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Decision 96-09-087 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investiga-)
tion on the Commission's Own)
Motion into Competition for)
Local Exchange Service)

I.95-04-044
(Filed April 26, 1995)

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Interim Opinion. According to the Introduction, we have adopted the following:

By this decision, we continue the development of a statewide policy for the administration of numbering resources. In Decision (D.) 96-08-028, we established initial statewide standards for determining appropriate Numbering Plan Area (NPA) relief options. We have also adopted number conservation measures applicable only to the 310 NPAs in D.96-06-062, but deferred consideration of a proposal to ration codes by use of a lottery as a contingency measure.

On the same day we adopted D.96-06-062, the California Code Administrator (CCA) declared a freeze on code assignments in the 310, 415 and 619 NPAs. Separate relief plans are currently in progress for each of these NPAs. The freeze declared by the CCA illustrates the seriousness of the growing strain being placed on scarce numbering resources within California as a result of increased demand due to new telecommunications technologies as well as the entry of new competitive local carriers (CLCs) into the market.

We recognize the need for appropriate code conservation and utilization standards as part of a statewide numbering policy to protect customers against number shortages and to assure that the competitive market is not disadvantaged by denial of needed numbering resources. Our most immediate priority, however, is to deal with the heightened risk of premature code exhaustion.

those NPAs where a freeze has already been declared. Accordingly, we provide specific guidance in this decision regarding a contingency plan for conducting a lottery of NXX codes in the 310, 415, and/or 619 NPAs in the event that other measures cannot prevent premature exhaust. We resolve the outstanding disputes regarding the conditions under which a lottery would be conducted for allocating NXX codes.

In D. 96-06-062, we also solicited comments on the general applicability of the conservation measures adopted for the 310 NPAs as part of a statewide policy. We defer to a subsequent decision the consideration of whether to adopt statewide policies for the conservation and efficient utilization of NXX codes. In the meantime, we expect the CCA and carriers to scrupulously observe existing industry guidelines for code conservation in recognition of the numbering shortage facing California. We also defer the issue of how costs are to be shared among carriers for disseminating customer education and awareness regarding NPA relief and number conservation to a later decision.

II. Procedural Background

The need for the development of a statewide policy regarding numbering resource administration was first raised in the 310/562 NPA relief plan complaint proceeding. In D. 95-08-052, we adopted a 310/562 NPA resource geographic split to provide relief of the impending number

exhaust for that region. Recognizing the broader policy implications of the numbering resource issues raised in the 310 NPA relief proceeding, we directed that a statewide policy for NPA relief planning be developed in the Local Exchange Competition Rulemaking (R.95-04-043). In D.95-10-052, we further directed the Commission's Advisory and Compliance Division (ACD) to work with the CCA and other interested parties to develop contingency measures to address the possibility of NXX code exhaust in the 310 area code prior to the opening of the new 562 area code. On June 19, 1996, the Commission issued Order D.96-06-062 which adopted measures for the conservation of central office codes for the 310 NPA pursuant to the directives in D.95-10-019 (Order Modifying D.95-08-052 and Denying Rehearing). We solicited further comments in our Ordering Paragraph (OP) 6 of D.96-06-062 on (1) the applicability of the measures adopted for the 310 NPA as part of a statewide policy, (2) cost sharing for disseminating customer education regarding NPA relief and conservation measures, (3) the design of a lottery mechanism to ration codes, and (4) which code conservation measures should remain in effect beyond the permissive dialing period for the 562 NPA. Comments on these issues were filed on July 15, 1996 by various parties. Among the adopted measures in D.96-06-062, the CCA was directed to declare an interim freeze on the assignment of NXX codes in the 310 area code if code supply fell below a prescribed minimum. In conformance

with the criteria (in D.96+06+062, the CCA declared a 90-day freeze on code assignments in the 310 NPA on June 19, 1996. While D.96+06+062 only covered conservation measures applicable to the 310 NPA, the CCA also declared a 30-day code assignment freeze for the 415 and 619 NPAs since they were already in a "jeopardy" status (i.e., demand was expected to exceed supply during the NPA relief planning interval). On July 19, 1996, Pacific Bello (Pacific) filed an initial report with the Commission on behalf of the CCA regarding the results of the industry meetings to develop extraordinary conservation procedures which were held pursuant to the freeze. Pacific filed a supplemental report on July 31, 1996 regarding additional progress toward developing extraordinary conservation measures. A subsequent meeting was scheduled for August 6, 1996. Pacific reports that consensus was reached among meeting participants regarding implementation of rationing as well as a lottery when demand exceeds supply. They also agreed to use as a general guideline the Memorandum on Extraordinary Central Office Code Conservation developed by industry participants in the State of Massachusetts. Pacific attached to its report a document entitled "California Extraordinary Conservation Measures Working Document." This document reflects the consensus reached among participants in the industry meetings and provides the standards which the CCA intends to apply in California for any NPA that is declared to be in jeopardy.

