

Decision 99-09-067 September 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.

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)

INTERIM OPINION**I. Summary**

This decision grants a petition to modify Decision (D.) 98-05-021, filed by Assemblyman Wally Knox and other parties, asking the Commission to halt implementation of a new 424 area code "overlay" in the 310 area code region.¹ D.98-05-021 ordered the overlay, requiring that all new numbers in the area be assigned a 424 area code and requiring all customers in the area to dial 11 digits ("1+10 digit dialing") for all local as well as out-of-area calls. We adopt petitioners' proposal to suspend the overlay and institute more aggressive measures to conserve existing numbers. We do so in recognition that 1+10 digit dialing and the prospect of an overlay have caused substantial customer confusion and inconvenience. We believe the public interest demands the steps we order here, specifically an accounting of what numbers are actually in use in the 310 area code before we set a date for further relief. Our decision today

¹ See Appendix 1 for a listing of Petitioners.

(S)
Risa Hernandez
CPUC
Market Structure Branch
AREA 3-D

adopts number conservation measures that are consistent with the authority granted to us by the FCC on September 15, 1999.

II. Procedural Background

On May 7, 1998, the Commission issued D.98-05-021, approving an area code relief plan for the 310 Numbering Plan Area (NPA). The adopted relief plan called for the implementation of the first area code overlay ever used within California. In conformance with federal rules governing the use of overlays, the adopted plan also called for the implementation of mandatory 1+10-digit dialing within the 310 NPA, which became effective on April 17, 1999. On June 9, 1999, Assemblyman Knox and several other parties filed the instant petition to modify D.98-05-021, seeking a halt to the opening of the new 424 area code overlay scheduled to occur on July 17, 1999. Petitioners seek to end mandatory 1+10-digit dialing for the 310 area code that was previously instituted as part of the overlay relief plan pursuant to D.98-05-021. Petitioners also sought an order shortening time for responses to the Petition on the basis that expedited Commission action on the Petition is needed prior to the scheduled opening of the new area code on July 17, 1999, in order to prevent irreparable harm.

The assigned commissioner and administrative law judge issued a ruling on June 11, 1999 granting the petitioners' motion for an order shortening time. The ruling set two dates for replies. Interested parties were to reply by June 18, 1999 on the issue of temporarily suspending the implementation of the 424 area code overlay to permit time to act on the full merits of the Petition. Parties were given until June 25, 1999 to reply to the full merits of the Petition.

Responses addressing the issue of temporarily suspending the implementation of the 424 area code were filed by Pacific Bell; the Cellular Carriers Association of California; jointly by MediaOne Telecommunications of California, Inc., ICG Telecom Group, Inc., Nextlink of California, Inc., AT&T

Communications of California, Inc., and the California Cable Television Association. Joint comments were also filed by GTE California, Inc., Paging Network of Los Angeles, The Telephone Connection of Los Angeles Inc., Air Touch Cellular, MGC Communications, and Mobilmedia Communications/Mobilecom, Paging Network (Joint Commenters). Comments were also filed separately each by MCI WorldCom and by the Commission's Office of Ratepayer Advocates (ORA).

The Commission issued D.99-06-091 on June 24, 1999 granting a temporary suspension of the activation of the 424 area code to provide the Commission sufficient time to address the full merits of the Petition. The temporary suspension did not rescind the 1+10-digit-dialing requirement. Parties filed responses addressing the full merits of the petition on June 25, 1999. The City of Los Angeles and the County of Los Angeles also filed comments.

III. Position of the Petitioners

Assemblyman Wally Knox filed the instant petition on behalf of a variety of civic groups, residential associations, and other legislators. Petitioners seek to terminate mandatory 1+10-digit dialing within the 310 NPA, and seek to suspend implementation of the 424 NPA overlay. Unless the relief plan implementation is suspended, Petitioners believe customers will be significantly harmed.

