Decision **DRAFT DECISION OF ALJ PULSIFER** **(Mailed 3/4/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

OPINION IMPLEMENTING CHANGES TO GRANDFATHERING POLICY

Today's decision represents another step in our continuing program to promote efficient utilization of telephone numbering resources in order to minimize the need for and disruption of area code changes. The specific focus of this decision is on modifying the Commission's policies relating to the treatment of telephone numbers located within the boundaries of a numbering plan area (NPA) that are "grandfathered," thereby keeping their old area code even though the area code is different for other surrounding customers as a result of an area code split.

This decision finds the original circumstances that formed the basis for our grandfathering policy have changed. Technological advances have alleviated the difficulties in reprogramming handsets to recognize new area codes. Moreover, with the advent of number pooling and porting, the constraints imposed by grandfathered codes have become problematic.

Accordingly, we modify our prospective policy to adopt a presumption in favor of geographical consistency in assigning new area codes. Prospectively, grandfathering may only be considered on a limited case-by-case basis in response to an express request affirmatively showing that the advantages of grandfathering outweigh the disadvantages in a specific area. We also adopt a plan for a combination of measures to phase out existing grandfathered codes over a three-year period.

I. Background

Since 1996, area code splits implemented in California have included a "grandfather" provision applicable to certain customers of commercial mobile radio service (CMRS) carriers. Under the grandfather provision, affected customers are permitted to retain their preexisting area code after a geographic split, even when the rate center of the carrier's assigned NXX code lies within the geographic boundaries prescribed for the new area code. The Commission adopted this provision for CMRS carriers in Decision (D.) 96-08-028 (Conclusion of Law 23) as a means of relieving the burden on CMRS customers who would otherwise have to bring their handset equipment to the carrier for reprogramming, or else reprogram the equipment themselves, to recognize the change in area code.[1]

As part of our continuing initiative to promote efficient use of scarce numbering resources in the interests of minimizing area code changes and

[1] The FCC granted the States authority to do this in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392 ¶ 308 (1996); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 17964 ¶¶ 53-71 (1999).

customer disruption, we recently initiated a reexamination of this grandfathering policy. On May 30, 2002, an "Assigned Commissioner's Ruling" (ACR) was issued, concerning potential modification of existing treatment of CMRS carriers' assigned rate center designation in connection with the implementation of area code splits. In responses to the ACR, parties addressed the issue in the context of a prospective-only change in the grandfathering provisions as new area code changes are implemented. Prospective-only changes would not address the problems created by existing grandfathered numbers that are the product of past area code splits. Accordingly, on October 2, 2002, the assigned ALJ issued a ruling to provide notice and opportunity to comment on the issue of a retrospective reversal of the grandfathering provisions as applied to existing area codes.

As stated in each of the rulings, modification of the grandfathering policy is being considered as a measure to promote the efficient utilization of numbering resources, particularly in those areas closer to exhaust.

The following parties filed comments in response to the rulings: Pacific Bell (Pacific), Verizon California, Inc., Verizon Wireless, Cellular Carriers Association of California (CCAC), AT&T Wireless Services, Allied National Paging Association (Allied), and jointly by the California Cable & Telecommunications Association (CCTA), AT&T Communications of California, Inc., and Time Warner Telecom of California, LP (Joint Parties). Comments were also filed by NeuStar, Inc. in its capacity as the designated National Number Pooling Administrator.

II. Issues to be Addressed

A. Need to Reassess Commission Policy Concerning Grandfathering

Changes in the telecommunications industry since the Commission's adoption of the grandfathering policy in 1996 warrant a reevaluation of this policy. The original rationale for the grandfathering treatment related to the perceived need to mitigate the hardships associated with CMRS customers changing numbers in connection with an area code spit. Technological advances since 1996, however, have lessened those hardships. At the same time, the grandfathering policy has become problematic with the implementation of number pooling and planned implementation of number portability for CMRS carriers. Because grandfathered numbers bear an area code different from those in the surrounding NPA, such grandfathered numbers cannot be assigned to wireline customers through a number pooling or porting arrangement.[2] It is appropriate, therefore, to explore whether, or through what means, existing grandfathering may be eliminated, or phased out, to remove impediments to pooling and porting.

There are separate considerations involved depending on whether grandfathering were to be terminated only on a prospective basis as new area codes are established, versus a retrospective elimination of the grandfather provision in existing area codes.

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[2] Moreover, the Industry Numbering Committee's Thousand-Block Number Pooling Administration Guidelines prohibit the assignment of grandfathered NXX codes. The Guidelines state: "…blocks donated to a pool from wireless grandfathered NXXs cannot be assigned to [service providers] until regulatory authorities direct how to handle these unique numbering resources."

B. Prospective Elimination of Grandfathering in Establishing New NPAs

1. Parties' Positions

Joint Parties support prospective elimination of the grandfathering policy, arguing that changed conditions since 1996 have rendered this policy unnecessary and even perverse in some circumstances. Joint Parties cite advances in digital wireless technology that have greatly alleviated the need for wireless customers to have their handsets manually reprogrammed for a new area code. Since 1996, the technology for CMRS number changes has evolved from a purely manual to a more automated process, due in large part to the development of "over-the-air" (OTA) programming capabilities. OTA enables certain software changes to be implemented remotely.

CCAC states, however, that OTA programming is not a completely automated process , and that changing numbers for CMRS customers is still far more cumbersome than for wireline customers. CCAC argues that consequently, there will continue to be a significant number of customers whose handsets must be reprogrammed manually in implementing any area code split. CCTA also argues that it still remains more difficult to change wireless telephone numbers than wireline numbers upon implementation of an area code split.