Pacific also attached to its report "Position Papers" (including those of itself and AirTouch, California Cable Television Association (CCTA), GTE California (GTEC), MCI, PageNet, Sprint, Teleport Communications Group (TCG), TCI Cablevision (TCI), and Time Warner (TW)). In their recent "Position Papers," parties expressed disagreement and regarding the terms under which any lottery would be conducted to allocate codes. In addition to the parties filing "position papers," comments were also filed on July 15, 1996 by the California Telecommunications Coalition (Coalition),¹ Los Angeles Cellular Telephone Company (LACTC), and CMT Partners (on behalf of Bay Area Cellular Telephone and certain other cellular companies). The Commission's Division of Ratepayer Advocates (DRA) filed comments on July 17, 1996. DRA's motion for late-filed acceptance is granted.

Comments were received on September 11 with reply comments on September 16 regarding the effects of the recently issued August 8, 1996, Federal Communications Commission (FCC) rules on this Commission's authority to impose a lottery-based rationing of codes and also

¹ The members of the California Telecommunications Coalition joining in the filed comments were AT&T Communications, Inc.; The California Cable Television Association, Sprint Communications Co., L.P., and MCI Telecommunications Corporation. Although Toward Utility Rate Normalization is a member of the Coalition, it did not had time to review the comments and, therefore, did not join in its contents. The views expressed in the comments represent a consensus position and may not necessarily represent all of the views of all of the members of the Coalition.

regarding the substantive merits of the proposed lottery? Comments were filed by various telecommunications carriers and by the Commission's Division of Ratepayer Advocates. No evidentiary hearings have been held on the issues decided herein. As a basis for our decision, we have considered parties' filed comments received on July 5, 1996; the filings of the CCA filed on July 19 and July 31, 1996 in response to the freeze declared on June 9, 1996, and the comments in response to the September 4, 1996 ALJ Ruling.

Commission Jurisdiction Over NXX Code Allocation and Rationing

On August 8, 1996, the Federal Communications Commission (FCC) issued its Second Order and Report (FCC 96-333) which established rules, among other issues, for numbering administration functions, and how jurisdiction for numbering administration should be divided between state and federal regulatory bodies. The FCC retained its authority to set policy with respect to all facets of numbering administration... [b] retaining authority to set

broad policy on administration matters. The FCC, by prior orders, established the North America Numbering Council (NANC) as an impartial numbering administrator delegated with the task of overall number allocation throughout the United States. A nationwide uniform system of numbering is essential to efficient delivery of telecommunications service in the United States, according to the FCC.

In its order, the FCC specifically rejected this Commission's proposed plan to serve as central office (CO) code administrator until the NANC has developed its policy on numbering administration. (325,331) By asserting authority to set broad policy on numbering administration, however, the FCC did not rule out any continuing role for state commissions in numbering administration issues. During the interim period between the enactment of the FCC rules and the transfer of code administration functions to the new NANP administrator, the FCC did allow the states, if they performed any number administration functions prior to enactment of the 1996 Act, to continue to do so until such functions are transferred to the new NANP administrator.

The FCC also authorize(d) the states to resolve matters involving the implementation of new area codes, noting that (s)tate commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions. (id., p 272)

Because of the relevance of the FCC rules to the issue of lottery-based rationing as contemplated in this proceeding, the assigned ALJ solicited supplemental comments regarding the impacts of the FCC rules on the Commission's authority over code allocation matters. Specifically, the ALJ asked whether the recently issued rules regarding code administration and area code relief impacted this Commission's authority to impose lottery-based rationing of NXX codes. Parties were asked to comment on the apparent bright line drawn by the FCC which

between area code relief and code administration, and (whether lottery-based rationing could be clearly delineated as an area code relief function within Commission jurisdiction.)

A. Positions of Parties

Parties filing comments generally agree that it is consistent with the FCC rules for the Commission to adopt rules for the rationing of scarce NXX codes within the context of area code relief implementation and consistent with the FCC's broad policies in GTEC and CCTA. We believe this authority should be revisited once the NANP administrator is selected. Pacific notes, however, that there is no time limit placed on states' authority to initiate and develop area code relief plans, and such authority may continue even after the NANP administrator is selected.

While the FCC did not delegate the task of overall number allocation to the states, it did permit the states jurisdiction over area code relief initiation and implementation. Because area code relief necessarily involves oversight of NXX code allocations to assure that premature code exhaust does not occur, the parties believe that this Commission has jurisdiction to resolve disputes over code allocations in the context of area code relief. LACTO believes this authority is limited to choosing among area code relief plans presented by the industry, but that the Commission cannot substantively alter or revise the alternatives proffered by the industry. Other parties believe this view is too limited, and that the Commission

has a wider role in area code relief planning. By contrast, code administration functions which are outside of particular area code relief plans would not be subject to Commission jurisdiction unless we had been performing those functions prior to enactment of the 1996 Act. Certain CLCs argue that the Commission not only may, but must act to protect consumer choice for all Californians by assuming responsibility for competitively neutral and allocation of codes among numerous California competitive carriers. Most parties agree that some form of lottery-based rationing is consistent with the FCC's broadband policies, and therefore within the authority of this Commission to initiate. Parties disagree, however, on the details of how new entrants should be treated in a random lottery. Brooks Fiber is the only party to argue that a lottery-based code rationing is prohibited under the FCC rules and directly conflicts with the FCC's procompetitive policies. If the Commission determines that it has jurisdiction over central office code allocation functions, Brooks Fiber recommends that codes be rationed on a first-come, first-served basis to be consistent with FCC policies.