The Petitioners observe that the Commission is investigating issues relating to the generic use of overlays in R.98-12-014. Likewise, the Federal Communications Commission (FCC) is proposing to develop comprehensive solutions to the numbering exhaust problem pursuant to its Notice of Proposed Rulemaking (Docket 99-200), released June 2, 1999. Moreover, the California legislature has pending before it Assembly Bill (AB) 818, sponsored by

Assemblyman Knox which, if adopted, would direct the Commission to delay implementing mandatory 1+10-digit dialing pending certain investigations into number utilization as called for in the bill. Petitioners argue that further factual investigations and policy considerations in these pending legislative and regulatory proceedings should be allowed to conclude before implementing these 310/424 NPA relief measures in order to clarify the options for improved telephone number administration.

Petitioners further claim that suspension of the overlay is warranted because affected customers were not vigorously represented or present at the meetings and proceedings held prior to approval of the 310 NPA overlay.

IV. Positions of the Responding Parties

All parties representing carriers oppose any suspension of the overlay. Their principal argument expresses a concern over the adverse effects of a suspension on future availability of numbers in the 310 area code given the currently remaining number of unassigned "NXX codes" (also more informally known as "prefixes.") Pacific Bell asserts that the pending exhaustion of remaining NXX codes will create a situation in which only those carriers that have unassigned numbers available will be able to offer new local service.

The Cellular Carriers Association also urges that the request for a halt to the opening of the 424 area code be denied. They argue that it is unrealistic to expect that this Commission could resolve the 310 NPA numbering shortage without implementing the overlay in light of current FCC restrictions on state number plan relief flexibility. They also discuss various matters recently and currently pending before the FCC. They, like Pacific, note the dwindling number of remaining NXX codes in the 310 area code and state that delay in implementing the 424 area code will result in a demand for 310 NXX codes that cannot be met. They state that 60 NXX codes have already been requested in the

424 area code,² asserting that this gives some indication of the “pent up demand for codes in the area.” They contend there is no irreparable harm from implementing the overlay area code and that all the problems cited by the petitioners are either “fixable,” e.g., by customer programming changes, or are merely inconveniences that customers will get used to, i.e., dialing the extra numbers for calls within an area code. They assert that the real harm will be to carriers, who will not have adequate numbers available, and, therefore, will not be able to compete.

The Joint Commenters also oppose any suspension of the 424 area code. They contend that certain carriers have secured NXX codes in the 424 area code and, absent the ability to issue numbers in those codes to customers in the next few weeks, will not have any numbers to issue to customers. They object to considering the Petition at this late date and question whether the concerns raised by the Petitioners, although real, constitute irreparable harm. They too discuss the Petition in the analytical context of a preliminary injunction and the standards applicable to such relief. Finally, they challenge the suspension being in the public interest.

ORA agrees with parties opposing the Petition that “under any imaginable scenario, the Commission will need to implement area code relief in the 310 NPA.” ORA, however, does not advocate moving ahead with the overlay in view of the public opposition which has been expressed through the Petition as well as subsequent letters received from the public opposing the overlay. Instead, ORA proposes that the Commission reverse its course by implementing

² According to the NANPA, 81 NXX codes have been assigned in the 424 NPA as of the date of the temporary suspension granted in D.99-06-091.

a geographic split of the 310 NPA. ORA believes that the public interest is of paramount consideration and should override any temporary impairment of service which carriers may experience due to lack of availability of numbering resources. ORA argues that the “public interest and public health and safety concerns raised by Petitioners require the Commission to select a geographic split for relief of the 310 NPA.”

ORA proposes that the Commission expeditiously schedule public participation meetings to seek guidance on the most appropriate geographic split to provide relief for the 310 NPA. ORA believes the split options previously developed should serve as the basis for such a decision.

The City of Los Angeles (City) and County of Los Angeles (County) also filed separate comments, respectively, in support of the Petition. The City and County reiterate many of the same arguments made in the Petition. The City particularly highlights concerns over mandatory 1+10-digit dialing, arguing that it will compromise public safety and impair access to police and fire dispatch systems. The City argues that public safety as well as economic concerns warrant further study of the proposal. The County argues that no adverse effects will result from reverting to seven-digit dialing.