Another changed circumstance relevant to the grandfathering issue is the implementation of number pooling. Parties generally agree that grandfathering imposes constraints on carriers' ability to pool or to port numbers between CMRS and wireline customers. Such impediments limit the potential for customers with grandfathered numbers to benefit from the number resource efficiencies offered by pooling and the competitive choice offered by number portability.

Pooling capable service providers in an NPA subject to number pooling, donate spare thousand blocks in each rate center to the Pooling Administrator to be subsequently reassigned to any service provider who demonstrates a need for numbering resources in that rate center. Yet, although certain CMRS providers are now required to participate in number pooling, any thousand blocks they donate that have been grandfathered cannot be pooled, since the donated block will be geographically located within the boundaries of one area code but will bear a different area code. Consequently, if a CMRS customer sought to port a grandfathered number to a wireline carrier, the wireline carrier would need to open an NXX that may be foreign to the current wireline carrier's rate center structure, resulting in call rating and routing conflicts.

Verizon contends, in fact, that if one of these grandfathered blocks were assigned to a wireline carrier, that block would effectively become a mini one-block overlay area code. In order to use such blocks, Verizon claims that it would have to do the same kind of network preparation as required for a full-scale area code overlay – a project that typically takes a year or more. In some cases, 911 networks would have to be upgraded. Verizon also claims that a large amount of translation work would need to be done in switches that receive such number blocks to recognize this new area code for local customers. As a mini-overlay, Verizon argues, the use of such a block could trigger the mandatory ten-digit dialing requirement of Section 52.19(c)(3)(ii) of the FCC's rules. Customers who have recently lived through an area code split would have to be re-educated about local dialing.

NeuStar states that if the grandfathered blocks were merged into the wireline carriers' existing number pool, confusion as to the proper area code could lead to service-related errors, with calls being misdirected.

Parties generally agree that in view of these changed circumstances since 1996, some modification of the currently adopted grandfathering policy is warranted. Parties generally agree that authorization of prospective grandfathering should not be automatic, but should be addressed on a case-by-case basis as new NPAs are implemented. Joint Parties argue that any case-by-case evaluation should be applied on a consistent basis within a given NPA to all carriers, both CMRS and wireline. Joint Parties likewise argue that any extension of the permissive dialing period on a case-by-case basis for CMRS customers should be the exception rather than the rule.

In area codes where grandfathering is found not to be appropriate, CCAC, Pacific, and Verizon recommend that the permissive dialing period be extended for a period determined by the Commission in order for CMRS customers to reprogram their handsets, and to mitigate any customer disruption that might otherwise result.

2. Discussion

In view of the changes that have occurred in the industry since 1996, both technologically and economically, we conclude that the policy favoring the grandfathering of numbers for CMRS carriers and customers in connection with an area code split should be modified.

When the grandfathering policy was adopted in 1996, the process for changing numbers of CMRS customers was completely manual. CMRS customers had to deliver their handsets to the carrier for reprogramming or manually reprogram the handset themselves. The grandfathering policy served

to alleviate the potential for significant service disruptions at the end of the permissive dialing period for an area code change.

As automation of the process for changing CMRS customers numbers has mitigated the need for grandfathering, the implementation of number pooling and portability has made the grandfathering of numbers more problematic. The need to reevaluate the Commission's policies on grandfathering are particularly timely in view of recent Federal Communications Commission (FCC) directives to implement pooling and porting for CMRS carriers. Pursuant to FCC order, certain categories of CMRS providers were to become capable of offering local number portability (LNP) effective November 24, 2002.[3] The stated intent of the FCC order is to promote number conservation by having a large majority of the CMRS carriers participate in number pooling with wireline carriers.

Allied points out, however, that paging carriers do not, and are not required to, participate in number portability or pooling. Thus, Allied argues that reversing the grandfathering policy with respect to NXX codes assigned to paging carriers offers no benefit. We agree. Any benefits derived from the reversal of the grandfathering policy will be realized in the context of number portability and pooling, as described above. On the other hand, any of the contemplated measures to reverse existing grandfathered numbers will cause potential disruption to customers. Therefore, we shall exclude any

[3] The FCC granted an extension in the deadline for CMRS carriers to become LNP capable until November 24, 2003 pursuant to Memorandum Opinion and Order, FCC 02-215, Released: July 26, 2002, Para. 34. Decision issued in WT Docket No. 01-184/CC Docket No. 95-116.

grandfathered NXX codes assigned to paging carriers from the requirements adopted in this order regarding the reversal of our grandfathering policy. Any references below to CMRS carriers are intended to refer only to those carriers that are subject to the requirements of number pooling. Unless otherwise indicated, such references are intended to exclude paging carriers.

In the event that the FCC imposes requirements on paging carriers to participate in the pooling and porting of numbers, however, the same sorts of pooling and porting difficulties that currently exist with respect to the grandfathered codes of other wireless carriers would occur with respect to paging carriers. Grandfathered NXX codes of paging carriers would not be capable of being pooled or ported by wireline carriers. Should the FCC impose such pooling and porting requirements on paging carriers in the future, we shall therefore reconsider our exclusion of paging carriers from the provisions of this order.

Effective with this order, we modify the policy adopted in D.96-08-028 regarding the grandfathering of codes by adopting a policy that favors geographical consistency in connection with the creation of new area codes. On a prospective basis, we adopt a presumption in favor of assigning new area codes created by NPA splits to all customers whose rate center is physically located in the geographic region assigned to the new area code, irrespective of whether they are served by a CMRS or a wireline carrier. We do not impose an outright prohibition on future grandfathering since there may be certain limited situations, as noted by CCAC, where a significant number of customers in certain regions still require manual reprogramming of handsets. Not all digital handsets have the OTA capabilities. Any such requests for grandfathering will only be considered, however, based on an express request

and affirmative showing by a party that the harm from changing certain customers' assigned area code outweighs the advantages resulting from uniform treatment of customers' assigned numbers.

