted boundary line defining the new NPA is properly drawn. The boundary line of the Phase 1 geographic split previously adopted as the Alternative 18A Relief Plan assumed that an overlay NPA would be implemented in a second phase approximately one year later. Under this assumption, we found in D.99-03-059 that the expected lives of the NPAs were reasonably in balance. With our suspension of the previously adopted Phase 2 overlay plan for the 909 NPA, however, we are concerned that the boundary lines of the Phase 1 geographic split may no longer provide for a reasonable balance of NPA lives.

We therefore temporarily suspend the schedule for permissive dialing of the new 951 area code to take effect on February 12, 2000, to provide time to determine whether a redrawing of the 909/951 NPA boundaries is warranted to provide for a reasonable balance of expected NPA lives. We hereby solicit parties' comments on this issue in view of our suspension of the Phase 2 overlay for the 909 NPA. In particular, we solicit comments on whether the boundary lines for the 951 NPA should be redrawn to conform to the Phase 1 boundary lines proposed under Alternative 9A, the industry's three-way geographic split proposal for the 909 NPA. If we subsequently adopt a geographic split as the backup plan for the second phase of relief scheduled for the 909 NPA, Alternative 9A (Phase 2) would provide for ready-made boundary lines for the backup plan without the need for further industry or public meetings. Since we are temporarily suspending the starting date for permissive dialing, we solicit comments on what subsequent windows of time would be available during the spring of 2000 for a revised starting date for permissive dialing of the 951 area code.

We solicit parties' comments on these issues to be due 15 days following the issuance of this decision. Reply comments shall be due five days thereafter. Upon receipt and review of the comments, we shall promptly issue a subsequent order determining what changes, if any, in the previously adopted boundary lines for the 909/951 geographic split are to be made. We shall also adopt a revised schedule for the start date for permissive dialing and, if necessary, for mandatory dialing.

We appreciate the need to act expeditiously to allow for permissive dialing in the new area code to begin. In the meantime, carriers are directed to send bill insert notices to their customers in the 909 NPA at the earliest available billing cycle, advising them of the temporary deferral of the starting date for permissive dialing.

Sufficient time exists to suspend the overlay plans in order to conduct an assessment of the use of alternative relief measures for each of the affected NPAs without jeopardizing code exhaustion. The previously projected code exhaustion dates for each of the NPAs subject to an overlay plan were established based upon remaining unassigned NXX codes and rationed allotments of codes assigned through monthly lotteries. These previously projected exhaustion dates have recently been further extended by action of the Commission's Telecommunications Division Director, directing the NANPA to reduce the monthly allotment of NXX codes given out in each of the NPAs subject to an overlay.

The resulting extension in the projected exhaustion date for each of the affected NPAs will provide needed time to consider whether other alternatives can be put into effect to address carriers' need for numbering resources without opening new area codes in the affected NPAs at this time. The suspension of the overlays will also provide time to adopt appropriate backup

plans in the event that any alternative number preservation initiatives we devise are subsequently deemed to be insufficient to avoid NXX code exhaustion in any of the affected NPAs.

B. Elements of the Number Preservation Plan

This decision orders several measures designed to extend the life of each of the NPAs in which overlays were previously approved in the hopes of avoiding the necessity of implementing new NPAs at this time and consistent with FCC authority granted September 15, 1999. First, we order preparations to commence for a mandatory 1,000-block number pooling trial in each of the affected NPAs. Second, we will reduce the allotment of codes in the monthly NXX lottery for each affected NPA in order to preserve the requisite codes for pooling. The Commission Telecommunications Division is directed to further adjust the monthly code allotment as needed to extend the NPA lives to allow time to implement number conservation measures. Third, we will direct the North American Number Plan Administrator (NANPA) to determine whether any NXX codes assigned in each of the NPAs have not been activated in the time frame provided by industry guidelines. Further, if some codes have not been timely activated, we direct the NANPA to seek return of those NXX codes. Fourth, we will require the implementation of efficient number management practices, such as "fill rates" or sequential numbering. Fifth, we will explore other feasible means of promoting more efficient number usage, such as service specific overlays, rate center consolidation, and other means. Sixth, we order carriers to provide us with utilization information necessary to implement return of unused numbers and efficient allocation of numbers. In addition, we are considering an emergency petition from some of those carriers asking us to adopt revised NXX code allocation measures in the 310 NPA, in light of the current suspended implementation of the 424 NPA. We will consider extending

the provisions of the emergency code allocation procedures for the 310 NPA to the other NPAs where overlays have been suspended.