B. Discussion

We conclude that the imposition of a lottery-based rationing of NXX codes for codes in area codes which are subject to a freeze is within our authority to initiate and implement area code relief. We conclude that the FCC rules permit this Commission to settle disputes

regarding NXX code allocations and to establish rules for code rationing through a lottery or other means, as long as we act within the context of area relief oversight and are consistent with the broad policies set forth within the FCC rules. By establishing a distinction between a broad policy on numbering administration and matters involving implementation of new area code relief plans, the FCC clearly recognized a continuing role for state commissions in determining the allocation of NXX codes where NPA relief planning is involved. An essential aspect of NPA relief planning involves continued review of NXX codes remaining in the NPA. If the supply of NXX codes is insufficient to meet demand during the relief planning interval, jeopardy is declared and special conservation measures become necessary. A lottery is one such measure to deal with code shortages.

The FCC rules clearly permit state commissions the option to perform functions associated with initiating and planning area code relief. The FCC delegates area code relief initiation and planning, however, only to those states wishing to perform these functions. Those states that seek to perform any or all of these functions must notify the new NANP administrator within 120 days of the selection of the NANP administrator. Those states wishing to perform these functions prior to the transfer of such functions to the new NANP administrator must notify promptly the current code administrator.

The FCC rules permit this Commission to settle disputes

For purposes of this decision, we do not address the question of whether the Commission shall elect to take on the actual role of initiating and planning area code relief. Up until now, this function has been performed by Pacific as code administrator, with oversight by the Commission. For purposes of this decision, we limit our focus to the issue of continuing our existing regulatory oversight of area code relief functions.

We shall elect to continue to perform the oversight functions relative to area code relief which we performed prior to the enactment of the FCC rules. The oversight of code conservation is within the scope of the number administration functions that this Commission performed prior to enactment of the 1996 Act. In connection with authorizing the 310/562 NPA relief plan, we recognized the need to oversee the process of code conservation to avert the risk of premature code exhaustion prior to relief implementation. The extraordinary conservation measures adopted for the 310 NPA in D.96-06-062 were an integral part of the implementation of the relief plan adopted in D.95-08-052. The adoption of a plan for rationing of NXX codes through a lottery or other means is another extraordinary conservation measure to facilitate the timely implementation of an NPA relief plan with minimal adverse impacts on consumers, competitors and service providers. The question of whether a lottery is appropriate involves consideration of local conditions within the NPA. The FCC has indicated that expertise in local conditions is

is within the purview of the state. We thus conclude that it is consistent with the FCC rules for this purpose. Commission to authorize code conservation procedures in the context of area code relief planning, including a lottery procedure for the rationing of NXX codes in those NPAs where jeopardy conditions are present and a freeze has been imposed by the CCA. We discuss below how the lottery should be designed and conducted in order to be consistent with overall FCC policy and to promote a

competitive marketplace of services and improve the assurance of the maintenance of the FCC rules. The following section IV, User of a Lottery for Code Rationing discusses

In D.96-06-062, we deferred action on a proposal by CACD to institute a lottery to assign NXX codes in the 310 NPA in the event of a declared freeze. We stated that the institution of a lottery warranted further study before a final decision is made on its adoption. In particular, we raised concerns that code allocation based on a random lottery could be considered discriminatory and inconsistent with the first-come, first-served allocation criteria. Accordingly, we solicited comments from parties by July 15, 1996 concerning how a lottery could be designed to overcome potentially unfair discriminatory treatment of carriers. Several parties filed comments on this issue on July 15, 1996, and also addressed the issue in their position papers appended to the July 31, 1996 CCA Supplemental Report. The FCC has indicated that expertise in