In those instances where we determine that CMRS carriers' numbers will not be grandfathered in connection with area code relief implementation, we will entertain proposals to consider a longer permissive dialing period for CMRS customers to recognize that such customers still face a more difficult transition process than wireline customers with respect to reprogramming of handsets. The specific length of any extended permissive dialing period for CMRS customers will be assessed on a case-specific basis in view of the local circumstances involved in each particular case.

We conclude that the adoption of this revised policy on prospective basis is within the authority delegated to the Commission by the FCC to implement area code relief. To the extent that we implement this change in the prospective treatment of grandfathering in the context of area code relief implementation, it is within our jurisdiction to do so.

C. Retrospective Reversal of Existing Grandfathered NXX Codes

We now consider whether the grandfather policy for *existing* numbers should be terminated. Parties were directed to comment on the potential feasibility of alternative approaches to implementing a reversal of the grandfathering provision within *existing* area codes, with an analysis of the pertinent impacts and proposed remedial measures that would be necessary to mitigate any adverse impacts. The goal is to achieve consistency between the customer's assigned NPA and the geographic area in which the customer resides.

1. Parties' Positions

Pacific does not believe that the reversal of existing grandfathered numbers can be easily or efficiently accomplished without creating immediate customer concern. Pacific argues that none of the three options presented in the ALJ ruling offer expedient solutions that can be implemented in an abbreviated fashion. Pacific believes, however, that Option 3 allows for the least customer disruption.

CCAC expresses opposition to any retrospective termination of existing grandfathered numbers (absent an area code split). CCAC argues that any retrospective termination would generate the very customer confusion and frustration that the Joint Parties caution against.

Verizon Wireless also contends that reclaiming existing grandfathered codes will yield little, if any, number conservation benefits, and will fail to free-up a large enough supply of numbers to defer the need for area code relief. Under current projections by the North American Number Plan Administrator, the earliest exhaust date for an NPA containing grandfathered numbers is no earlier than 2005, and the latest exhaust date is the fourth quarter of 2008. On this basis, Verizon Wireless argues that none of the NPAs containing grandfathered numbers are facing imminent exhaust, and therefore, that grandfathered numbers are not contributing to accelerated NPA exhaust.

2. Discussion

We recognize that any retrospective elimination of existing grandfathered NXXs would entail more disruption and disadvantages for customers than mere prospective denial of new grandfathered NXXs in connection with general area code relief implementation. The question of whether such retrospective elimination is warranted calls for a weighing of the

relative advantages and disadvantages related to any potential approach that might be used to reverse existing grandfathered codes. The ALJ Ruling, issued October 2, 2002, identified three possible approaches for implementing a reversal of existing grandfathered numbers. We consider each of these options below.

D. Alternative Approaches for Reversing Grandfathered Numbers

1. Re-homing of Grandfathered Codes

One of the possible approaches identified in the ALJ ruling to phase out grandfathered codes would require CMRS customers' existing number prefixes that are currently assigned in a rate center outside of the "home" numbering plan area (NPA) to be moved to a rate center within the "home" NPA (i.e., "re-homed").[4] Re-homing of the prefix to a new rate center in the home NPA would not require the subscriber to change his or her area code, but could lead to a change in the rating of incoming calls as local or toll since the call would be rated to a different rate center.

a) Parties' Positions

Pacific believes the re-homing option would likely cause the most customer confusion, thus requiring the most comprehensive public customer notification efforts. Pacific also claims that this option would pose the most technical challenges to implement. Adverse effects on customers' bills could be

[4] The following example illustrates the principle of re-homing: Assume that a wireless central office code with the NPA/NXX prefix 209/977 is assigned to the Fresno rate center that is geographically located in the 559 NPA. All wireline numbers in Fresno are assigned in the 559 NPA. The "re-homing" would entail reassigning the 209/977 central office code to, e.g., the Merced rate center, which is located at the edge of the 209 NPA nearest Fresno.

mitigated, however, by re-homing the prefix to a rate center in the home NPA as close as possible to the customer's physical location.

Verizon Wireless argues that re-homing is particularly problematic because grandfathering of numbers has generally occurred in non-urban areas where the nearest rate center is often outside the local calling zone. In such an environment, the rating for all land-to-mobile calls would be toll, and in some cases, inter-LATA toll. Although the toll charges would appear on landline customers' bills, Verizon Wireless claims that CMRS carriers would bear the brunt of the blame from angry customers.

Surewest Wireless likewise argues that re-homing of rate centers would create massive customer and public confusion. Surewest argues that the grandfathered codes should not be reversed, and contending that such reversal would provide very limited benefit to numbering resources while imposing a burden both on wireless customers as well as those users of the public switched network that have become accustomed to dialing grandfathered numbers without incurring toll charges.

b) Discussion

We conclude that re-homing is appropriate in those instances where it can be implemented with relatively minimal impacts on call rating. We shall direct CMRS carriers holding grandfathered codes to file proposed plans to identify and implement re-homing of appropriate NXX codes, as discussed below. We appreciate, however, the potential for customer disruption and inconvenience that could result from re-homing of grandfathered numbers. To the extent re-homing is implemented, a public education program will be necessary to inform customers and the public generally regarding the reasons for and effects of the re-homing to the extent that the rating of calls changed from

local to toll. Time and expense will also be involved with respect to carriers' network and billing system reconfigurations resulting from the re-homing of codes. Parties' comments fail to address in detail the specific costs, steps, or time that would be involved in implementing such changes. Further measures will be needed to determine relevant implementation details required and the time necessary for completion, both in terms of technical modifications and public notification.

