

Decision 00-07-052 July 20, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service	Rulemaking 95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	Investigation 95-04-044 (Filed April 26, 1995)

**O P I N I O N**

By this decision, we continue the development of a statewide strategy to promote the efficient allocation of telephone numbering resources. The focus of this decision involves extending number conservation measures that have been adopted for the 310 Numbering Plan Area (NPA) to other NPAs within California. In Decision (D.) 99-09-067, we halted implementation of the 310/424 NPA overlay, and undertook to extend the life of the 310 NPA by promoting more efficient use of existing number resources as much as possible before authorizing the opening of a new area code.

The claims of code exhaustion in the 310 NPA were indicative of a much more fundamental problem in the way that number resources had been traditionally allocated. Under the traditional system, each local carrier obtains a separate NXX code for each rate center in which service is offered. This system was designed for an era when one monopoly carrier provided local service within a franchised territory. Since local competition began in California in 1995, multiple carriers now demand their own NXX code in each rate center. At the

same time, rapid growth in the wireless industry and other communications services also places greater demand on finite numbering resources. The result has been an unprecedented acceleration in the opening of new area codes since the late 1990s.

Since the adoption of D.99-09-067, we have continued implementing the strategies identified in that decision to extend the life of the 310 NPA by reforming the traditional number allocation system to yield more efficient use of existing numbering resources. In particular, we issued D.99-11-027 and D.00-03-054 implementing criteria relating to carriers' demand forecasts and number utilization rates for the 310 NPA. We initially limited these measures only to the 310 NPA in view of the priority placed on the numbering crisis facing that NPA. Yet, since similar number allocation problems are facing NPAs throughout the state, we now consider extending those conservation measures to apply as part of an overall statewide numbering policy. Our goal is to stem the unnecessary proliferation of new area codes while making efficient use of existing numbering resources throughout California. In implementing the extension of these rules, we take into account the limitations imposed by the Federal Communications Commission (FCC) with respect to its delegation of authority in this area.

## **I. Background**

On April 13, 2000, an Administrative Law Judge (ALJ) Ruling was issued soliciting comments on extending the number conservation criteria adopted in D.99-11-027 and D.00-03-054 currently applicable only to the 310 NPA to apply to additional NPAs or to the entire state. The ALJ's Ruling sought comment on the extension of the following criteria:

1. Procedures adopted in D.99-11-027 for the return of NXX codes and for the allocation of codes based on "imminent exhaust criteria."

2. Sequential number assignment and minimum usage or fill rate requirements to obtain additional numbering resources. (Adopted in D.00-03-054.)

**A. Return of Codes**

In D.99-11-027, the California Public Utilities Commission (Commission) adopted procedures for the return of unused NXX codes, and for allocation of codes in the 310 NPA based on imminent exhaust criteria. Specifically, with regard to return of codes, the decision required the return to the North American Numbering Plan Administrator (NANPA) of any previously assigned codes that were not placed in service within six months of the assignment effective date. Codes assigned after the effective date of D.99-11-027 had to be placed in service within three months of assignment date or the effective date of the decision (whichever was later), unless technical difficulties exist beyond the carrier's control.

**B. Imminent Exhaust Criteria**

The imminent exhaust criteria adopted by the Commission in D.99-11-027 (for the 310 NPA) requires a carrier requesting a code to meet several requirements. Separate criteria were established depending on whether the carrier is seeking an initial or a growth code. Under the criteria for an initial code, a carrier must document that it will be in operation and prepared to market service within the rate center within three months of its request. Under the criteria to obtain a growth code, the carrier must supply NANPA with a month-to-exhaust form that demonstrates that its numbers will exhaust within three months. The carrier must also supply NANPA with six months of historical utilization data, using the Industry Numbering Committee definitions of numbers in the assigned, reserved, administrative, aging, and available categories, and demonstrate to NANPA that it has legally enforceable written agreements for all numbers classified as reserved. Finally, the carrier must

provide NANPA with documentation demonstrating that it has reduced its aging period to 60 days for residential telephone numbers and six months for business telephone numbers.