Each of these measures is discussed in more detail below.

1. Mandatory Number Pooling

One of the most significant potential tools to extend NPA lives and defer the need for new area codes is the use of number pooling. As noted previously, number pooling provides for more efficient utilization of existing number resources by enabling multiple carriers to obtain blocks of numbers from a single NXX code. Without number pooling, a carrier must obtain a full NXX code (in minimum blocks of 10,000 numbers) even if only a few numbers are used from the NXX prefix.

The FCC has delegated authority for this Commission to conduct a pooling trial initially that covers one Metropolitan Statistical Area (MSA). We have already begun implementation of a pooling trial in the MSA that includes the 310 and 818 NPAs. The FCC provided that after having implemented a thousands-block pooling trial in one MSA, we may expand the trial to other MSAs. In such a case, the FCC required that carriers be allowed sufficient transition time to undertake any necessary steps, such as modifying databases and upgrading switch software, to prepare for an expansion of thousands-block pooling to additional MSAs. Thus, the FCC intended that the start dates for thousands-block pooling in different MSAs should be appropriately staggered to permit the industry to undertake all necessary steps.

The potential use of number pooling as an alternative warrants further consideration as one of the potential measures to defer the need for new area codes and to make better use of existing number resources within the NPAs where overlays were previously approved. We recognize, however, that any adopted schedule for implementing additional number pooling trials must be

done on a staggered basis, as required by the FCC. The TD, in consultation with the assigned Commissioner, shall expeditiously develop a plan to address the feasibility and timing for implementing additional thousand-block numbering pooling trials on a staggered basis within the NPAs for which overlays were previously approved. We shall take into account, as appropriate, any relevant constraints or concerns in considering the staggered implementation of thousand-block pooling trials in one or more of the affected NPAs, including carriers' LNP capabilities, coordination among any other state-mandated pooling trials and federal plans for national pooling standards. We shall also develop the staggered schedule in light of projected code exhaustion for each NPA. We shall take further steps on an expedited basis to resolve necessary issues relating to implementation and scheduling of subsequent number pooling trials in the affected NPAs on a staggered basis.

The ALJ or the assigned Commissioner may also issue rulings to facilitate the development and administration of mandatory pooling.

2. Interim Lottery Allotment Measures

Based on the current status of the NXX code lottery all NXX codes for each affected NPA are likely to be exhausted within the foreseeable future. Reducing the monthly allotment of NXX codes in the lottery can extend this period. In order to extend the duration of each NPA, the TD Director has ordered the monthly allotment of NXX codes assigned from the lottery for each affected NPA to be reduced by approximately 50% with our concurrence. Also, a needs-based assessment of code allocation within the affected NPAs shall be instituted similar to that adopted for the 310 NPA. The implementation of the needs-based assessment for the affected NPAs will be addressed in a forthcoming ruling.

By its Order (FCC 99-243) released October 21, 1999, the FCC eliminated the requirement that at least one NXX code must be set aside for each new entrant during the 90-day period preceding the introduction of any overlay. Accordingly, we shall direct the NANPA to release any previously set-aside NXX codes in the six NPAs that were previously subject to the FCC rule. The release of such codes will allow for assignment to those carriers meeting the appropriate needs-based criteria once they are adopted.

We expect the reduction in the number of NXX codes rationed each month, the freeing-up of previously reserved codes under FCC rules, and the implementation of needs-based criteria for code assignments will extend the remaining life of each NPA. We expect additional NXX codes may become available through NXX code reclamation and voluntary NXX code returns, as outlined below.

3. Return and Efficient Utilization of NXX Codes

Number pooling will be a more useful remedy for the NPA code exhaust problem if carriers are concurrently required to return unused or underutilized assigned NXX codes (or blocks of 1,000 numbers within those codes), and to more efficiently allocate numbers they use.