Parties generally agree that if a lottery is used, it should be considered a last resort after all other feasible means have failed to avert a shortage of numbers. Pacific states that a lottery should account for the difference between tandem and end-office based interconnectors. Those carriers who interconnect at the end-office would have no choice but to deny service to customers if they have no 310-NPA numbers. Tandem interconnectors, on the other hand, could simply shift their demand for numbers to an adjacent area code. GTEC argues that the first-come, first-served method for code allocation is most appropriate whether the supply of NXX codes is limited or not. LACTC expresses concern over any proposal to establish statewide policies for rationing codes, whether by lottery or other means, noting the potential for bureaucratic entanglement and for the possible effective denial of efficient service to end users. At the industry meeting held on June 19, 1996 pursuant to the declared freeze in the 310-NPA, attendees agreed that rationing as well as a lottery should be implemented when code demand exceeds supply. Industry participants disagreed, however, on how a lottery should be conducted. The disagreement involves whether the lottery should be purely random with all carriers having an equal chance for selection, or whether certain preferences should be given to carriers with few or no codes in their possession. Members of the Coalition and DRA favor the latter approach. Disagreements focused on a

majority of representatives comprised at a 20% level

three proposed modifications to a random lottery involving the use of the frozen gas & benzene ad blocks of heat

to establish Code Request Categories, Initial and Growth Priority Lists for Code Allocation and Company Weighting for Lottery Participation and Positions of Parties

by Establishment of Code Request Categories

Some industry representatives believe that two separate categories of code requests should be established: (1) initial and (2) growth codes. Initial Code Requests are first time requests by a code applicant for a code in a particular geographic rate center of the NPA. Growth Code Requests are requests for an additional code in a particular geographic rate center of the NPA where the requester already has one or more codes assigned to them. Proponents of this approach base it upon the model developed in the State of Massachusetts. An initial code request refers to a first time request by a code applicant for a code in a particular geographic rate center. A growth code request refers to requests for an additional code in a particular rate center where the requester already has one or more codes assigned to them. The code administrator would then assign available codes each month based upon a predetermined percentage of codes designated for initial code requests and for growth code requests. In Massachusetts, the code allocation was 60% initial and 40% growth. While this percentage allocation was favored by some industry representatives, a majority of representatives compromised at a 50%/50%

allocation between initial and growth categories if the Commission approves the use of such categories. If the total monthly allocation is not reached for one category, then the remaining codes can be used by the other category. The Coalition and DRA support this approach since it would guarantee first-time applicants access to a minimum number of NXX codes, and would guarantee a minimum number of codes for growth as well. At the July 19 meeting, Pacific voted in favor of the use of two categories in the spirit of "compromise" with the understanding that each category would obtain 50% of the codes assigned each month (as opposed to the 60%/40% split used in Massachusetts). Pacific believes, however, that the use of categories is less desirable than an entirely random lottery. Some parties advocate that a code allocation be adopted of 60% for initial and 40% for growth as was used in the Massachusetts plan. CCTA/TW/COX propose that the 60% allocation for the initial category should give a preference to facilities-based providers that offer both residential and business local exchange service. TW and Cox state that they will be prevented from providing facilities-based service in the 619 NPA if they cannot secure the NXX codes needed to serve that NPA. CCTA argues that a pro-competitive framework can only be constructed by ensuring that all providers have the requisite access to numbers, and that

a lottery must give preferential weighting to new entrants to meet this goal. Priority Lists for Code Allocation

The Coalition and DRA advocate that a priority list should be established for code assignments following the model developed by Massachusetts. When the allotment for any month is insufficient to meet demand, a priority list would be established. Code applicants not receiving a code would be placed on the priority list in the order in which they were drawn. While these applicants must reapply in each of the following months, they would be given priority. In any given month, the code priority list from the previous month would be honored before the new lottery selections were assigned codes.

Proponents of the priority list approach claim that it guarantees code applicants getting at least one code rather than none at all. Other industry representative opposed the use of priority lists since it could penalize code applicants who are denied needed codes because earlier requests by code applicants are given higher priority. GTEC argues that assigning based on a priority system should not be used except to prevent the denial of service for the carrier of last resort (COLR). Pacific argues that the proposed priority system discriminates against new entrants who may not be in a position to apply for codes at the time of the first month's lottery. Providers have the requisite access to numbers and that

3. Company Weighting for Lottery Participation

As noted in D.96-06-062, CACD proposed that an allocation of codes under a lottery should incorporate a weighting factor which assigns carriers additional chances to win the lottery draw based upon the percentage of NXX codes held by the applicant. Depending on the quantity of NXX codes that a code applicant has, a certain number of lottery tickets would be issued, based on the following criteria:

% of Total NXXs Held by Applicant # Tickets Assigned Applicant

Over 40	1
Over 30	2
Over 20	3
Over 10	4
0 to 10	5

This weighting process would give new entrants and those with fewer NXX codes a relatively greater chance to win the lottery draw compared to the incumbent LECs.

Pacific believes that a fair method of weighting a lottery is difficult, perhaps impossible to design. A lottery should take into account the difference between tandem and end-office interconnectors, according to Pacific. Weighting the chance to obtain needed resources based on embedded codes alone would give a preference to certain carriers. Pacific argues that the weighting proposal is the most discriminatory of any option, and would unreasonably deny code access to carriers.

The weighting proposal is supported by DRA and various CLCs. TCG, for example, argues that greater

weight should be given to new entrants in any lottery selection to offset the advantage which incumbent LECs have through their control of the majority of NXX codes.