V. Timeliness of Petitioners' Filing

Various parties argue that the Petition should be summarily denied for lack of compliance with Rule 47(d) of the Commission's Rules of Practice and Procedure. Rule 47(d) states that:

Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has

not been justified, it may on that ground issue a summary denial of the petition.

Opposing parties argue that the Petition provides no justification for seeking modification more than one year after issuance of D.98-05-021. Parties argue that the Petition raises no new issues that couldn't have been raised earlier and thus, on procedural grounds alone, parties call for summary denial of the Petition.

The Petitioners defend the timing of their filing, stating that it was made promptly after the commencement of mandatory 1+10-digit dialing in the 310 NPA, and after the FCC's issuance of its Notice of Proposed Rulemaking (NOPR) suggesting serious federal concern over numbering problems. The Petitioners also point to the growing concern of the public and policymakers about the effects of inappropriate and disruptive approaches to new area codes.

We consider the Petitioners' stated rationale for waiting beyond one year to file the Petition to be sufficient under Rule 47(d) to warrant further consideration of the Petition on its merits. While we recognize that a number of the concerns raised in the Petition could have been raised earlier, the extent of those concerns has continued to grow as the extent of the numbering crisis becomes more apparent. Given the gravity of the problem raised by Petitioners and the growing public awareness of the problem, we consider the Petition on its merits.

VI. Discussion

The instant petition to modify requires us to weigh two countervailing interests. On the one hand, federal law requires us to implement area code relief where 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.³ On the other hand, we are charged with protecting consumer interests and minimizing the adverse affects which may result from the creation of new area codes regardless of whether it is achieved through overlay or split. When the Commission adopted the 310 NPA overlay relief plan in D.98-05-021, it recognized the importance of minimizing the adverse impacts of introducing yet another new area code. The Commission believed at that time that an overlay with 1+10 digit dialing appropriately balanced these tradeoffs. It acknowledged that however a new area code was introduced—through a split or an overlay—the new area code would result in disruptions to customers. We revisit this issue with a heightened sense of how those disruptions are affecting customers.

The petition enumerates a variety of hardships imposed by mandatory 1+10-digit dialing. Petitioners complain that customers must reprogram equipment, that some school telephone systems are programmed to prevent long distance calling and this feature must be eliminated in order to accommodate 1+10-digit dialing for local calls, and that elevator emergency telephones are not working. They observe that those who are ill and disabled may find it difficult to dial 11 digits when they need assistance. To some extent, all of these circumstances impose costs or compromise safety. Petitioners comment that, at the time it issued D.98-05-021, the Commission did not have an adequate record as to how customers would view these disruptions and costs.

In reaching its conclusions in D.98-05-021, the Commission explored the customer hardships that might accompany an overlay and 1+10 digit dialing

³ 47 CFR 52.9(a)(1)

prior to their adoption. The Commission took several steps to solicit the views of the public on these issues in the 310 area code region. 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 D.98-05-021. Over the past several months and since the filing of the instant petition, we have received a significant volume of oral and written communications from members of the public expressing strong opposition to the overlay plan. The customer resistance and disruption generated by the implementation of 1+10-digit dialing and which motivated this petition suggests that the hardships encountered by the public have been greater than those the Commission originally anticipated. On that basis alone we should reconsider our earlier decision. Changes in policy and technology are further motivating factors.

The history of number exhaustion provides a useful backdrop to a reassessment of D.98-05-021. 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 more numbers than they need. For instance, a carrier with no more than a handful of customers scattered throughout the 310 area code, could

request and receive 160,000 numbers: 10,000 for each of the 16 rate centers in the 310 area code.