### **C. Minimum Fill Rates**

In D.00-03-054, the Commission adopted minimum fill rates that must be met in the 310 NPA before any new NXX codes or number blocks can be requested. The Commission adopted a 75% fill rate, applied at the rate center level to all thousand number blocks held by a carrier. In calculating this fill rate, carriers are required to account for all number resources they hold. Reserved numbers may be considered as utilized only for a six-month period; after that, they must be counted as unassigned. The decision further provided that it would use the same definitions previously adopted in the number utilization study for the 310 NPA to define what constituted reserved, assigned, administrative and aging numbers. The 75% fill rate was also extended to non-local number portability (LNP) capable carriers as well as to other carriers, so that a non-LNP capable carrier must meet the 75% fill rate before obtaining an additional NXX code through the lottery.

### **D. Sequential Number Assignment**

D.00-03-054 also adopted sequential number assignment criteria for the 310 NPA. All carriers were required to assign numbers in the 310 NPA in sequential thousand number blocks, moving to the next block only once a 75% fill rate in each block was obtained. To qualify for a new thousand-block, the carrier is required to show that it has achieved a minimum fill rate of 75% in each block. To obtain an additional NXX code a non-LNP capable carrier must show that a minimum 75% fill rate has been applied sequentially in each of the thousand-blocks comprising its NXX codes in a given rate center.

### **E. Jurisdictional Authority**

In the FCC's Second Report and Order on Local Competition,<sup>1</sup> the FCC granted states the authority to resolve matters concerning the implementation of area codes. (47 C.F.R. § 52.19(a).) In response to a petition filed by this Commission, the FCC, in its September 15, 1999 order, granted the Commission certain additional interim authority to engage in number conservation activities. Specifically, the FCC's order permits California to:

1. Mandate thousand-block number pooling within different regions on a staggered schedule;
2. Require carriers to submit number utilization data;
3. Establish minimum number usage thresholds to qualify for number resources;
4. Reclaim unused and reserved NXX codes and portions of those codes;
5. Require sequential number assignments; and
6. Resolve claims of carriers requesting numbers outside the existing rationing procedures.

However, in granting the Commission additional authority to implement code conservation measures, the FCC stated:

Although we grant the California Commission interim authority to institute many of the optimization measures raised in its Petition, this grant will be superseded by forthcoming decisions in the Numbering Resource Optimization proceeding that will establish national guidelines, standards, and procedures for numbering optimization.<sup>2</sup>

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<sup>1</sup> 11 FCC Record 19392 (FCC 96-333) (Aug. 8, 1996).

<sup>2</sup> In the matter of California Public Utilities Commission Petition for Delegation of Additional Authority pertaining to Area Code Relief and NXX Code Conservation measures, CC Docket No. 96-98, FCC 99-248 (rel. Sept 15, 1999) p. 1. (FCC's California Order.)

On March 31, 2000, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking in its Numbering Resources Optimization (NRO) docket. The NRO Order adopts administrative and technical measures intended to

[P]romote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers.<sup>3</sup>

Among those measures are rules governing the allocation of initial and growth codes. For initial codes, the FCC requires carriers to submit "documented proof (1) the applicant is authorized to provide service in the area for which numbering resources are requested and (2) the applicant is or will be capable of providing service within 60 days of the numbering resources activation date."<sup>4</sup> For growth codes, the FCC requires carriers to meet a nationwide rate center-based utilization threshold for non-pooling carriers beginning January 1, 2001.<sup>5</sup>

Thus, as we consider the prospects for extending the conservation provisions we have previously adopted for the 310 NPA, we do so subject to any applicable constraints imposed by the NRO Order.

## **II. Parties' Positions**

Comments in response to the ALJ Ruling were filed by Pacific Bell, GTE California, Inc., the Cellular Carriers Association of California, Allegiance Telecom of California, Inc., RCN Telecom Services of California, Inc., and

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<sup>3</sup> NRO Order, ¶ 5 (pp. 5-6).

<sup>4</sup> *Id.*, ¶ 96 (p. 41).

<sup>5</sup> *Id.*, ¶¶ 105-115 (pp. 44-48).

NeuStar, in its capacity as NANPA. Joint comments were also filed by MCI WorldCom, Inc., The California Cable Television Association, NEXTLINK of California, Inc., AT&T Communications of California, Time Warner Telecom of California, LP, Advanced TelCom Group, Inc., and the Competitive Telecommunications Association.