Since code requests for growth purposes only require a 70% utilization of a carrier's current NXX codes, this means an incumbent LEC could have up to 3,000 numbers to available for use at the time it requests a new code. In addition, the LEC recovers additional numbers through the "churn" of customers. TCG argues that new entrants with few or no NXX codes lack comparable access to number resources. Thus, TCG believes that CLCs are not similarly situated to incumbent LECs and therefore deserve an offsetting advantage with respect to any lottery. Thus, TCG believes it is the results of any rationing process, not necessarily the means to that result, that must be nondiscriminatory.

4. Override for Carriers of Last Resort

Pacific states that the industry was unable to agree at the July 19 meeting on whether to give a special protection to carriers of last resort in designing a lottery. If a COLR had no numbers in a particular wire center, and if no other carrier with a supply of numbers was willing to provide service in that wire center, then Pacific believes that the COLR should have priority in the next month's lottery to avoid denial of customer service.

In practice, however, Pacific believes such an override would rarely, if ever, need to be invoked.

The weighting proposal is supported by DRA and various CLCs. TCG, for example, argues that greater

5. Case-by-Case Exemptions from the Lottery ~~and~~ CCTA/COX/TW argue that in order to ensure timely availability of numbers for new entrants in accordance with FCC principles, carriers should be exempted from the lottery under certain circumstances. Specifically, these parties advocate that no customer should be denied their choice of service provider due to a lack of telephone numbers, and that no service provider who has made a new or additional significant investment to provide new or expanded service in an exhausting area code and is fully prepared to provide such service within six months should be entitled to promptly obtain the requested NXX codes as long as that number of codes is available. The parties argue that any service provider who qualifies under these guidelines should be able to file a petition with the Commission seeking expedited allocation of reasonably forecast NXX codes.

B. Discussion

Our overall goal is to assure that numbering resources are available when and where they are needed, and that all feasible means should be deployed to avoid reaching a situation where a freeze on code assignments becomes necessary. Even after a freeze is declared, where more stringent conservation measures must be deployed, the rationing of numbers should be considered as a last resort. As long as there are sufficient codes available to meet demand, the existing practice of code assignment on a first-come, first-served basis provides a fair

nondiscriminatory means of assigning codes. Once the demand for codes exceeds available supply, we believe that the first-come, first-served approach may no longer assure a code allocation which is conducive to a competitive market and which is equitable to new CLCs. While we do acknowledge the problems inherent in fairly rationing scarce codes under any methodology, we conclude that a lottery is an appropriate tool in the event that rationing becomes necessary. Only after a freeze has been declared and all other feasible means of conserving numbers have been deployed, will we then authorize the CCA to proceed with number rationing via lottery. If premature code exhaustion still cannot be averted, we note that industry representatives at the July 12 meeting on code conservation measures reached consensus that a lottery should be implemented to allocate codes when demand for codes exceeds supply. We concur with the industry consensus on this point.

We shall adopt a contingency plan for the CCA to conduct a lottery to allocate remaining NXX codes in the 310, 415, and 619 NPAs in the event it becomes necessary. The CCA should not proceed with any lottery, however, until the final report regarding the results of currently ongoing industry meetings regarding implementation of extraordinary conservation measures pursuant to the declared freeze. As reported in Pacific's July 31 report, substantial progress has been made toward developing additional measures for the allocation of 310 NPA NXX codes through the consensus process. Parties have agreed

on allocation measures which involve modification of certain code allocation guidelines which have been developed in the State of Massachusetts, as summarized on page 4 of the report. We approve this procedure as reported by Pacific and encourage parties to continue to work cooperatively toward devising mutually agreeable code allocation procedures.

We recognize that parties have generally agreed that if a lottery is to be conducted, the Commission and staff, rather than Pacific, should conduct the lottery. As discussed above, pursuant to the FCC Second Report and Order and Memorandum Opinion and Order, FCC 96-333, however, state regulatory commissions are permitted to initiate and plan area code relief. Since the conducting of the lottery would involve the part of the relief planning implementation, this Commission is not precluded from performing the lottery for purposes of allocating codes. The actual logistical details of conducting the lottery should be coordinated between the code plan administrator, Commission staff and industry participants.