The number distribution problem is partly an unforeseen consequence of the Telecommunications Act of 1996 (Act) which has promoted an explosion of new services and carriers. The number shortage extends beyond the 310 NPA, and affects NPAs throughout the state. New area codes have been proliferating within California at an alarming rate. Not counting the 424 NPA, 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

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.

in blocks of 10,000. The availability of 1,000-block number pooling, however, could provide significant relief in the 310 NPA. On September 15, 1999, the FCC granted the Commission a waiver for authority to require 1,000-block number pooling and to require carriers to return unused or underutilized NXX codes, a requirement that could yield perhaps as many as a million or more numbers for reallocation in the 310 NPA. Placing wireless providers into one or more separate NPA's, referred to as a "technology-specific overlay," would 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.

Implementation of local number portability, already deployed in the 310 NPA, means that the technology to facilitate number pooling is in place. Also, implementation of local number portability, already in place in the 310 NPA, may facilitate other ways to conserve numbers. The telecommunications industry can employ these advanced technologies to more efficiently manage the allocation and utilization of numbers and to alleviate the burden on consumers that continued area code proliferation causes.

In sum, since the Commission issued its decision instituting an overlay and the commensurate 1+10 dialing in the 310 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 the 310 area.

VII. Elements of the 310 Preservation Plan

This decision orders several measures designed to extend the life of the 310 NPA in the hopes of avoiding the necessity of implementing the 424 NPA at this time and consistent with FCC authority granted September 15, 1999. First, we will establish voluntary 1,000-block number pooling. Second, we order preparations to commence mandatory 1,000 block number pooling. Third, we will reduce the allotment of codes in the monthly NXX lottery for the 310 NPA in order to preserve one-third of the codes for pooling. Fourth, we will direct the NANPA to determine whether any NXX codes assigned in the 310 NPA 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. Fifth, we will require the implementation of efficient number management practices, such as "fill rates" or sequential numbering. Sixth, we will explore other feasible means of promoting more efficient number usage, such as service specific overlays, rate center consolidation, and other means. Seventh, we order carriers to provide us with utilization information necessary to implement return of unused numbers and efficient allocation of numbers. In addition, we intend, by separate order to address the needs of the 17 carriers who have already been assigned NXX codes in the 424 NPA. We have received 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 have taken comments on the emergency petition, and anticipate issuing a subsequent order shortly.

Each of these measures is discussed in more detail below.

A. Interim Plan for Voluntary Number Pooling

The Commission previously considered implementing voluntary number pooling. D.98-08-037 established the Number Pooling Task Force and

sought the recommendations of this task force for creating a voluntary number-pooling plan. The Task Force did not develop a timeline or any other recommendations on how a pooling trial should be conducted, largely because incumbent local exchange carriers refused to participate in a voluntary trial.

In recognition of the benefits of voluntary number pooling, we will develop a voluntary number pooling trial in the 310 NPA. The Commission has clear authority to authorize voluntary pooling. The FCC has authorized state commissions to experiment with voluntary number pooling trials.

We shall go forward with the development of a voluntary number pooling trial in the 310 NPA. Given the stalemate that the industry task force reached on a number pooling in California, we direct the Telecommunications Division, with the assistance of Lockheed Martin, to devise a number pooling trial for the 310 NPA. The situation in the 310 NPA requires that voluntary pooling be implemented expeditiously. For this immediate need, Lockheed Martin has expertise as both the NANPA and as pooling administrator in trials in other states. Lockheed Martin is thus directed to act as pooling administrator for this trial under the direction of the Telecommunications Division.

We are mindful of the FCC's desire to maintain a nationally cohesive numbering system, and we do not wish to undercut that effort. We anticipate working closely with the FCC and the industry to ensure that we do not impede the FCC's efforts for national standards for number pooling. We anticipate that we can model the voluntarily pooling trial in the 310 NPA after existing number pooling trials in other states or in conjunction with number pooling standards being developed by the FCC's working groups. Once the FCC finalizes national number pooling standards and a national pooling administrator, we envision that the voluntary trial we establish in the 310 NPA can be migrated over to the national system.