Parties filing comments contend that the Commission's criteria adopted for the 310 NPA in D.99-11-027 and D.00-03-054 are not consistent with the FCC's NRO Order issued March 31, 2000, and should not be extended to other NPAs. The parties argue that the NRO Order supersedes to a substantial degree the authority previously granted to the Commission on number conservation issues.

The parties argue that the Commission is thus precluded from extending the imminent exhaust criteria in D.99-11-027 to other NPAs because those criteria conflict with the FCC NRO.

Even aside from their arguments that the Commission is preempted by the FCC, various parties argue that the imminent exhaust criteria should not be extended on a statewide basis because the circumstances under which the imminent exhaust criteria was formulated and adopted for the 310 NPA were in response to a very unique situation. That is, carriers faced a critical shortage of numbers in the 310 NPA occasioned by the suspension of the 310/424 overlay relief plan after implementation had already begun. The industry recommended the use of the imminent exhaust criteria because it was the only way to ensure that at least some of the carriers with the greatest need could obtain numbers.

Cellular Carriers Association of California (CCAC) argues that good reasons exist for not extending the stringent criteria to any NPA, absent a showing that the demand for numbers far exceeds the existing supply in any particular NPA. Even then, CCAC argues, the criteria should be applied outside of the lottery process. If there are not enough numbers to satisfy the demands of

all carriers meeting the imminent exhaust criteria, then it is clear that relief of the NPA will be necessary.

CCAC argues that the imminent exhaust criteria are not a desirable means of allocating numbers because carriers will constantly be nearing, if not reaching, exhaust in NPAs where numbers are allocated via the lottery. CCAC claims this system may force carriers to significantly curtail marketing or to turn away customers simply to avoid running out of numbers.

The parties also argue that the FCC's NRO Order precludes the Commission from extending the fill rate and sequential number requirements of D.00-03-054 to apply on a statewide basis.

The NRO Order seeks further comment on what specific utilization threshold should be required for carriers not participating in number pooling (e.g., non-LNP) in order to request growth numbering resources. The NRO Order tentatively concludes that a nationwide utilization threshold should be set at 50% and increase by 10% annually until it reaches 80%, applicable only to carriers that do not pool. A new utilization rule will likely go into effect on January 1, 2001. The parties argue that the Commission should not extend the 75% fill rate requirement for the 310 NPA to a statewide basis now, only to have to change it approximately six months later when federal rules take effect.

The NRO Order also requires state commissions to conform their existing sequential number assignment requirements by January 1, 2001. Specifically, any state commission's sequential numbering rules requires carriers to first assign all available telephone numbers within an opened thousand-block before opening another thousand-block unless the available numbers in the opened block are not sufficient to meet a customer request. In that event, a carrier can deviate from the sequential numbering requirement if the carrier demonstrates that (1) it has a genuine request from a customer detailing the specific need for telephone

numbers<sup>6</sup> and (2) it is unable to meet the specific numbers request from the surplus of numbers within the carrier's currently activated thousand-block. The sequential numbering rules adopted in D.00-03-054 do not provide for this exception.

### **III. Discussion**

Parties raise two general objections to the proposal to extend number conservation measures adopted in the above-referenced decisions to apply statewide. First, they object on the grounds that the FCC's recent NRO rulemaking preempts state action in this area. Second, they argue that the conditions that led the Commission to adopt these measures for the 310 NPA do not apply in other NPAs within California, and that such measures would unduly constrain carriers' access to numbers.

We recognize that the rules adopted by the FCC in its NRO Order need to be taken into account in determining to what extent the number conservation measures adopted for the 310 NPA can or should be extended to apply to other NPAs within California. Nonetheless, we conclude that the NRO does not completely foreclose us from taking action, at least to the extent discussed below, to extend certain conservation measures beyond just the 310 NPA.