Verizon Wireless argues that although wireless customers affected by such a change should be educated, it would be unduly burdensome to require wireless carriers to educate the public at large (including wireline customers) about the implications of rehoming, especially outside of area code relief education programs. Verizon proposes, instead, that wireless carriers only be required to inform affected customers about any changes, as necessary.

While we agree that the primary focus of any public education should be directed toward those customers that are assigned a grandfathered number, wireline customers are also impacted to some degree, particularly to the extent that they call others that are assigned a grandfathered number. The specific nature, form, and extent of information to disseminate to wireline versus wireless customers is a matter best addressed at a staff level. We shall accordingly direct that Commission's Public Advisor's Office, together with the Telecommunications Division, review the proposals for public education put forth by carriers in their advice letters. Public Advisor's Office and Telecommunications Division staff shall meet and confer with representatives of the wireless carriers to the extent further clarification or augmentation of the proposed public education plans is deemed warranted. We reserve the option of issuing further rulings or orders to address more specific details of the public

education program as necessary to ensure that customer confusion is minimized and phase-out of grandfathering is administered prudently.

We recognize that in some areas, the potential negative consequences of re-homing may outweigh the benefits to be derived from increased efficient utilization of numbering resources. Where the re-homing would transform local calls into intraLATA toll calls, the resulting disadvantages may likely outweigh any advantages. Customers subject to significant call rating changes as a result of a re-homing would face distinct disadvantages. We shall not require re-homing in such instances.

Nonetheless, there are some instances where re-homing could have overall beneficial effects. Particularly, in urban areas where the distance between rate centers is shorter, rehoming may not entail such a significant change in the rating of calls. In such instances, re-homing should be implemented. Evaluation of whether to re-home is best addressed based on a more complete assessment of relevant local factors on a case-by-case basis for each grandfathered code.

We shall direct those CMRS carriers (excepting paging carriers) holding grandfathered codes to make a specific assessment of which codes, if any, may be appropriate for re-homing based on review of local conditions. CMRS carriers with grandfathered codes are directed to identify the relevant grandfathered codes which can be re-homed with minimal impacts on call rating. We shall direct CMRS carriers holding grandfathered codes, to file a proposed plan via advice letter within 60 days of the effective date of this order regarding what codes, if any, are appropriate for re-homing based on assessment of the relevant call rating impacts. In their advice letters, carriers shall include a proposed plan and timetable for implementing any re-homing of codes that are

so identified. The proposed plan shall outline the implementation steps required for public notification and for technical network modifications.

The proposed implementation plans shall include a provision for timely notification to wireline carriers of re-homing plans and associated customer education programs. This notification shall be required in order to allow wireline carriers to prepare for and effectively address any customer inquiries about the re-homing process.

After receiving this advice letter filing from CMRS carriers, a Commission resolution will be issued as to the implementation of a plan for the re-homing of specific grandfathered codes. To the extent re-homing is subsequently implemented, an appropriate public notification and education plan will be an essential element. Such a plan shall be targeted both to CMRS and wireline customers to explain the differences in call rating and billing associated with changing rate centers, and the reasons why such changes are being required. A timetable will have to be established to enable carriers to implement necessary technical changes to reconfigure networks and billing systems to recognize the re-homed codes.

2. Changing Grandfathered Telephone Numbers

Another possible approach to reversing the grandfathering of numbers identified in the ALJ ruling would be to have customers change their grandfathered number to a new prefix that matched to a rate center of the geographic NPA. This alternative would not trigger any change in the toll-versus-local rating of incoming calls, but would disadvantage the customer resulting from a forced number change. After all the customer number changes had been made, vacating the prefix, the prefix would be returned to NANPA for reassignment in the home NPA.

This option would require the CMRS carrier to determine whether only the three-digit area code change would be needed or if a full 10-digit number change would be required. If the central office prefix of the customer's current number was still available for assignment in the new area code, the customer could keep the existing seven-digit number and experience only an area code change. Otherwise, if the central office prefix of the customer's current number were not available in the new area code, the customer would have to undergo a full 10-digit number change.

a) Parties' Positions

Pacific reports that as of October 10, 2002, there were 61 out of 108 existing grandfathered codes identified by Commission staff where the prefix of customer's current seven-digit number was still available in the new area code. Conversely, it would be necessary to assign the customer a completely new 10-digit number in the remaining 47 grandfathered codes.[5]

Pacific contends that this option would cause a spike in customer complaints due to the change in telephone number, but would result in the least amount of technical implementation difficulties.

Verizon Wireless argues that the inconvenience, complications, and burden on customers of forced number changes cannot be underestimated, especially where a 10-digit number change is required for which there is no "natural trigger." Verizon Wireless argues that CMRS carriers would be placed

[5] With respect to potential 10-digit number changes, wireless carriers may be able to permit customers to retain the last four digits of their current numbers in some cases.

in the untenable position of trying to explain to customers why a number change is necessary even though no area code is being split.

b) Discussion

We conclude that the second option considered in the ALJ ruling, namely, an immediate forced area code or seven-digit number change independent of any general area code relief plan, would likely produce more disadvantages in terms of customer disruption and confusion than any advantages in the form of efficient number utilization. Customers are accustomed (at best) to forced number changes in connection with general area code splits to relieve code exhaust. It will be more difficult attempting to educate and explain to the public regarding why selected customers must immediately give up either their area code or full 10-digit number even though no code exhaust is imminent.