Voluntary number pooling in the 310 NPA shall be conducted on a 1,000 block basis. By this order, we direct the NANPA to set aside one NXX code for each of the 16 rate centers where demand is demonstrated in the 310 NPA to be used for the trial. In addition, we direct TD and Lockheed Martin to design the trial such that carriers may donate NXX codes and 1,000 blocks to the trial. Carriers may volunteer to participate in the number pooling trial and the costs of setting up and administering the trial will be shared equally amongst all carriers who volunteer. Carriers who are interested in volunteering for the number pooling trial must notify the Director of the Telecommunications Division by no later than October 1, 1999.

Once the volunteers are identified, the Telecommunications Division may appoint industry members to assist it and Lockheed Martin on the protocols for the trial. Also, the ALJ assigned to this proceeding may issue rulings, as needed, regarding the requirements of how the trial will be developed and conducted.

Moreover, the FCC will likely establish a national number pooling cost recovery mechanism once national standards and a national pooling administrator are established. We anticipate that there will be some true-up of the costs for the voluntarily trial in the 310 NPA with the national costing mechanism at a later date.

Carriers who choose not to volunteer for the trial will still have access to NXX codes through the priority assignment of NXX codes (described above) and through the monthly rationing process. In addition, we believe that additional NXX codes will become available through NXX code reclamation and voluntary code returns as we proceed with the number utilization study in the 310 NPA (described later in this order). All carriers will be required to provide detailed NXX Code utilization studies for the 310 NPA on a quarterly basis on a

schedule to be determined in a future ruling. We intend to impose fines on carriers that violate the requirement to submit quarterly utilization studies as described herein or to direct the NANPA to suspend NXX Code assignments to such carriers.

B. Mandatory Number Pooling

Voluntary pooling is a short term and limited solution to the number shortage in the 310 area, largely because we cannot require carriers to participate or to return unused numbers, even though more than a million numbers may become available as a result of such a requirement. If we hope to provide timely relief for the residents in the 310 NPA without opening a new area code, we must rely on mandatory pooling. Accordingly, we order a mandatory number pooling trial in the 310 area code, consistent with the September 15 FCC delegation of authority to us.

Accordingly, we direct our Telecommunications Division ("TD") to begin designing the structure for mandatory number pooling in the 310 NPA. TD shall contract for services to design, implement, and evaluate an NXX code utilization study for the 310 NPA.

The mandatory number pooling plan for the 310 NPA shall be on a 1,000-block basis. We anticipate that its design will build upon the voluntary number pooling trial we are establishing in today's order. Once approval for mandatory pooling is granted, the ALJ assigned to this docket should solicit comments from parties on how related cost issues should be handled. The ALJ may also issue rulings to facilitate the development and administration of mandatory pooling.

C. Interim Lottery Allotment Measures

Based on the current status of the NXX code lottery for the 310 NPA, all NXX codes are likely to be exhausted within about 8 months.⁵ Reducing the monthly allotment of NXX codes in the lottery can extend this period. In order to extend the duration of the 310 NPA, we order the monthly allotment of NXX codes assigned from the lottery to be reduced from 6 to 2 NXX codes per month, effective on the September 22, 1999 lottery session. One code from each rate center where demand is demonstrated will be withheld from the lottery for use in our number pooling trial. To address the needs of those carriers which previously obtained NXX codes in the 424 NPA, those carriers shall be given an opportunity to apply for a priority assignment of NXX codes from the remaining 310 NPA inventory. Also, a needs-based assessment shall be instituted prior to the NANPA issuing any codes to such carriers.⁶ The details of the needs based assessment will be addressed in a forthcoming Administrative Law Judge (ALJ) ruling.