We shall direct Pacific to convene a meeting of industry participants to consider procedures to assure that if a lottery is conducted, it is administered in an open and competitively neutral manner. We shall direct the Telecommunications Division to monitor this process. We shall direct the CCA to file a subsequent status report with the Commission no later than 10 working days after the effective date of this decision, with a

copy served on parties of record in this proceeding. The report shall provide a progress status since the July 31, 1996 report and shall advise whether the conservation measures currently being formulated in the ongoing industry meetings are expected to avoid premature exhaustion in the 310, 415, and 619 NPAs. Only when or if the CCA reports to us that deployment of such measures cannot avert premature exhaustion within an NPA shall we authorize the CCA to proceed with conducting the lottery for that NPA. While the industry agrees in principle on the use of a lottery, there is disagreement regarding the rules under which the lottery should be conducted. We shall adopt the proposal to establish separate selection categories for initial and growth codes with a 60%/40% allocation between the two categories. The use of these categories will assure that first-time applicants have access to a minimum number of codes while reserving a minimum number of codes for growth as well. We shall establish a priority list for both the initial and the growth code category. We shall adopt the procedures for administering the lottery as summarized on page 6 of Pacific's July 31 Report. We shall also direct that first in priority on the list shall be any COLR with no numbers in a particular wire center and where no other carrier with numbers is willing to provide service in that wire center. We shall also adopt the stipulation that the COLR preference only applies for the use of NXX codes that meet COLR obligations. Any such COLRS shall have first

priority in the following month's lottery to avoid denial of customer service. We conclude that a 60%/40% allocation patterned after the plan adopted in the State of Massachusetts strikes an appropriate balance between the goals of removing barriers to competitive entry and assuring fair access to numbering resources by all telecommunications carriers. By allocating a somewhat greater share of the codes to the initial relative to the growth category, new entrants will have an enhanced opportunity of receiving at least some codes so that they will not be foreclosed from competing within an area code subject to code shortages. We decline at this time to adopt the proposal for case-by-case exemptions from the lottery as proposed by CGTA/TW/COX. We shall closely monitor the results of any lottery, however, and shall direct the Commission's Telecommunications Division to keep careful statistics on any new entrants who are foreclosed from entry into a given market solely because of denial of NXX codes. We shall keep our options open for dealing with this potential problem as conditions warrant.

We decline to adopt the CACD proposal for preferential weighting the chances of lottery selection based on the number of NXX codes held by each carrier. We believe that the measures outlined above address the concerns regarding the ability of new carriers to have an opportunity to obtain codes in a random lottery. We are concerned, however, that the weighting proposed by CACD is unduly

A. Parties' Position
The Commission advocates expedited implementation of the 310/565 NPA split as a remedy against pressure

complicated and may go too far in the direction of biasing the lottery results in the opposite direction. The goal of any code allocation process should be to strive for nondiscriminatory treatment of all carriers, irrespective of the number of codes they already possess. We appreciate the concern that incumbent LECs, through their control of the majority of NXX codes, have a competitive advantage over new entrants in meeting customer demand for numbers. It is not our intention that new entrants be competitively disadvantaged in their access to codes through a random lottery. We are concerned, however, that the weighting proposed by CACD does not reasonably correlate the weighting to any competitive harm experienced. For example, the weightings proposed by CACD would give a carrier with 10% of the NXX codes in a given wire center a five-fold advantage over carriers with 40% or more of the NXX codes. Yet we find no basis to conclude that the carrier with 10% of the codes is at a five-fold competitive disadvantage. If there is concern that the LECs' existing inventory of NXX codes reduces their need for new numbers, then the preferred remedy is to more rigorously scrutinize the LECs' claimed demand for new codes. Accordingly, we decline to adopt a weighting as proposed by the CACD.

V. Acceleration of NPA Relief Implementation

A. Parties' Positions: The Coalition advocates expedited implementation of the 310/562 NPA split as a remedy against premature

code exhaust, Pacific's jeopardy determination is quite
predicated on calculations that assume area code relief
implementation must be preceded by a 24-month notice and
period pursuant to the notice requirements contained in PU
Code Section 7931 and 7930(a). In D.95-08-052, however,
the Commission concluded that the statutory provisions of
Code Sections 7930-7931 apply to telephone corporations
and do not legally foreclose the Commission from ordering
its own implementation of a geographic split if it is in
the public interest to do so. (Decision at 38.)

The Coalition argues that the Commission can
alleviate the impending premature exhaust problem by
ordering that the implementation of the new area code
relief plan be accelerated. The revised relief schedule
proposed by the Coalition would require the new 562 area
code to be established on a schedule of less than 24 and
months but greater than 15 months to allow for the minimum
advance written notice period pursuant to Section 7930.
The Coalition believes that expedited implementation of
NPA relief is clearly feasible.

At the June 12 Industry Meeting, Pacific and
GTEC expressed pessimism concerning expedited
implementation, citing LEC resource constraints.