Before such number changes could be implemented, a customer notification plan would be required to inform both wireline and CMRS customers of the number changes. Pacific estimates that approximately 56% of the impacted customers' numbers would have to take a new area code, and approximately 44% would be forced to accept a completely new 10-digit number. The notification plan would most closely resemble the design of a customer information package developed where a split area code relief alternative is mandated.

The ultimate goal of efficient number utilization is to minimize the need for customers to undergo area code changes through geographic splits or overlays. Yet, a forced number change would result in certain customers being forced to change not only their area code, but possibly their full 10-digit number, sooner than would be required from a general area code relief plan.

Particularly in the case of those grandfathered NXXs in NPAs that are not projected to face imminent exhaust, this approach could produce as much or more adverse customer reaction and disruption than from a generalized NPA split. Accordingly, we decline to require immediate area code or seven-digit number changes as a means of reversing the effects of grandfathered codes.

Nonetheless, while we shall not make it mandatory for grandfathered customers immediately to undergo an area code or 10-digit number change, we shall grant carriers the option on a voluntary basis to permit customers to change their area code or 10-digit number in a grandfathered code in the interests of accelerating the depopulation of the grandfathered code. To the extent this process can be accomplished on a voluntary basis, it will mitigate any subsequent adverse impacts of forced number changes.

3. Customer Migration Through Attrition

Another potential solution would be to defer immediate re-homing or area code changes and to rely instead on customer migration to vacate the grandfathered prefix through attrition. The prefix would either then be returned to NANPA for reassignment or be re-homed only after its usage becomes vacant.

a) Parties' Positions

Parties generally view the voluntary migration option as the least onerous on customers. Verizon Wireless suggests the timing for such attrition be tied to the NANPA's exhaust projection for NPA relief planning purposes, or to some permissive period, after which the reduced number of remaining customers would undergo number changes. Verizon Wireless argues that allowing time for customer attrition naturally and/or through some acceptable carrier incentives would help to alleviate customer harm without placing undue pressure on the affected NPAs.

Verizon Wireless contends that the voluntary migration option would require FCC waivers from the sequential number rule and utilization rates. Also, during the transition period, the grandfathered NXX codes would need to be excluded from pooling. Verizon Wireless also believes carriers would need FCC waiver of the LNP requirement for grandfathered numbers in the NPAs that have not yet exhausted. Finally, the CMRS carrier would either donate all grandfathered thousand blocks with a utilization level of 10% or less, or such blocks would not count against the carrier's number utilization for purposes of obtaining additional numbering resources.

b) Discussion

We conclude that the attrition option offers a useful alternative for phasing out the grandfathering of codes in those instances where re-homing is not feasible. While the transitional period for phasing out grandfathered codes would be longer under this alternative, it would also produce the less disruption and negative reaction from customers than an immediate area code change or re-homing. As customers progressively migrate out of the grandfathered code over time, the number of remaining customers potentially impacted would gradually diminish.

Accordingly, we shall adopt a plan for the use of customer attrition in order to phase out grandfathered codes in those cases where re-homing is not feasible. As customers in grandfathered NXX codes move or otherwise switch numbers, we shall direct that those numbers not be reassigned, but held open, pending further depopulation. Pacific proposes that any deadline imposed should not be less than 24 months in order to allow enough time for customer notification. We shall rely on voluntary attrition to depopulate all

grandfathered codes until the next general are code relief plan is implemented for the NPA in which the respective grandfathered codes reside.

Concurrent with the implementation of the new area code for all customers in the affected NPA, any remaining grandfathered numbers in an NPA shall be reassigned to their respective "home" NPA. Since all other customers in the affected NPA will be impacted by a general change in area code, it is equitable to reassign any remaining grandfathered numbers to their respective home NPA at the same time. Any remaining customers holding numbers in grandfathered codes at that time shall thus be required to undergo an area code change. In those instances where a matching seven-digit number is not available in the "home" NPA, the customer must take a 10-digit number change.

To the extent that carriers believe that implementation of the attrition approach requires waiver of any existing FCC rules relating to number utilization, we shall direct carriers to take necessary steps to secure such waivers. Given that wireless carriers' objectives of meeting the FCC requirements match with the Commission's objectives of eliminating grandfathered codes, Verizon Wireless proposes that the Commission work with the carriers in seeking a limited waiver of the FCC's sequential numbering rules for grandfathered codes. The Commission stands ready to express support, as appropriate, for efforts on the part of carriers to obtain number utilization rule waivers from the FCC necessary to facilitate compliance with this decision.

Moreover, the FCC has adopted a process known as the "safety valve" mechanism (see FCC Order 01-362) whereby the states may grant requests by carriers that receive a specific customer request for numbering resources that exceeds the carrier's available inventory. The "safety valve" provisions were

adopted as a way to ensure that carriers can meet customer demand even if a deviation from utilization rules is needed under certain circumstances. In its order adopting the "safety valve" mechanism, the FCC gave states flexibility to direct the NANPA or Pooling Administrator to assign additional numbering resources to carriers that have demonstrated a verifiable need for additional numbering resources outside of the specifically enumerated instances set forth in the FCC order. We have granted several "safety valve" requests since the FCC adopted the process. We encourage carriers to make appropriate use of the FCC "safety valve" provisions, as customer demand warrants, to obtain necessary numbering resources while observing our requirements for migrating customers out of grandfathered NXX codes.