Accounting for the priority assignment of 310 NXX codes and NXX codes allocated to voluntary number pooling, we expect the reduction in the number of NXX codes rationed each month will extend the remaining life of the 310 NPA an additional several months. We expect additional NXX codes may

⁵ After NXX codes were allocated in the August 18, 1999 lottery, 51 NXX codes remain unassigned in the 310 NPA. Currently, 6 NXX codes in the 310 NPA are rationed to carriers each month.

⁶ We note that several of the 17 carriers assigned NXX codes in specific rate centers in the 424 NPA already held one or more NXX codes in those same rate centers in the 310 NPA.

become available in the 310 NPA through NXX code reclamation and voluntary NXX code returns, as outlined below.

D. Return and Efficient Utilization of NXX Codes

The majority of NXX codes have already been assigned to carriers in the 310 NPA. We agree with parties who have argued that number pooling alone in a mature NPA such as 310 is not sufficient to defer an overlay or split. Number pooling is a more useful remedy for the 310 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 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 310 area code 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 310 NPA 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 October 30, 1999 the status of its actions pursuant to this directive.

In addition, we have petitioned the FCC for authority to establish a technology-specific or service-specific overlay. If granted that authority, we intend to establish an expanded overlay covering several existing NPAs in the Los Angeles metropolitan area. We intend that the expanded overlay be dedicated to wireless services. We have learned that over 160 NXX codes in the 310 NPA are held by wireless carriers. We would propose to move those 160 plus NXX codes into the new, expanded overlay. This would allow the NANPA to recover 160 plus NXX codes in the 310 NPA for potential reallocation, thus extending the life of the 310 area code.

E. Utilization Study for 310 NPA

A prerequisite for the process of requiring the return of unused or underutilized NXX codes and blocks of 1,000 numbers within the 310 NPA is to determine the utilization of NXX codes which have already been assigned within the 310 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.⁷ We will extend the

⁷ 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 was challenged by Pacific. Pacific claimed that imposing requirements for efficient number management within NXX codes constituted number assignment, a task the

Footnote continued on next page

reporting requirement adopted in D.98-05-021 to apply to all carriers holding NXX codes in the 310 NPA. Moreover, we believe that more detailed reporting than was previously ordered is necessary to get a true picture of number utilization in the 310 NPA.

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 the 310 NPA. 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 results of the NXX code utilization study for the 310 NPA no later than February 29, 2000. The report should also address the status of number pooling implementation and the prospects for extending the life of the 310 NPA.

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 1,000-number blocks from undue contamination pending the implementation of number pooling. We intend to issue a decision on this and related matters as soon as possible following an FCC ruling addressing our concerns in this area.

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.

VIII. Conclusion

Petitioners have convinced us to reverse our earlier decision to require an area code overlay in the 310 NPA at this time. In our efforts to balance numerous competing interests and promote competitive telecommunications markets, we adopted the overlay plan 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 an overlay may impose more substantial, and possibly unnecessary, hardship on customers than previously anticipated. Technological change and the FCC's September 15 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.

By reversing our order adopting an area code overlay, we may concurrently relieve customers of the associated requirement that customers dial 11 digits to reach customers in their own region. We direct carriers to modify their networks accordingly. We also require carriers to notify customers by billing insert that, beginning September 30, 1999, local calls may be completed using 7 digit or 1+10-digit dialing (i.e., permissive 1+10-digit dialing).

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 February 29, 2000, and should include an estimate of the dates TD expects to have the various measures 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, as well as the findings from the utilization study of the 310 area code. 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 the 310 NPA. 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 in the 310 NPA.

Comments on Draft Decision

The proposed alternate decision of Commissioner Joel Hyatt was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on September 9 and reply comments were filed on September 14. This decision was modified slightly to reflect some of the comments. The decision states our intent to pursue a technology overlay to assure most efficient use of existing numbers, and to issue a subsequent decision addressing the concerns of carriers who had ordered numbers in the 424 NPA. We also modify the voluntary pooling program slightly to require all carriers, including those who participate in a voluntary pool, to provide utilization data. Finally, it recognizes the authority granted to us by the FCC on September 15, 1999.