#### **A. Return of Codes**

We shall first address the question of whether the provisions in D.99-11-027 requiring carriers to return unused codes are to be extended to apply statewide. We conclude that it is within the scope of the FCC's delegated grant of authority for this Commission to implement statewide orders requiring

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<sup>6</sup> In evaluating the customer's need for numbers, the FCC does not consider "vanity" numbers to qualify.

carriers to return unused codes, provided that we follow FCC-mandated criteria as prescribed in the NRO. As stated in Paragraph 237 of the NRO: "[A] state commission may request proof from all code holders that NXX codes have been activated and assignment of numbers commenced. We further direct the NANPA to abide by the state commission's determination to reclaim an NXX code if the state commission is satisfied that the code holder has not activated the code within the time specified by this Report and Order." The FCC also permits the state commission not to follow the reclamation procedures set forth in the Central Office Code Assignment Guidelines relating to referring the issue to the Industry Numbering Committee, as long as the code holder is given an opportunity to explain the circumstances causing the delay in activating NXX codes.

Accordingly, we shall direct carriers in every NPA on a statewide basis to submit a report within 30-days to the Director of the Commission's Telecommunications Division (TD) identifying NXX codes that have not been activated within the six-month time specified by the FCC. An updated report shall be submitted monthly. In the report, carriers may explain the circumstances causing the delay in activating the NXX codes, and shall indicate when each NXX code is expected to be activated. The Commission shall consider each carrier's circumstances and determine whether to direct the NANPA to reclaim NXX codes that have not been activated within six months. The criteria adopted for the 310 NPA in D.99-11-027 requiring return of codes within three months shall also be amended to provide for a six-month window before requiring the return of codes in order to conform with the FCC rules. The institution of this requirement on a statewide basis will guard against carriers hoarding numbers that are not currently needed, and will help to promote the efficient use of numbers on a statewide basis.

## **B. Imminent Exhaust Criteria**

In D.99-11-027, we adopted "imminent exhaust criteria" that were separately applied to requests for growth codes and to initial codes in a rate center. Since the FCC NRO Order has adopted documentation requirements that carriers must meet to obtain an initial code in each rate center, our delegated authority to apply the imminent exhaust criteria in D.99-11-027 in the 310 NPA or on a statewide basis for obtaining initial codes is superseded. Therefore, we shall not adopt separate statewide criteria for carriers to obtain initial codes.

Specifically, the NRO Order requires carriers to provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource. Carriers requesting initial numbering resources must also provide the NANPA appropriate evidence (*e.g.*, contracts for unbundled network elements, network information showing that equipment has been purchased and is operational or will be operational, business plans, or interconnection agreements) that its facilities are in place or will be in place to provide service within 60 days of the numbering resources activation date. The burden is on the carrier to demonstrate that it is both authorized and prepared to provide service before receiving initial numbering resources. These requirements apply equally to carriers requesting an initial NXX code and those requesting an initial thousands-block pursuant to number pooling.

The FCC states, however, that if a carrier's initial request seeks more than one code or thousand-block within a rate center, the additional codes or thousand-block will be treated as growth codes, subject to separate requirements. In the case of growth codes, the FCC did not implement immediately effective measures for carriers to qualify for codes or thousand number blocks. We

conclude, therefore, that we still retain delegated authority to set criteria for obtaining growth codes until or unless the FCC implements rules for growth codes that are in conflict with state-mandated criteria.

We conclude, therefore, that we continue to retain the delegated authority to impose the "imminent exhaust criteria" adopted in D.99-11-027 as applied to requests for growth codes or thousand-blocks in the 310 NPA. Likewise, we conclude that we have the delegated authority to extend the applicability of the "imminent exhaust criteria" to cover all other NPAs within California. We conclude that the extension of the imminent exhaust criteria to all other NPAs within California is also in the public interest as a means of helping to ensure that numbering resources are used efficiently. By requiring carriers to meet these requirements before being eligible to obtain a growth code or thousand-block (in the case of number pooling), there will be greater assurance that numbering resources are allocated only when and where they will actually be used. Accordingly, we hereby extend the "imminent exhaust criteria" adopted in D.99-11-027 for the 310 NPA to apply also to all other NPAs in California. We shall make certain minor refinements, however, in the application of the criteria as previously adopted in D.99-11-027.

At the time that we adopted the "imminent exhaust criteria," we directed carriers to use the definitions of numbers in the assigned, reserved, administrative, aging and available categories as defined by the Industry Numbering Committee. Since the FCC has subsequently adopted revised definitions for numbers in these categories in its NRO Order, we shall direct carriers to incorporate the revised FCC definitions of number categories in complying with our adopted "imminent exhaust criteria."