In D.98-05-021, the Commission took a preliminary step to ensure rational and efficient number allocation, requiring that number assignments made by the incumbent local exchange carriers to their customers in the 310 NPA be made first from the NXXs that have more than 25% utilization. The Commission adopted this measure to preserve 1,000-number blocks with utilization rates of 25% or less from undue contamination pending the implementation of 1,000-block number pooling. The fewer the numbers within an NXX code actually being used for telephone service, the more easily that code can be designated for number pooling. In subsequent decisions approving other

NPA overlays, we have applied a similar requirement to all carriers providing service within the relevant NPA.

We reiterate today our intention to require carriers to return unused and underutilized codes, and to implement other number management practices, consistent with the FCC's September 15, 1999 order. We direct our staff to work with the industry and the NANPA to implement the return of underused NXX codes. In the meantime, we direct the NANPA to determine whether any NXX codes assigned in the affected area codes have not been activated in the time frame allowed pursuant to industry guidelines. In the event that the NANPA determines some NXX codes in the affected NPAs have not been timely activated, we direct the NANPA to seek return of those codes. We further direct the NANPA to report to us by January 21, 2000 the status of its actions pursuant to this directive. We order all carriers to comply with requests by NANPA to return these codes. Failure to do so will subject carriers to fines or penalties by the Commission.

4. Utilization Study

An essential feature in the process of requiring the return of unused or underutilized NXX codes and blocks of 1,000 numbers is to determine the utilization of NXX codes which have already been assigned within a given NPA. The Commission initiated this process in D.98-05-021, which required Pacific and GTEC to report the percentage utilization rate for all blocks of 1,000 numbers within the NXX codes assigned to them.⁵ We will extend the reporting

⁵ We note that the information we required from Pacific Bell and GTEC was just a preliminary view of their code utilization. A more detailed and updated showing from these carriers is still required. Although the decision ordering this information to be provided went unchallenged, a subsequent decision containing an identical provision

Footnote continued on next page

requirement adopted in D.98-05-021 to apply to all carriers holding NXX codes in the affected NPAs before us here. Moreover, we believe that more detailed reporting than was previously ordered is necessary to get a true picture of number utilization.

Based on the results of utilization studies, we will order carriers to return codes that are not activated to the NANPA. TD should immediately initiate the design and conduct a study of NXX code utilization in increments of 1,000-number blocks for each NXX code assigned within each of the NPAs for which an overlay was ordered. A subsequent schedule for implementing these studies shall be addressed at a later time. TD may procure consulting services to conduct the study or portions of it and guide the study's design to provide the most useful information. TD should file and serve a report on the status of the NXX code utilization study no later than May 15, 2000. The report should also address the status of number pooling implementation and the prospects for extending the life of each of the affected NPAs.

While we are in the process of collecting code utilization data, and identifying unused and underutilized NXX codes and 1,000-number blocks which can subsequently be reallocated to other carriers, we will also initiate steps to determine the framework and process for number pooling. The assigned ALJ issued a ruling, dated April 1, 1999, soliciting comments concerning the types of NXX code reporting requirements or other measures needed to protect existing

was challenged by Pacific. Pacific claimed that imposing requirements for efficient number management within NXX codes constituted number assignment, a task the FCC has delegated exclusively to the NANPA. The Commission has rejected that challenge, but we have solicited comments on what, if any, measures we should impose in all area code relief plans pertaining to efficient management of numbers within NXX codes.

1,000-number blocks from undue contamination pending the implementation of number pooling. A ruling further addressing this and related matters shall be issued as soon as possible.

5. Customer Notice

By reversing our orders adopting the area code overlays, we concurrently relieve customers of the associated requirement that customers dial 11 digits to reach customers in their own region. We also require carriers to notify customers being served in each affected NPA by billing insert within 60 days that, the previously scheduled implementation of mandatory 1+10-digit dialing and overlay area codes is now suspended indefinitely. Previously ordered directives for the industry to conduct a Public Education Program regarding the overlay plans in each affected NPA are hereby rescinded.