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 310 NPA have experienced 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 conservation measures.

3. The need for an area code overlay or split 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. Industry participants have been unable to reach consensus as to how to implement voluntary pooling.

5. Utilization data is required in order to facilitate number pooling in the 310 NPA.

6. 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.

Conclusions of Law

1. The Commission should order implementation of number conservation measures and utilization studies as set forth herein before requiring the implementation of an area code overlay or split in the 310 NPA.

2. The Commission should continue to suspend the overlay ordered for the 310 NPA in D.98-05-021 and direct carriers to reinstate to permissive 1+10-digit dialing for local calling in the 310 NPA.

3. The Commission should grant the petition to modify D.98-05-021 to the extent set forth herein.

INTERIM ORDER

IT IS ORDERED that:

1. 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 310 Numbering Plan Area (NPA).
2. The assigned ALJ shall develop a further record regarding the long-term process to implement mandatory number pooling and a process for the return of underutilized NXX codes within the 310 NPA.
3. The TD shall develop a voluntary number pooling trial for the 310 NPA as set forth herein.
4. The NANPA shall set aside one NXX code for each of the 16 rate centers in the 310 NPA where demand is demonstrated for the voluntary pooling trial.
5. Carriers interested in participating in the voluntary number pool shall so notify the Director of the TD no later than October 1, 1999.
6. The TD shall develop a plan for the design and implementation of a mandatory number pooling program, and procedures for the return of underutilized NXX codes in the 310 NPA, contingent upon the FCC's grant of authority for the Commission to implement such measures. The TD shall take all other necessary steps to implement number conservation measures as set forth herein.
7. The TD shall file a report by February 29, 2000 regarding the status of efforts to implement number pooling in the 310 NPA, analyzing the extent to which conservation measures may resolve number shortage in the 310 NPA and other matters, as set forth herein. Parties who wish to comment on the report must file responses no later than March 21, 2000.

8. The provisions of D.98-05-021 requiring an overlay and 1+10-digit dialing are suspended as set forth herein and pending further order of the Commission.

9. Carriers in the 310 NPA shall reinstate permissive 1+10-digit dialing for local calls within 60 days of the effective date of this order.

10. To address near term number shortages, all carriers serving rate centers in the 310 NPA shall, within 15 days of the effective date of an FCC order granting the Commission relevant authority, return to the number administrator all numbers that have not been used in blocks of 1,000 to the extent those number blocks are less than 10% subscribed. 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. Carriers who fail to comply with this order shall be subject to all penalties.

11. Telecommunications Division shall work with the number administrator to assure the fair and efficient allocation of blocks of numbers made available pursuant to OP 10. 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 Petition to Modify D.98-05-021 is granted to the extent set forth herein.

This order is effective today.

Dated September 16, 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 1

**List of Petitioners
Joining in Petition to Modify D.98-05-021**

The Petition was submitted by Assemblyman Wally Knox for the following additional petitioners:

Antonio Villaraigosa, Henry A. Waxman, Westwood South of Santa Monica Blvd., Homeowner's Association, Residents of Beverly Glen, Inc., Municipal League of Beverly Hills, Beverly-Wilshire Homes Association, Inc., California Country Clubs Homes Association, Carthay Circle Neighborhood Association, South Brentwood Homeowners' Association, the Federation of Hillside and Canyon Associations, Inc., Ladera Heights Civic Association, West Knoll Triangle Residents Association, West of Westwood Homeowners Association, Westside Civic Federation, Cheviot Hills Homeowners Association, Westwood Hills Property Owners Association, Association for Los Angeles Deputy Sheriffs, Inc., Beverly Hills/Greater Los Angeles Association of Realtors, OPICA Adult Day Services and Counseling Center, Dr. Betty L. Seidmon, and Dr. Steven A. Teitelbaum.

The above-identified petitioners represent residents, homeowners and residential associations, social service providers, and businesses located in the 310 area code region.