For the category of "reserved" numbers, the FCC permitted carriers to include numbers that are held for a period of no more than 45 days. Any

numbers held beyond the 45 days must be categorized as "available." Since our previously adopted criteria in D.99-11-027 defined reserved numbers as those for which the carrier has a legally enforceable written agreement, we shall revise our "reserved number" definition to conform to that of the FCC. Likewise, we shall conform our requirements for the aging of numbers to conform to the NRO Order. Thus, the aging period as previously adopted in D.99-11-027 shall be revised for residential numbers from 60 to 90 days, and for business numbers from six months to 365 days, as prescribed by the NRO Order. We shall apply these revised number category definitions uniformly in applying our "imminent exhaust criteria" both to the 310 NPA as well as to all other NPAs within California.

In D.99-11-027, we also directed carriers to supply six months of historic and six months of forecasted utilization data to support exhaust projections. For purposes of expanding the rules to apply on a statewide basis, we shall require carriers to provide 12 months of historic and 12 months of forecasted utilization data for each NPA in which numbering resources are requested. We believe a 12-month time span will provide a more meaningful basis for evaluating carriers' exhaust projections. In setting this requirement, we do not intend to duplicate any reporting requirements that will subsequently be imposed by the NANPA pursuant to FCC rules. The NRO Order adopts utilization reporting requirements for all carriers, with the first report to be filed with the NANPA no later than August 1, 2000. Once such federal reporting requirements for utilization data are implemented, we shall simply require carriers to provide copies to the TD staff of the utilization reports prepared pursuant to those federal reporting requirements covering the requisite 12-month time span.

### **C. Minimum Fill Rates**

With respect to rules governing carriers' ability to obtain growth codes, the FCC deferred the adoption of specific qualifying utilization criteria until early in 2001. Thus, between now and the time that the FCC's rules are effective, we conclude that our delegated authority to extend our own fill rate criteria for carriers' obtaining growth codes for NPAs within California is not yet superseded. Accordingly, we have the authority to extend the currently adopted fill rate criteria for the 310 NPA to other NPAs until federally mandated fill rate rules obtaining growth codes take effect.

Various parties argue, however, that the Commission would be ill advised to adopt criteria that would have to be changed within just a few months when FCC rules take effect early in 2001. Parties further claim that even apart from FCC preemption, the 310 NPA number conservation criteria should not be extended to other NPAs because the circumstances surrounding the adoption of those criteria in the 310 NPA are unique and do not apply elsewhere.

While the circumstances in the 310 NPA may be more extreme than in most other NPAs, the general environment of claimed number shortages and inefficient number resource allocations are by no means unique to the 310 NPA. The strain being placed on numbering resources is pervasive in NPAs throughout the state, particularly in large metropolitan areas where local exchange competition is the strongest.

We conclude that it will promote more efficient utilization of numbering resources to apply the 75% fill rate criteria adopted in D.00-03-054 to other NPAs in California as well as for 310 NPA, even for the limited time remaining before FCC rules take effect. Every month that passes without stringent criteria in effect in other NPAs, the risk increases that NXX codes will be assigned to carriers that do not truly have a imminent need for such codes,

thereby unnecessarily accelerating code exhaustion and depriving other carriers of codes that need them. The interim adoption of state-mandated fill rate criteria will help bridge the gap until federal criteria become effective.

We therefore shall extend the 75% fill rate criteria adopted for growth codes and the 310 NPA should be applied to all other NPAs within California. We shall apply the FCC definitions of number categories in applying our 75% fill rate criteria, as discussed previously with respect to the “imminent exhaust criteria.”

We thus direct that the extension of the 75% fill rate criterion on a statewide basis be implemented immediately, even though it will be superseded by FCC rules in early 2001. The extension of our 75% utilization rate requirements beyond the 310 NPA will help to address the impending claims of code exhaustion in other NPAs, and will promote the goal of efficient number utilization during the interim period until FCC rules take effect.