Verizon Wireless contends that use of the "Safety Valve" process in this manner would be unduly burdensome, costly and potentially arbitrary. In some NXX codes, Verizon Wireless argues, a carrier could be placed in a position where every thousand-block request would entail the "safety valve" process. At minimum, Verizon Wireless proposes that the Commission streamline processing of "safety valve" requests that arise as a result of grandfathered codes. In the interests of efficiency, we shall adopt the streamlined measure proposed by Verizon Wireless whereby a carrier will be permitted to submit an illustrative showing of its utilization rate excluding grandfathered codes. For example, a carrier with one grandfathered NXX code in the relevant rate center with only 2000 numbers assigned would fail to meet the utilization rate even where the carrier's other resources are highly utilized and there is immediate demand from new customers for new numbers. This carrier would be denied a request for a thousand-block from the pool because of its lower overall utilization rate. Under the streamlined "safety valve" process

that we herein adopt, we would simply remove the grandfathered code from the calculation to determine that the utilization rate is adequate and order the direct release of requested blocks by the Pooling Administrator.

As part of any NPA relief plan that is subsequently filed, we shall require disclosure of any grandfathered codes that exist within the NPA. As part of the implementation plan that we adopt for any geographic split, or other form of NPA relief, we shall examine any remaining grandfathered codes, and determine a disposition for numbers assigned from such grandfathered codes consistent with the discussion above.

We affirm that any changes in individual customers' area code or 10-digit number as a result of implementing the reversal of grandfathered codes does not constitute an area code relief plan as that term is used in Sections 7930-7945 of the Public Utilities Code. Accordingly, such limited customer-specific changes in area code or 10-digit number resulting from the reversal of grandfathered codes does not invoke the requirements of those code sections that address the implementation of an area code relief plan.

E. Legal Authority to Implement Retroactive Elimination of Grandfathered Codes Independently from Area Code Relief

1. Position of Verizon Wireless

Verizon Wireless raises the issue of whether we exceed our delegated authority granted by the FCC by ordering the reversal of grandfathering on a retroactive basis. Verizon Wireless contends that the Commission is precluded from revoking the grandfathered status of wireless carriers' existing NXX codes without an additional grant of authority from the FCC. Verizon Wireless argues that retroactive elimination of grandfathered codes does not fall within the scope of the FCC's delegated authority to the states

to implement area code relief pursuant to the Telecommunications Act of 1996 (Act). To the extent that continuation of existing grandfathered codes raise number pooling and portability issues, Verizon Wireless argues that both pooling and porting are within the exclusive jurisdiction of the FCC which supersedes the Commission's delegated authority in these areas. Verizon Wireless claim that the Commission must turn to the FCC for guidance regarding any number pooling or porting obstacles that may be posed by grandfathered codes.

2. Discussion

We find the objections of Verizon Wireless claiming lack of delegated authority to be without merit. The actions we implement in this order are merely intended to rectify unintended consequences of past Commission policies concerning grandfathered NXX codes. We have provided parties due notice and opportunity to be heard prior to adopting any modifications to previous policies concerning grandfathering. Accordingly, we have laid a proper basis for adopting modifications of prior Commission policy, as set forth in this order.

Verizon Wireless claims that reversal of grandfathered codes conflicts with federally delegated authority. To the contrary, the remedial measures we adopt herein merely facilitate CMRS carriers' ability to comply with federal mandates to implement pooling and porting of numbers. Failure to adopt and implement appropriate remedial measures concerning grandfathered codes, on the other hand, would perpetuate impediments to carriers' complying with these federal mandates. Accordingly, the measures we adopt in this order to address the anomalies caused by grandfathered codes are within the

discretion of this Commission, and are consistent with promoting carriers' adherence to federal mandates.

F. Number Pooling Implications of Grandfathered Codes

To the extent that grandfathered number blocks continue to exist in their current fashion, appropriate measures will have to be taken so that they are not assigned to wireline carriers. As discussed above, such grandfathered number blocks cannot be used by wireline carriers in the surrounding area because of the inconsistent area code.

1. Parties' Positions

Verizon states that whatever policy is adopted should avoid the assignment of thousand-blocks to wireline providers in geographies not consistent with the NPAs of those codes. Verizon expresses concern that continued use of grandfathered NXXs will create problems now that CMRS providers have begun to participate in thousand-block number pooling, and are now required to donate blocks of numbers from grandfathered codes.

A possible remedy to address the number pooling problem created by grandfathered codes, suggested by NeuStar, is to create two separate number pools, one for wireline and a second pool for CMRS. Under this approach, the Pooling Administrator would segregate the grandfathered codes into their own separate number pools, apart from the remaining codes in the new NPA. The segregated number pool for grandfathered codes would then be restricted exclusively for the use of CMRS providers.

Verizon Wireless proposes that the Pooling Administrator set aside or flag any donated thousand blocks from grandfathered codes to prevent such blocks from being assigned to other carriers through pooling.

2. Discussion

As long as grandfathered numbers remain in use among carriers subject to number pooling, the Pooling Administrator will need to take appropriate measures to ensure that such grandfathered number blocks are not inadvertently assigned to a carrier that cannot use them. Given the limited number of codes that are grandfathered, the administrative costs and burdens involved in creating and administering a separate number pool exclusively for grandfathered numbers does not appear to be justified. CCAC points out that of almost 15,000 total NXX codes assigned statewide, only 69 NXX codes were grandfathered as of the date of comments.

By letter dated October 30, 2002, the Director of the Commission's Telecommunications Division requested that the Pooling Administrator set aside and refrain from assigning any donated thousand blocks from grandfathered codes until the pooling and porting problems associated with grandfathered codes can be resolved. Because of the limited number of codes that are presently subject to grandfathering, however, the majority of pooled number blocks can be donated and assigned without the grandfathering impediment.