6. Follow up Status Report

TD should present to the Commission and parties to this proceeding a report on the status of activities conducted pursuant to this order. The report should be mailed by May 15, 2000, and should include an estimate of the dates TD expects to have the various measures outlined herein to be in place and an estimate of the extent to which each may mitigate the code shortage. The report should also include the status of the remaining Commission petition before the FCC regarding technology-specific area codes. Parties shall be permitted to comment on the TD report. On the basis of that report and the parties' comments, we will consider whether the measures we adopt today appear adequate, whether in the short term or longer term, to eliminate, or at least significantly defer the need for an area code overlay or split in each of the affected NPAs. We shall then determine what further action may be warranted

to meet our obligation to provide timely access to numbering resources in the interests of promoting competition.

C. Back up Relief Plans

The FCC's September 15, 1999 order requires that the Commission establish a "back up" NPA relief plan for an area code that may otherwise run out of numbers in the event that number pooling and related conservation measures prove inadequate to avoid code exhaustion. Given the opposition to overlays expressed in the petitions for modification suspending the overlays, we conclude that a reexamination is warranted of the previously proposed geographic split options for each of the NPA relief plans as a basis for a back up plan for each of the affected NPAs.

We recognize that contingency schedules needs to be adopted early enough to allow time to complete implementation of the back up plans before total code exhaust would occur in any given NPA if it became necessary. The record needs to be further developed, however, to determine an appropriate back up plan and a contingency schedule for each affected NPA, considering the various constraints involved. Thus, we shall conduct an inquiry concerning the adoption of an appropriate back up plan for each of the affected NPAs based on previously formulated geographic split proposals offered by the industry. We shall also inquire as to what minimum time would be required in terms of technical measures and customer notice to implement a back up plan in each affected NPA should it become necessary, and what triggering event or at what point in time a Commission decision could be required ordering implementation to start on the back up plan in order to prevent total code exhaustion. We shall take action expeditiously to adopt an appropriate backup plan for each of the affected NPAs. The FCC does not require that a backup plan be implemented prior to requiring thousand-block pooling, but only that we must be *prepared* to

implement the backup plan before exhaustion of the number resources at issue. We shall thus direct the ALJ to issue a ruling promptly calling for comments concerning the appropriate backup plan for each of the NPAs for which overlays are being suspended by this order, addressing the issues outlined above. A contingency schedule will be developed for implementation of a back up plan for each NPA following receipt and review of such comments to guard against the risk of code exhaustion.

D. Conclusion

Petitioners and ORA have convinced us to reverse our earlier decisions to require area code overlays in the 408, 415, 510, 650, 714, and 909 NPAs at this time. In our efforts to balance numerous competing interests and promote competitive telecommunications markets, we adopted each of the overlay plans assuming, on the basis of the record before us, that adverse customer effects could be mitigated through public education and temporary number conservation measures. Subsequent events convince us that each of the overlays may impose more substantial, and possibly unnecessary, hardship on customers than previously anticipated. Technological change and the FCC's September 15, 1999 grant of authority to implement number conservation measures permit us to pursue alternatives to imposing an overlay. All will require the concerted efforts of our staff, the industry, and the NANPA.

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 November 22, 1999 and reply comments were filed on November 30, 1999. We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. Because carriers are assigned blocks of 10,000 numbers at a time, carriers may be assigned more numbers than they need.
2. Many customers in the 408, 415, 510, 650, 714, and 909 NPAs will experience cost and inconvenience as a result of 1+10-digit dialing ordered in D.98-05-021 which may be unnecessary if the Commission is able to adopt number pooling and related conservation measures in those NPAs.
3. The need for previously ordered area code overlays may be forestalled or eliminated as a result of changes in technology and pursuant to the authority the FCC granted the Commission to implement number conservation measures.
4. The implementation of number pooling within the affected NPAs needs to be scheduled on a staggered basis in view of network reliability concerns and in conformance with the authority delegated by the FCC.
5. Sufficient time exists for planning alternative number conservation measures within the affected NPAs since the monthly lottery allotment of NXX codes has been recently reduced to avoid premature code exhaustion.
6. Utilization data is required in order to facilitate number pooling in those NPAs for which an overlay was previously ordered.
7. The FCC has plenary jurisdiction over numbering issues and has delegated only limited jurisdiction to state commissions regarding the oversight of numbering resources. Today's order is consistent with the authority granted by the FCC to implement number conservation measures.
8. The FCC (by Order 99-243) has eliminated the previous requirement that one NXX code per carrier must be reserved in each NPA subject to an overlay.
9. In the case of the 909 NPA, the previously adopted relief plan in D.99-03-059 calls for a two-phased approach with a geographic split for the first phase and an overlay for the second phase.