The NRO Order determined, however, that minimum fill rate criteria should not be applied to carriers seeking number resources through thousand-block number pools. Accordingly, since the FCC has required that state pooling trials be conformed to federal rules by September 1, 2000, our state-mandated 75% fill rates cannot realistically be applied to thousand number blocks in those NPAs in which number pooling trials will be implemented within the next few months. Yet, only LNP-capable carriers can currently participate in number pooling trials. Thus, we shall not extend our adopted 75% fill rate criteria to apply to LNP-capable carriers' requests for number resources in the 415, 714, or 909 NPAs at this time since pooling trials are scheduled to begin in each of these NPAs later this year. In the 310 NPA pooling trial, the minimum fill rate shall continue to apply until September 1, 2000. We shall, however, apply the 75% fill rate criteria to non-LNP-capable carriers in all pooling NPAs since they will not

be participants in the pooling trials and will not be subject to the fill rate exemption. We continue to believe, however, that the use of minimum fill rate criteria in a pooling environment promotes more efficient use of numbers. In the event that we subsequently obtain authorization from the FCC to apply fill rate criteria to pooling participants, we stand ready to promptly reinstate that requirement for all state-mandated number pools.

#### **D. Sequential Numbering Requirements**

In D.00-03-054, we also required that all carriers assign numbers in the 310 NPA in sequential thousand number blocks, moving to the next block only once a 75% fill rate has been attained in the prior block. Each pooling participant in the 310 NPA was required to show that it has achieved a minimum fill rate of 75% in each sequential thousand number block within the rate center or switch, as applicable, where it seeks to obtain additional number blocks. To qualify for obtaining an additional NXX code, the non-LNP-capable carrier in the 310 NPA was required to show that a minimum 75% fill rate has been applied sequentially in each of the thousand-blocks comprising its NXX codes in a given rate center where additional codes are requested.

In its NRO Order, the FCC adopted a rule requiring carriers to utilize a previously opened thousand number block in its entirety before opening an uncontaminated thousand-number block to provide supporting justification to the state commission. As justification for opening the uncontaminated block, the carrier would be required to show:

- (1) a genuine request from a customer detailing the specific need for telephone numbers; and
- (2) the inability on the part of the carrier to meet the specific customer request for telephone numbers from the surplus of numbers within the carrier's currently activated thousand-block.

Since the NRO Order requires state commissions to conform their existing delegations of sequential numbering authority to the FCC's adopted provisions by January 1, 2001, we continue to have delegated authority to apply our own sequential numbering requirements on a statewide basis during the interim period. The FCC criteria differ somewhat from the criteria we adopted for sequential numbering in the 310 NPA, particularly with respect to our requirement to achieve a minimum 75% fill rate in the currently active block before opening an uncontaminated block next in sequence. In the interests of preserving the maximum number of uncontaminated thousand-blocks for subsequent number pooling, we conclude that it is appropriate to extend our sequential numbering rules for the 310 NPA to apply on a statewide basis, at least for numbering resources being sought outside of a number pool. In those instances, we shall require that all carriers assign numbers in sequential thousand number blocks, moving to the next block only once a minimum 75% fill rate has been attained in the prior block. The 75% requirement shall be applied in addition to the sequential numbering requirements imposed by the NRO Order.

Although FCC rules preclude the use of a specific minimum fill rate requirement for number resources sought through a number pool, we shall still require carriers to apply the FCC's adopted sequential numbering requirement articulated above.

**E. Provisions for Meeting Extraordinary Need Outside of the Lottery**

In D.99-11-027, we authorized the Director of TD, in consultation with the assigned Commissioner, to set aside codes to be disbursed outside of the lottery to carriers demonstrating extraordinary need in the 310 NPA. We also stated that the Director of TD in consultation with the assigned Commissioner, shall establish rules and guidelines determining standards for extraordinary

need in the 310 NPA, and shall consider as criteria: (1) carriers' inability to avail themselves to the thousand-block pooling and (2) carriers having been forced to deny service to customers for lack of numbers. By today's order, we extend this directive to apply to all NPAs within California.

#### **IV. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on July 10, 2000, and reply comments on July 17, 2000. We have taken comments into account, as appropriate in finalizing this order.

#### **Findings of Fact**

1. In D.99-11-027, the Commission prescribed procedures for the return of unused NXX codes and for the assignment of NXX codes based upon imminent exhaust criteria for the 310 NPA.