III. Comments on the Draft Decision

The draft decision of the ALJ in this matter was mailed to parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Opening comments were filed on March 24, 2003 and reply comments were filed on April 1, 2003. We have taken the comments into account, as appropriate, in finalizing this order.

IV. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner to this portion of the proceeding and Thomas R. Pulsifer is the assigned Administrative Law Judge.

Findings of Fact

1. Under the grandfather provisions adopted in 1996 in D.96-08-028, certain customers of CMRS may retain their preexisting area code after a geographic split, even when the rate center of the carrier's assigned NXX code lies within the geographic boundaries prescribed for the new area code.

2. The grandfathering policy was adopted to alleviate the potential for significant service disruptions for CMRS customers at the end of the permissive dialing period for an area code change by avoiding the need for handsets to be manually reprogrammed for a new area code.

3. Advances in over-the-air (OTA) technology have greatly alleviated, but not eliminated, the need for wireless customers to have their handsets manually reprogrammed for a new area code.

4. Because OTA is not completely automated, the process for number changes for CMRS customers is still more cumbersome than for wireline customers, and consequently, there will continue to be a significant number of customers whose handsets must be reprogrammed manually in implementing any NPA split.

5. Although certain CMRS providers are now required to participate in number pooling, any thousand blocks donated that have been grandfathered cannot be used by a wireline carrier, since the donated block will be geographically located within the boundaries of one area code but will bear a different area code.

6. To the extent that grandfathered codes cannot be used by wireline carriers through number pooling or porting , state and federal mandates to implement pooling and porting to promote efficient utilization of numbering resources and competitive choice are impeded.

7. Because paging carriers are not required to participate in number pooling or portability, the effects of grandfathered codes on number pooling or porting have no relevance to paging carriers.

8. Prospective-only changes in the Commission's grandfathering policy would not address the number pooling and porting impediments created by existing grandfathered numbers that are the product of past area code splits.

9. Retroactive reversal of existing grandfathered codes would be more disruptive to customers than a prospective only reversal of grandfathering policy in conjunction with implementing future area code relief plans.

10. Because grandfathered telephone numbers represent only a small fraction of total numbers, the ability to pool and port numbers between CMRS and wireline carriers is not impeded with respect to the majority of number blocks statewide.

11. Three primary approaches to retroactive elimination of grandfathered codes presented to parties for comment by ALJ ruling were: (1) re-homing of grandfathred codes whereby customers' existing number prefixes currently assigned in a rate center outside of the "home" NPA would be moved to a rate center within the home NPA; (2) changing customers' numbers to conform the area code of the grandfathered number to that of the home NPA; and (3) implementation of Options 1 or 2 through gradual attrition as customers migrate out of the grandfathered code on a voluntary basis, or in the context of implementing an area code change plan.

12. Grandfathering of numbers has generally occurred in non-urban areas where the nearest rate center is often outside the local calling zone.

13. In an environment where the nearest rate center is outside the local calling zone, re-homing of grandfathered codes would change the rating for land-to-mobile calls from local to toll, and in some cases, inter-LATA toll.

14. Re-homing is an appropriate remedy as a means of reversing existing grandfathered codes in those instances where it can be accomplished with minimal impacts on call rating.

15. In those instances where re-homing would cause a local call to be rerated as an intraLATA toll call, the adverse impacts on customers are likely to outweigh the advantages.

16. In those instances where re-homing is not feasible, a useful alternative for the phasing out of grandfathered NXX codes is through reliance on customer attrition to depopulate such codes over a period of time.

17. It is reasonable to adopt a final cut off for remaining grandfathered codes that have not otherwise been depopulated through attrition.

18. In the interests of minimizing customer impacts of grandfathering phase-out through attrition, it is reasonable to coincide the final cut off for phasing out remaining grandfathered numbers with the next area code relief plan implementation in each affected NPA.

19. At the end of the cut-off period, it is reasonable to require remaining customers with grandfathered numbers to change their number (area code only where feasible, and full 10-digit where necessary) to achieve consistency with the home NPA associated with the customer's geographical residence.

20. An appropriate public education and notification program is necessary to prepare customers for the change in area code or 10-digit number that will be required for remaining customers with grandfathered numbers at the end of the three-year attrition period.

21. An immediate forced number change for grandfathered codes would likely produce more disadvantages in terms of customer disruption and confusion than any advantages in the form of efficient number utilization.

22. Where the prefix of the customer's grandfathered number was still unassigned in the new area code, the customer could keep the existing seven-digit number and undergo only an area code change in order to free up the grandfathered code. Otherwise, if the prefix of the customer's number were already assigned in the new area code, the customer would have to undergo a full 10-digit number change.

Conclusions of Law

1. Certain modifications of the Commission's grandfathering policy in D.96-08-028 should be adopted to promote more efficient utilization of numbering resources, particularly in those NPAs closer to code exhaust.

2. Parties have been provided due notice and opportunity to be heard concerning the potential modification of D.96-08-028 with respect to the treatment of grandfathered codes in accordance with Public Utilities Code Section 1708.

3. The grandfathering policy adopted in D.96-08-028 should be modified to reflect a presumption in favor of consistency in the treatment of area code assignments among carriers subject to number pooling, irrespective of whether customers are served by a CMRS or wireline carrier.

4. As long as paging carriers are not required to participate in number pooling or number portability at this time, they should not be required to change their use of grandfathered codes.

5. Prospective elimination of grandfathered codes in the context of implementing area code relief plans should be addressed on a case-by-case basis,

taking into consideration the respective impacts on customers relative to the benefits derived from more efficient number resource utilization.