10. ORA's motion only seeks suspension of overlays, and no party is seeking suspension of the pending Phase 1 geographic split of the 909 NPA.

11. The boundary line of the Phase 1 geographic split previously adopted as the 909 NPA, Alternative 18A Relief Plan, assumed that an overlay NPA would be implemented in a second phase approximately one year later.

12. With the suspension of the previously adopted Phase 2 overlay plan for the 909 NPA, however, the boundary lines of the Phase 1 geographic split may no longer provide for a reasonable balance of NPA lives.

Conclusions of Law

1. The Commission should pursue implementation of number conservation measures and utilization studies as set forth herein rather than requiring the implementation of an area code overlays in the NPA.

2. The Commission should grant the motion of ORA to suspend the overlay plans ordered for the 408, 415, 510, 650, 714, and 909 NPAs and the related mandatory 1+10-digit dialing for calling in each of the NPAs.

3. The suspension granted for the 909 NPA should apply only to the overlay portion of the 909 NPA relief plan, scheduled for the second phase of relief. The first phase of area code relief for the 909 NPA, being implemented as a geographic split, should remain in effect, but the previously adopted boundary lines should be reevaluated in view of the suspension of the overlay, and the effects on the balancing of NPA lives.

4. Permissive dialing of the new 951 area code previously scheduled to begin on February 12, 2000 should be temporarily deferred so that a further determination can be made concerning the need to redraw the boundary lines of the 951 NPA.

5. The Commission should grant the petitions of the Counties to modify the 415 overlay decision and the petition of the Mayor of Berkeley to modify the 510 NPA overlay decision to the extent set forth herein.

O R D E R

IT IS ORDERED that:

1. The previously adopted relief plans for implementation of mandatory 1+10-digit dialing and for the opening of the overlay for the 408, 415, 510, 650, 714, and 909 Numbering Plan Areas (NPAs) are hereby suspended. The previously adopted geographic split for the first phase of relief in the 909 NPA is not affected by this order, but shall remain in effect and shall be implemented as previously scheduled.

2. The Commission's decisions previously approving overlay relief plans for each of the NPAs referenced in Ordering Paragraph (OP) 1 are hereby modified to suspend the overlay plans which are superseded by the plan adopted in this order. The affected decisions are as follows:

<u>NPA</u>	<u>Authorizing Decision</u>
408	D.98-11-065
415	D.99-04-025
510	D.99-04-024
650	D.99-04-070
714	D.99-03-058
909	D.99-03-059

3. The Commission's Telecommunications Division (TD) shall administer a study of NXX code utilization in increments of 1,000 for each NXX code assigned within the NPA.

4. A further record shall be developed regarding the long-term process to implement mandatory number pooling on a staggered basis as required by the

FCC and a process for the return of underutilized NXX codes within each of the effected NPAs.

5. The North American Number Plan Administrator shall set aside the requisite NXX codes for each of the affected NPA for the mandated pooling trials based upon consultation with TD.

6. The TD shall be authorized to advise the NANPA concerning any periodic revisions to the monthly code allotment for the lottery conducted in each of the affected NPAs.

7. The TD, in consultation with the assigned Commissioner, shall develop a plan for the design and implementation of a mandatory number pooling program to be scheduled on a staggered basis, and determine appropriate procedures for the return of underutilized NXX codes in each of the NPAs referenced in OP 1 above. The TD shall take all other necessary steps to implement number conservation measures as set forth herein.

8. The TD shall file a report by May 15, 2000 regarding the status of efforts to implement number pooling in each of the affected NPAs analyzing the extent to which conservation measures may resolve number shortages and other matters, as set forth herein. Parties who wish to comment on the report must file responses no later than June 9, 2000.