2. In D.00-03-054, the Commission adopted the use of a 75% minimum fill rate and sequential numbering requirements as a basis for carriers' eligibility to obtain NXX codes or thousand number blocks (in the case of pooling participants) in the 310 NPA.

3. The numbering crisis in the 310 NPA that led to the adoption of number conservation measures as set forth in D.99-11-027 and D.00-03-054 also exists to varying degrees in other NPAs throughout California.

4. It will promote more efficient utilization of numbering resources to adopt fill rate criteria for all NPAs in California.

5. The FCC NRO Order directed the NANPA to abide by a state commission's determination to reclaim an NXX code if the state commission is satisfied that the code holder has not activated the code within the time specified by the FCC.

6. The time frame adopted in D.99-11-027 requiring return of codes within three months is inconsistent with the six-month window required before requiring the return of codes under the FCC rules.

7. The FCC has adopted documentation requirements that carriers must meet in order to obtain an initial code in each rate center.

8. With respect to rules governing carriers' ability to obtain growth codes, the FCC deferred the implementation of specific qualifying fill rate criteria until January 1, 2001.

9. The FCC has exempted carriers participating in number pooling from being subject to minimum fill rate requirements.

10. The FCC has required state commissions to conform their state number pooling rules to those of the FCC by September 1, 2000.

11. In its NRO Order, the FCC adopted a rule requiring carriers seeking to utilize a previously opened thousand number block in its entirety before opening an uncontaminated block to provide supporting justification to the state commission.

### **Conclusions of Law**

1. It is within the scope of the FCC's delegated grant of authority for this Commission to implement and enforce statewide orders requiring carriers to return unused codes, provided that FCC-mandated criteria as prescribed in the NRO Order are followed.

2. It is within the scope of the FCC's delegated authority for this Commission to impose minimum fill rates, sequential numbering and imminent exhaust criteria for growth codes as prescribed in D.99-11-027 and D.00-03-054, respectively, until FCC rules for growth codes take effect that are in conflict with state rules.

3. It will promote more efficient utilization of numbering resources for the Commission to adopt minimum fill rates, sequential numbering and imminent exhaust criteria for all NPAs within California as well as for the 310 NPA.

4. Since the FCC has adopted requirements that carriers must meet to obtain initial and codes, state-delegated authority to extend the imminent exhaust criteria in D.99-11-027 to other NPAs as a basis for obtaining an initial code in a given rate center is superseded.

5. State-mandated authority to establish fill rates cannot realistically be applied to requests for thousand number blocks in those NPAs in which number pooling trials will be implemented within the next few months, consistent with FCC directives for states to conform to federal pooling rules by September 1, 2000.

## O R D E R

### **IT IS ORDERED** that:

1. Any carrier that has held an NXX code in any Numbering Plan Area (NPA) within California for more than six months without being used is hereby directed to return that code to the North American Numbering Plan Administration.

2. The "imminent exhaust criteria" set forth in Attachment A shall be applied to all NPAs that have entered into NXX rationing, or those that enter into such rationing subsequent to this order.

3. The number conservation measures adopted in this order shall remain in effect until superseded by Federal Communications Commission (FCC) rules, or otherwise are modified by subsequent Commission order.

4. Carriers shall satisfy a minimum 75% fill rate requirement before being eligible to request growth codes in any of the NPAs that have entered into NXX rationing, with the exception of local number portability-capable carriers in those NPAs scheduled for pooling trials beginning this year. The 75% fill rate shall be

determined consistent with the methodology and formula adopted in Decision (D.) 00-03-054, but shall incorporate the FCC's definitions for assigned, intermediate, reserved, aging, administrative, and available number categories.

5. Carriers shall assign numbers in each NPA within California in thousand number block sequence, moving to the next block only once a 75% fill rate has been attained in the prior block, except where pooling trials are in operation. For those numbering resources subject to pooling trials, no specific fill rate shall be prescribed, but carriers shall assign numbers from thousand-blocks already in use on a sequential basis to the extent feasible. Within a given thousand number block, however, carriers shall have discretion in assign numbers in whatever sequence they deem warranted as long as the overall 75% fill rate criterion is observed.