B. Discussion

In D.96-06-062, we found that since the LECs had
already communicated to customers the planned start date
for permissive and mandatory dialing, acceleration of the
310/562 split implementation would be unduly confusing and

disruptive to customers who would be unprepared for an earlier implementation date. While we continue to have this concern, we now believe an even greater problem is the risk that carriers may be denied needed codes in the event that the NPA relief is not expedited. Moreover, as we found in D.95-08-052, the provisions of PU Code sections 7930-7931 do not legally preclude the Commission from ordering implementation of an NPA relief plan sooner than 24 months from the date that Pacific first announced its proposed relief plan. In fact, in D.96-08-042 in which we approved a geographic split for the 415 and 916 NPAs, we specifically limited the customer notice period for the 415 NPA relief plan to only 12 months in the interests of avoiding premature exhaust in that NPA. Accordingly, in conjunction with current industry efforts to identify means of avoiding premature code exhaust short of conducting a lottery, we shall direct Pacific and GTEC to review their resource constraints to determine the technical feasibility of expediting the present 310/562 NPA relief implementation efforts in order to avoid or mitigate the need for rationing of codes through a lottery or other means. The customer notification regarding potential shortages of telephone numbers which is currently being planned by industry participants would need to incorporate a notice that the schedule for opening the new area code was being accelerated in order to prevent number shortages. We shall require the CCA report on the status of efforts to assess the feasibility and required procedures to

1016: AAT the industry meetings held pursuant to the declared freeze in the 310 NPA, industry participants agreed on the use of a lottery to ration codes in the event that demand should exceed supply, but disagreed on three elements of lottery design:

7. The three elements of disagreement of lottery design among industry participants involved whether to allocate codes by separate categories, whether to prioritize applicants who were previously denied codes, and whether to apply a weighting to applicants' chances of winning the lottery based on the percentage of NXX codes held within a wire center.

8. Under the proposal for allocation of code requests by separate categories, the code administrator would assign available codes each month based upon 50% of codes designated for initial code requests and 50% for growth code requests.

8a. By allocating a greater percentage of codes to the initial category, the opportunity for new entrants to be able to obtain NXX codes is enhanced.

8b. If a new entrant is denied access to any NXX codes in an NPA, that entrant will be precluded from entering that NPA market.

9. Under the proposal for code prioritization, applicants not receiving a code would be placed on a priority list in the order in which they are drawn, and would be given priority for code assignments assuming they reapplied each following month.

10. In its November 9, 1995 Workshop Report, SCACD proposed that allocation of codes under a lottery should incorporate a weighting factor which assigns carriers additional chances to win the lottery draw based upon the percentage of NXX codes held by the applicant.

11. On August 8, 1996, the FCC adopted its Second Report and Order and Memorandum Opinion and Order (Rules) which addressed CO code administration and area code relief planning.

12. Under its adopted rules, the FCC retained jurisdiction for overall code administration policy but permitted the states to initiate and plan area code relief.

13. The process of initiation and planning of area code relief includes the monitoring of the availability of NXX codes and the development of contingency plans for code rationing where necessary to avert premature code exhaustion.

14. The FCC Rules also allow the states to continue to perform any number administration functions which they performed prior to enactment of the 1996 Telecommunications Act until such functions are transferred to the new North American Numbering Plan Administration.

Conclusions of Law

1. It is consistent with the FCC Rules adopted on August 8, 1996 (FCC-333) for this Commission to settle disputes and adopt rules regarding code allocations in the context of area code relief planning.

Implementation could be even more negative if it resulted

2. This Commission may adopt rules for code rationing through a lottery or other means as a function of its delegated authority to initiate and plan area code relief.

3. The NXX code resource allocation guidelines set forth in Exhibit A of Pacific's July 31, 1996 supplemental status report are reasonable and should be adopted for use in any NPA which is declared to be in jeopardy.

4. As long as there are sufficient codes available to meet demand, the existing practice of code assignment on a first-come, first-served basis provides for a fair and nondiscriminatory means of assigning codes.

5. Where the demand for codes exceeds available supply, the first-come, first-served approach may no longer assure a fair code allocation which is conducive to a competitive market and equitable to new CLCs.

6. Among the means of averting premature code exhaustion in the 310 NPA prior to resorting to a lottery for code allocation, Pacific and GTEC should assess their resource constraints and determine what changes in the current implementation processes would be required to accelerate implementation of the 562 area code in order to avoid the need for code rationing.

7. While a change in the previously announced implementation date for the 562 area code may cause customer confusion and dissatisfaction, the consequences of not accelerating the date for relief plan implementation could be even more negative if it resulted

in the denial of codes to carriers and the rationing of codes.

18. Any acceleration in the 310/562 NPA area of implementation schedule should preserve a six-month permissive dialing period in order to provide adequate time for customers to become accustomed to the new area code. While there are problems inherent in fairly rationing scarce codes under any methodology, a lottery is appropriate in the event that rationing becomes necessary as a last resort after all other feasible means have failed to avert a shortage of numbers.

19. Only after a freeze has been declared for an NPA and the CCA reports to the Commission that all other feasible extraordinary conservation measures have failed to avert premature exhaust should the CCA be authorized to proceed with number rationing via lottery for that NPA.

11. Separate selection categories should be established for initial and growth codes with a 60%/40% allocation between the two categories, respectively, for purposes of allocating scarce codes through a lottery.

12. If the total monthly allocation is not reached in any month for one category (i.e., Initial or Growth) then the remaining codes can be used by the other category.

13. When the allotment for any month is depleted, a priority list should be developed for applicants who fail to receive any code.