9. To address near term number shortages, all LNP-capable carriers serving rate centers in each of the above-referenced NPAs shall 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 set them aside. Carriers shall not 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. Pending the appointment of a pooling administrator, carriers are directed to compile a list, identified by rate center, of the 1,000-number blocks

meeting the prescribed 10%-or-less subscription criteria, and to report this information to Mr. John Leutza, Telecommunications Division Director, under the schedule prescribed in OP 10. Carriers who fail to comply with this order shall be subject to all penalties. This ordering paragraph shall not apply to non-LNP-capable carriers since they cannot be compelled to participate in a pooling trial at this time.

10. Carriers shall submit the information called for in OP 9 by NPA according to the following schedule:

<u>NPAs</u>	<u>Due Date</u>
415 and 909	January 18, 2000
408 and 714	February 21, 2000
510 and 650	March 20, 2000

11. TD shall work with the number pooling administrator to assure the fair and efficient allocation of blocks of numbers made available through number pooling. This process shall begin as soon as practical and may be superceded pursuant to further Commission order following completion of the utilization studies ordered herein.

12. The Petitions to Modify D.99-04-024 and D.99-04-025 are granted to the extent set forth herein.

13. The motion of the Office of Ratepayer Advocates is granted to suspend mandatory 1+10-digit dialing and to reevaluate the timing of and need for area code relief in the 408, 415, 510, 650, 714, and 909 area codes, as set forth herein.

14. Carriers serving customers in the NPAs affected by this order shall provide notice to customers within 60 days of this order by billing insert that the previously scheduled dates for the beginning of mandatory 1+10-digit dialing and for the opening of the new overlay area codes is suspended indefinitely. The previously adopted geographic split for Phase 1 of the 909 NPA relief plan,

however, is only temporarily suspended. The previously adopted schedule for permissive and mandatory dialing for Phase 1 of the 909 NPA geographic split and the previously adopted NPA boundaries shall be subject to revision following receipt and review of the comments ordered below.

15. Comments are solicited from parties on the effects of suspending the Phase 2 overlay for the 909 NPA on the Phase 1 geographic split, and the resulting effects on the balance between NPA lives. Comments shall address whether the 909/951 NPA Phase 1 split should be revised to provide for better balancing of NPA lives. In particular, parties should comment on whether the Phase 1 boundary lines should be redrawn to conform to Alternative 9A, the industry's three-way geographic split proposal for the 909 NPA in order to provide for a better balancing of NPA lives in view of the overlay suspension. Opening comments are due 15 days following issuance of this order, with replies due five days thereafter.

16. Carriers are directed to send bill insert notices to their customers in the 909 NPA at the earliest available billing cycle, advising them of the temporary deferral of the starting date for permissive dialing.

17. The previously ordered Public Education Plans concerning the overlays in each of the above-referenced NPAs are hereby rescinded.

18. The NANPA is directed to release for assignment previously set-aside NXX codes in each of the six NPAs subject to this order in response to the FCC's elimination of the set-aside requirement for NPAs subject to an overlay.

This order is effective today.

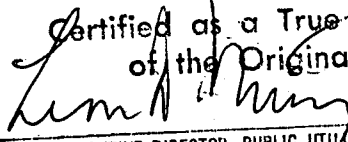
Dated December 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President

JOEL Z. HYATT
CARL W. WOOD
Commissioners

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

Certified as a True Copy
of the Original

ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

Commissioner Henry M. Duque, dissenting:

My analysis of the facts, the record before us, applicable law, relevant federal regulation, and the issues raised by commenters differ little from that contained in my dissents on D.00-09-067 and D.99-12-023. Once again, I find that 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.

The extensive development of Federal telecommunications law and regulations by the Federal Communications Commission (FCC) make the legal failings of the majority's decision particularly easy to demonstrate. 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."¹

This decision fails to meet any of these requirements. Instead, it simply rushes to suspend the overlays adopted in the 408, 415, 510, 650, 714, and 909 NPA's. It reaches no finding on the consequences of the actions that it takes today, thereby failing to comply with the conditions that structure the FCC's delegation of authority to this Commission to order number conservation.