(END OF ATTACHMENT 1)

R.95-04-043

D.99-09-067

Henry M. Duque, Commissioner, dissenting:

Facts and law compel my dissent.

The record of this proceeding makes it clear that the 310 area code is currently exhausted. There are currently 51 unassigned codes in the 310 area code, each holding 10,000 numbers. This decision sets aside 16 codes for a number pooling trial. Thus, there remain 35 codes available to meet numbering needs. In July alone, 77 applications for codes in the 310 went unmet. In addition, carriers have already received 81 codes in the 424 overlay area code. With the majority's decision, these 81 codes will remain unactivated, and the carriers' need for these codes will remain unmet. Thus, there is an immediate demand for 156 NXX codes in the area served by 310 area code. Following today's action, we have available only 35 codes, which will be distributed through a parsimonious auction, and a promise that at some time in the future, 160,000 more numbers will be available in a numbering pool.

Mobile carriers, a driving force in the telecommunications revolution and users of the newest and most vibrant communications technologies, will likely suffer the most serious adverse consequences of the majority's decision. Mobile carriers use a technology that prohibits the use of codes assigned to the pool. Thus, they will receive telephone numbers only through the monthly lottery, which will now provide only two codes per month.

The record of the proceeding also makes it abundantly clear that incumbents, new entrants, cellular carriers and consumers of new or additional telecommunications services will also bear major adverse consequence from the restriction of numbers that is the central feature of the majority's decision. For some carriers, the restricted number supply already precludes competition in those "rate centers" where they lack codes. This forces these carriers to decline requests for service. Thus, there are customers who already bear adverse consequences that this decision will unnecessarily prolong.

This proposed decision either ignores, dismisses, or fails to grasp the import of these facts. These facts lead me to conclude that the policies contained in this decision fail to promote the public interest, are imprudent, and will have adverse effects on the California economy.

Since this decision fails to promote the public interest, it should not be surprising that it clearly contravenes telecommunications statutes and regulations at both the Federal and State level.

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.

First, the immediate unavailability of numbers, the uncertain date for the implementation of number pooling, 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 the 310 area by restricting their choice of telecommunications carriers. Already, carriers have declined service to customers because they lack telephone numbers. In addition, the decision unduly favors those carriers (and their customers) 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 decision disfavors the potential consumers of mobile telecommunications services living in the 310 area code. 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.

Third, the decision unduly favors one telecommunications technology over another. In particular, as noted above, the decision favors 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, whether voluntary or mandatory, fail to comport with current FCC requirements. This is critical because Federal laws grant exclusive jurisdiction over numbering to the FCC.³

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.

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).

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

As the discussion above makes clear, the majority's decision fails to make numbers available on an equitable basis. The majority's decision fails to make numbering resources available on 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 the 310 area code.

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. As commenting parties made clear, technological uncertainties, particularly those surrounding the "Y2K" issue, as well as administrative complexities, preclude rapid implementation of number pooling. Nevertheless, this decision simply avoids the need for timely relief. 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

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).

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.

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

As commenting parties made clear, in the 310 area code consumers cannot now obtain telecommunications services from their carrier of choice. Nevertheless, the majority’s decision fails to acknowledge this fact. Most importantly, it fails to devise a numbering policy that will meet this FCC requirement, and therefore it lacks the basis to lawfully order the creation of a number pool.

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 event 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. Even now, 310 is in imminent danger of exhaustion. The decision rejects the one “back-up” plan now available. 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.

⁶ Ibid.

⁷ Ibid, paragraph 15.

⁸ Ibid.

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 the 310, the majority's decision decreased the number of codes available in the monthly lottery from 6 to 2. 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.

Finally, the majority's decision fails to comport with California statutes. California's policy are broadly consonant with Federal law and support consumer choice and 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

⁹ Ibid., paragraph 16.

R.95-04-043

D.99-09-067

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.

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

September 16, 1999

San Francisco