6. The Director of Telecommunications Division (TD), in consultation with the assigned Commissioner, may set aside codes within any NPA in California to be disbursed to carriers demonstrating extraordinary need outside of the lottery process. The Director of TD, in consultation with the assigned Commissioner, shall establish rules and guidelines determining standards on a statewide basis for extraordinary need for numbering resources, and shall consider as criteria: (a) carriers' ability to avail themselves to the thousand-block pooling and (b) carriers having been forced to deny service to customers for lack of numbers.

7. D.99-11-027 is hereby modified to reflect the provisions adopted herein, to (1) require carriers serving in the 310 NPA to return unused numbers within six months (instead of three months), and (2) to incorporate the FCC's definitions of categories of numbers in the reporting requirements.

8. D.00-03-054 is hereby modified to provide that (1) the 75% minimum fill rate requirement will no longer apply to 310 NPA pooling participants beginning on September 1, 2000, and (2) that pooling participants in the 310 NPA shall

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remain subject to the sequential numbering requirements adopted in the Numbering Resource Optimization Order, and (3) to incorporate the FCC's definitions of categories of numbers as inputs in computing fill rates for carriers that are not pooling participants.

9. The NRO Order adopts utilization reporting requirements for all carriers, with the first report to be filed with the NANPA no later than August 1, 2000. Once such federal reporting requirements for utilization data are implemented, carriers shall provide copies to the TD staff of those utilization reports on a statewide basis.

This order is effective today.

Dated July 20, 2000, at San Francisco, California.

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

I dissent.

/s/ JOSIAH L. NEEPER  
Commissioner

I will file a dissent.

/s/ HENRY M. DUQUE  
Commissioner

## **ATTACHMENT A**

### **IMMINENT EXHAUST CRITERIA FOR GROWTH CODES IN NPAs SUBJECT TO RATIONING**

1. For each rate center in which a carrier submits a request, the carrier must supply NANPA with a Month-to-Exhaust form demonstrating, for that rate center, number exhaust within three months.
2. The carrier must also supply to NANPA 12 months of historic utilization data and 12 months of forecast data to support the exhaust projections. In presenting its utilization data, carriers must use the FCC definitions of numbers in the assigned, reserved, administrative, aging, and available categories as adopted in its NRO Order. (The utilization data should be provided by rate center, in whole numbers, not percentages.) If the average projected monthly demand is within 15% of the historic utilization rate, a carrier's forecast data will be accepted. If the demand exceeds 15% of the historic utilization rate, the carrier must explain the deviation prior to the NANPA's determination that a carrier's forecast data will be accepted or denied.
3. The carrier must provide documentation to the NANPA demonstrating that all numbers in its reserved status are only those numbers which have been held for 45 days or less in conformance with FCC rules.
4. The carrier must have reduced its aging period to 90 days for residential telephone numbers and 365 days for business telephone numbers as required by FCC rules. The carrier must provide appropriate documentation that it has met this criteria to the NANPA.

**(END OF ATTACHMENT A)**

Commissioner Henry M. Duque, dissenting:

Today's decision of the majority extends the overly restrictive number rationing measures now in place in the 310 area code throughout the entire state of California. These restrictive measures fail to follow the regulatory path set by FCC guidelines. In addition, the decision of the majority delegates substantial authority to staff to allocate numbers to carriers demonstrating "extraordinary need."

Each of these steps is unwise. Restrictive number rationing hurts California's information infrastructure. The restrictive measures in the decision of the majority place new regulatory obstacles and additional regulatory uncertainties, absent in every other state, before those seeking to provide telecommunications services to Californians.

Further, proceeding on a regulatory path out-of-step with the FCC will continue to generate challenges to our policy in Federal courts, such as the challenge we now face by Sprint to the policies that the decision of the majority extends to the entire state. Moreover, federal courts have shown no reluctance to reverse California's regulatory policies that do not follow Federal regulations to the letter. This alone will add new regulatory and judicial uncertainties that telecommunications firms desiring to operate in California must confront.

Finally, placing responsibility for emergency allocation of numbers at the administrative level of this agency puts this issue off our public Commission agendas. This step obscures California's telecommunications policies, preventing scrutiny by Commissioners and the public.

For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque  
Commissioner

July 20, 2000

San Francisco