The immediate unavailability of numbers, the uncertain date for the implementation of number pooling or future relief, and the refusal to provide a mechanism for meeting current unmet demands for telephone numbers make entry into this telecommunications market place difficult, uncertain, and perhaps impossible. Market entry is the key to competition. Since a carrier cannot enter a market without telephone numbers, the majority's decision creates a barrier or high hurdle to market entry, and thereby hinders competition.

Second, the decision unduly favors and disfavors particular industry segments and groups of telecommunications consumers. In particular, since the decision fails to meet the demand for telephone numbers, the decision disfavors all consumers and businesses in these area codes by restricting their choice of telecommunications carriers. In addition, the decision unduly favors those carriers (and their customers) who have number now and those who have developed number portability technology, which is a technological prerequisite for access to those codes preserved for the number pool. Conversely, it disfavors those carriers (and their customers) for whom the FCC, for legitimate policy reasons, has deferred requiring the implementation of local number portability technology. In practice, because the FCC has deferred mobile carriers from the implementation of local number portability technology until November 2002, the

¹ 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 Docket No. 96-98, FCC 99-248 (rel. September 15, 1999, paragraph 2. The underlying regulations are at 47 C.F.R. § 52.9.

decision disfavors the potential consumers of mobile telecommunications services living in these area codes. Similarly, the decision, which effectively precludes access by mobile carriers to the number pool, disfavors this group of carriers for one cannot provide service without numbers.

Carriers entering the market for the first time lack the numbering resources that arise from the churning of customers that is a fact of life for all. Thus, for these carriers, the lack of numbers in a rate center or the inability to establish a service "footprint" large enough to generate economies of scope and scale places them at a disadvantage relative to carriers who are already in these markets. These constraints on numbering resources, combined with the random nature of the outcomes of the rationing lottery, work as a de facto barrier to entry.

Third, the decision unduly favors one telecommunications technology over another. In particular, as noted above, the decision favors those carriers using land-based telephony technologies who will have immediate access to the number pool. It disfavors radio-based technologies, who lack the local number portability technology that makes access to the pool possible.

The FCC recently delegated authority to the California Public Utilities Commission, to implement a number pooling trial.² The FCC's delegation of authority, however, came with certain preconditions that the majority's decision fails to meet. Thus, the decision's actions to implement a number pooling trial fail to comport with current FCC requirements. This is critical because Federal laws grant exclusive jurisdiction over numbering to the FCC.³

The failure of the majority's decision to meet the FCC's pre-conditions for the lawful exercise of the pooling authority delegated to California is very clear. In particular, the FCC states:

"Thus, the California Commission, to the extent it acts under the authority delegated herein, must ensure that numbers are made available on an equitable basis; the numbering resources are made available on an efficient and timely basis; that whatever policies the California Commission institutes with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers' and that the California Commission not unduly favor one telecommunications technology over another."⁴

² 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).

³ 47 U.S.C. § 251(e)(1).

⁴ 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 8. In FCC's includes a footnote citing regulatory and statutory support for these requirements. Footnote 27 references included 47 C.F.R. § 52.9(a) and 47 U.S.C § 251(e)(1).

As the above discussion makes clear, the majority's order fails to make telephone numbers available on a timely and equitable basis. Further, the policies adopted in the majority's decision unduly favor and disfavor certain telecommunications technologies and unduly disfavor telecommunications consumers residing in these area codes.

A closer look at the recent FCC order shows the many legal defects of the majority's decision. The FCC's delegation of authority for a number pooling trial continues to stress that federal policy requires that phone numbers remain available. The FCC 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."⁵

The decision adopted today contains no steps to ensure the availability of phone numbers. Indeed, it avoids the necessary steps needed for timely area code relief. Indeed, it simply orders a further restriction in the numbers issued in the monthly lotteries and fails to examine the current numbering shortfalls in the various area codes. Thus, the majority's decision lacks a legal basis for ordering the pooling of numbers and the other conservation measures that it proposes.

Examining another provision of the FCC's order makes clear still other defects in the majority's decision. The FCC order places consumers first. It finds the availability of telephone numbers is essential so that customers can exercise choice. Thus, the FCC sets a pre-condition that California must meet before creating a number pool:

"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."⁶

And again:

"Consumers should never be in the position of being unable to exercise their choice of carrier because that carrier does not have access to numbering resources. This criterion attempts to ensure that consumers continue to retain a choice of telecommunications providers in the event that the pooling trial or trials do not stave off the need for area code relief."⁷

⁵ 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.