14. In any given month, the code priority list from the previous month should be honored before the new code lottery selections are assigned codes providing that priority applicants reapply each following month.

15. If a COLR had no numbers in a particular wire center, and if no other carrier with a supply of numbers was willing to provide service in that wire center, then the COLR should have priority in the next month's lottery to avoid denial of customer service. The COLR preference shall only apply for the use of NXX codes that meet COLR obligations.

16. We shall also direct that first in priority on the list shall be any COLR with no numbers in a particular wire center and where no other carrier with numbers is willing to provide service in that wire center.

17. Any such COLR shall have first priority in the following month's lottery to avoid denial of customer service.

18. We decline to adopt the CACD proposals for weighting the chances of lottery selection based on the numbers of NXX codes held by each carrier.

19. The weighting of lottery selection chances proposed by CACD is unduly arbitrary and is not correlated to any competitive harm experienced by the remaining category.

20. When the allotment for any month is depleted, a priority list should be developed for applicants who fail to receive any code.

of 20. In the interests of averting premature code
exhaust and the need for lottery rationing, Pacific and
GTEC should assess the feasibility of accelerating the
implementation of the 310/562 NPA relief plan.

INTERIM ORDER

IT IS ORDERED that the California Code Administrator (CCA) shall
continue to use all due diligence to work with other
industry participants to devise appropriate emergency
means to conserve codes in those Numbering Plan Areas
(NPA) in which freezes have been declared. In particular,
Pacific Bell and GTEC California shall consider the
feasibility of accelerating the implementation date of the
310/562 NPA relief plan as a means of averting premature
exhaust, and shall report on its efforts to do so in the
report required in the following ordering paragraph.

2. The CCA is directed to file a status report
later than 10 working days following the effective date of
this order regarding the results of industry efforts to
devise emergency measures to conserve NXX codes in the
310, 415, and 619 NPAs in order to avoid premature
exhaust. The report shall indicate whether the supply of
codes is projected to be sufficient to meet demand in each
of the NPAs until the applicable NPA relief plans are
implemented.

3. In the event the CCA reports that codes will not
be adequate to meet demand, the CCA is directed to work

with the Commission Advisory and Compliance Division to implement the necessary administrative procedures for conducting a lottery for the assignment of NXX codes for those NPAs for which a freeze has been declared and where other emergency conservation measures have failed to generate sufficient codes.

4. In the event a lottery is conducted, it shall be administered according to the procedures applied in the State of Massachusetts as described in Sections IV and V of Attachment 1 to the July 15, 1996 comments of the Coalition (with the initial and growth categories shall be allocated on a 60%/40% basis and it shall be consistent with the Conclusions of Law set forth above.

5. The CCA shall promptly report to the Commission the planned date for any lottery; the results of any lotteries conducted and the resulting allocation of codes.

This order is effective immediately.

Dated: September 20, 1996, at San Francisco, California.

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device P: GREGORY CONLON

President
DANIEL W. PESSLER

to supply of JESSIE J. KNIGHT, JR.

codes is provided of HENRY M. DUQUE
JOSHUA L. NEEPER

of the Commission's applicable WA relief plans are

implemented.

3. In the event the CCA reports that codes will not

/s/ HENRY M. DUQUE
Commissioner

Henry M. Duque, Commissioner, concurring:

I concur with this decision, but file a concurrence to note my continuing objections to the thrust of the Commission's policies concerning the scarcity of telephone numbers in California.

For over a year, my public comments and written dissents have held that the Commission's policy regarding telephone numbering schemes should consist of two elements: 1) ensuring the supply of telephone numbers to all business that need them; and 2) when forced to choose between splitting an area code or overlaying a region with a second area code, the Commission should respect the preferences of the affected Californians, and then take steps to ensure the competitive neutrality of their choice. Overlays, for example, require several fewer months to implement than geographic splits and could prove useful in areas with pending shortages of phone numbers.

The Commission, in its collective deliberation, has found my suggestions and arguments unpersuasive. Thus, today the Commission again turns to the business of rationing phone numbers. The lottery in this decision, although fair, produces the following outcome: Companies that have invested hundreds of millions of dollars to provide competitive telephone services to Californians now find that they must participate in a lottery to determine whether they can get the telephone numbers needed to provide services. This outcome should cause the Commission to reflect on whether we are truly opening California markets, or creating a new regulatory program. In my view, this Commission should devote its time and attention to the business of opening California telecommunications markets, not to the bureaucratic business of determining schemes for rationing telephone numbers.

Nevertheless, now that the Commission has reached this juncture where numbers are scarce and rationing is likely, there is no good alternative to the lottery scheme contained in this decision.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

September 20, 1996

San Francisco

R.95-04-013; I.95-04-014
D.96-09-087

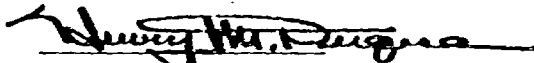
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Henry M. Duque
Commissioner

September 20, 1996

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