6. Where it is determined that numbers will not be grandfathered in implementing an area code change plan, if a carrier proposes a longer permissive dialing period for CMRS customers that still face a more difficult transition process than wireline customers with respect to reprogramming of handsets, the Commission may consider a longer permissive dialing period on a case-by-case basis.

7. CMRS carriers holding grandfathered NXX codes should each be required to present a proposal by advice letter filing no later than 90 days from the effective date of this order for the reversal of such grandfathering to return such codes to their home NPA in accordance with the directives set forth in this order.

8. It is within this Commission's authority and consistent with FCC mandates for number pooling and porting to implement appropriate remedial measures to reverse existing grandfathered codes as outlined in this order.

9. The re-homing of NXX codes is an appropriate means of reversing grandfathered codes where the re-homing can be accomplished with relatively minimal impact on call rating and where an appropriate customer education and public notification plan is implemented in advance.

10. Where re-homing of NXX codes is not feasible without triggering significant call rating problems, it is appropriate to rely on customer attrition to depopulate grandfathered codes for a prescribed phase-out period.

11. To the extent that grandfathered NXX codes have not been depopulated through attrition by the end of a prescribed cut-off period, it is appropriate to proceed with necessary measures to change the area code (or 10-digit number

where necessary) in order to reverse the remaining grandfathered codes and to achieve geographical consistency in area code assignments.

12. Customer-specify area code changes that are made to phase out grandfathered codes do not constitute area code relief nor do they trigger the requirements of Pub. Util. Code § 7930-7945.

O R D E R

IT IS ORDERED that:

1. The Commission's previously established policy concerning the grandfathering of NXX codes as set forth in Decision (D.) 96-08-028 is hereby modified as set forth in this order.

2. The Commission hereby adopts a prospective policy in favor of assigning new area codes created by numbering plan area (NPA) splits to all customers physically located in the geographic region assigned to the new area code, irrespective of whether they are served by a commercial mobile radio service (CMRS) or a wireline carrier.

3. Any grandfathered NXX codes assigned to paging carriers are hereby exempted from the requirements adopted in this order regarding modifications of previously adopted policies concerning grandfathering of NXX codes.

4. Any prospective grandfathering in connection with area code splits (other than for paging carriers) shall only be considered on an exception basis, in response to an affirmative request and showing of extenuating circumstances, such that the harm from changing a CMRS customer's assigned area code outweighs the advantages resulting from uniform treatment of customers' assigned numbers.

5. Each CMRS carrier that is holding grandfathered NXX codes within California shall submit by advice letter within 90 days of the effective date of this order a proposed plan for reversal of their existing grandfathered NXX codes in accordance with the directives set forth in this order.

6. As part of the advice letter setting forth the proposed plan for the reversal of grandfathered NXX codes, each carrier shall identify those NXX codes that can be re-homed with relatively minimal call rating impacts, and a timetable for completing the re-homing. The advice letter shall also detail the processes proposed to be used to notify the public and educate customers concerning the re-homing process. The advice letter shall also detail the processes proposed to be used to notify the public and educate customers concerning the changes in area code or 10-digit number that will be required at the end of the three-year voluntary attrition period as adopted in this order.

7. Upon receipt and review of the carriers' advice letter filings, the Commission will issue a resolution or order implementing the appropriate measures to re-home designated NXX codes and for institution of an appropriate customer education and public notification plan to prepare customers for such re-homing and for the eventual area code or 10-digit number changes that will be required at the end of the voluntary attrition period in order to phase out remaining grandfathered codes.

8. The Commission's Public Advisor's Office, together with the Telecommunications Division, shall review the proposals for public education put forth by carriers in their advice letters relating to implementation of measures to phase out grandfathered numbers.

9. The Public Advisor's Office and Telecommunications Division staff shall meet and confer with representatives of the wireless carriers to the extent further

clarification or augmentation of the proposed public education plans is deemed warranted.

10. The Commission reserves the option of issuing further rulings or orders to address specific details of the public education program as necessary to ensure that customer confusion is minimized and phase-out of grandfathering is administered prudently.

11. In those instances where re-homing is not feasible, customer attrition (i.e., the gradual depopulation of NXX codes as customers voluntarily switch numbers or move) is hereby adopted for purposes of phasing out grandfathered codes until the next NPA relief plan implementation in each affected NPA.

12. CMRS carriers with grandfathered codes are hereby required to freeze assignment of available numbers from such codes and not reassign any available numbers resulting from customer attrition, pending conclusion of the phase-out period.

13. To the extent that implementation of the attrition approach requires waiver of any existing Federal Communications Commission (FCC) rules relating to number utilization, each carrier shall take necessary steps to secure such waivers.

14. The "safety valve" mechanism authorized by the FCC shall be utilized to satisfy carriers' numbering needs notwithstanding the freezing of number assignments from grandfathered codes. A streamlined "safety valve" process is adopted, whereby the grandfathered code shall be removed from the calculation of the utilization rate for purposes of determining carriers' eligibility for requested blocks from the number pool.

15. The termination date for grandfathered codes that are not otherwise eliminated through attrition shall coincide with the date that the next NPA relief

plan implementation takes effect for each NPA in which the grandfathered codes reside.

16. At the time of the next NPA relief plan implementation in each affected NPA, any remaining customers in the affected NPA holding numbers from grandfathered codes will be required to undergo an area code change to return their number to the respective "home" NPA. In those instances where a matching seven-digit number is not available in the "home" NPA, the customer will be required to take a 10-digit number change.

17. The Pooling Administrator shall take appropriate measures to ensure that any donated thousand blocks from grandfathered codes are set aside or flagged to prevent such blocks from being assigned.

This order is effective today.

Dated _____, at San Francisco, California.