⁶ Ibid.

⁷ Ibid, paragraph 15.

A review of the majority's order makes it clear that it fails to examine in any way whether numbering resources in these six area codes are adequate to meet this condition. Thus, it reaches no finding concerning the availability of numbers to permit consumer choice.

The majority's decision also fails to comply with the FCC's requirements for prudent planning. The FCC is especially clear that the delegation of authority to order pooling carries with it obligations to act prudently by continuing to plan for number relief in the event of exhaustion. The FCC states:

"Thus, we require that in any NPA which is in jeopardy in which the California Commission implements a pooling trial, the California Commission must take all necessary steps to prepare an NPA relief plan that it may adopt in the even that the numbering resources in the NPA at issue are in imminent danger of being exhausted. This criteria is not intended to require the California Commission to implement an NPA relief plan prior to requiring thousands-block number pooling in California. Rather, we require only that the California Commission must be prepared to implement a "back-up" NPA relief plan prior to exhaustion of numbering resources in the NPA at issue."⁸

The FCC notes with favor the prudent action of the Illinois Commission, which has established an overlay as the relief plan that it will implement once conservation measures reach their logical conclusion. Once again, the majority's decision is deficient. In these area codes, the decision rejects the "back-up" plans now available and only promises to address this issue in the future. Thus, California is uniquely unprepared to act in the face of imminent exhaustion. For this reason, there is no legal basis for the actions ordered in the majority's decision.

Returning now to cellular carriers, today's decision of the majority fails to meet even the relaxed standards in the FCC's September 15, 1999 order. The FCC states:

"Within NPA's that are subject to the pooling trial, non-LNP capable carriers shall have the same access to numbering resources after pooling is implemented that they had prior to the implementation of a pooling regime, i.e., non-LNP capable carriers shall continue to be able to obtain full NXX codes."⁹

As the first step in implementing pooling in these area codes, the majority's decision decreased the number of codes available in the monthly lottery from 6 to 3. Clearly, the cellular carriers, although still able to obtain a full NXX, lack the same access to numbering resources that they had yesterday. For cellular carriers, in particular, the majority's decision reduces access to codes from meager to almost none. Once again, the majority's decision fails to comport with federally required actions, and there is consequently no legal basis for the exercise of the power conditionally delegated by the FCC.

⁸ Ibid.

⁹ Ibid., paragraph 16.

Finally, the majority's decision fails to comport with California statutes. California's policies are broadly consonant with Federal law and support consumer choice within open markets. In particular, Section 709 of the California Public Utilities Code states:

"The Legislature hereby finds and declares that the policies for telecommunications in California are as follows: (a) To continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications service to all Californians. (b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services. (c) To promote economic growth, job creation, and the substantial social benefits that will result from the rapid implementation of advanced information and communications technologies by adequate long-term investment in the necessary infrastructure. (d) To promote lower prices, broader consumer choice, and avoidance of anti competitive conduct. (e) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice."

The majority's decision clearly fails to comply with Section 709(b). In particular, the decision needlessly constrains the supply of telephone numbers, thereby discouraging the development and deployment of new technologies. Specifically, the scarcity of numbers will have disproportionate impacts on new cellular services and the advanced digital services offered by new carriers entering the 310 area code.

Today's decision fails to comply with the intent of Section 709(c), for it retards the implementation of advanced information and communications technologies by creating an artificial number shortage. In addition, the decision's reliance on a lottery to allocate numbers in this area code for the foreseeable future continues investment-curbing uncertainty in a way that needs no metaphor to convey.

The decision fails to comply with Section 709(d), for by constricting the supply of numbers, it constricts consumer choice. This is the opposite of the policy mandated by this California statute.

Finally, the decision fails to comply with Section 709(e). Rather than removing barriers to market entry, today's decision creates a new barrier to entry. Telephone companies cannot enter markets with numbers, and this decision makes the acquisition of a number especially difficult.

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

D.99-12-051

In summary, the majority's decision fails to promote the public interest and violates Federal and California statutes. For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

December 16, 1999

San Francisco