COM/LYN/TAH/epg **ALTERNATE DRAFT**

Agenda ID # 2826
Alternate to Agenda ID# 2823

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER LYNCH**
(Mailed 9/30/2003)

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

TABLE OF CONTENTS

Title **Page**

I. Summary 2

II. Background 2
A. History of Procedural Actions Taken to Split the 909 Area Code 4
B. California's Innovative Number Conservation Measures Have Extended the Life of the 909 Area Code 6
C. Utilization Study and Audit of 909 Telephone Numbers 10

III. Discussion 13
A. Forecast versus Actual Demand for Telephone Numbers 14
B. Pending FCC Actions Could Extend the Life of the 909 Area Code 19
C. Continued Requirements for Effective Number Conservation 21

IV. Comments on Draft Decision 22

V. Assignment of Proceeding 22

Findings of Fact 22

Conclusions of Law 24

ORDER 26

I. Summary

Adequate telephone numbers still are available in the 909 area code to provide customers and telephone carriers with sufficient service. It is not necessary at this time to split or overlay the 909 area code by implementing one of the back-up plan options submitted by the North American Numbering Plan Administrator (NANPA) in June 2002. The FCC's recent approval of the Commission's petition to increase the contamination threshold to 25% in the 909 area code should return at least 280,000 telephone numbers for use by other carriers.

The Commission should closely monitor the additional need for telephone numbers in the 909 area code during the next six months to assure adequate telephone number supplies. The wireless local number portability requirement scheduled to take effect on November 24, 2003, would free up significant amounts of unused telephone numbers in the 909 area code. Prior to imposing the burden of an area code split or overlay on businesses and families in the 909 area code, the Commission should evaluate the success of wireless industry compliance with local number portability requirements this November.

II. Background

The traditional system for assigning numbers was a legacy from an era in which one incumbent telephone company provided all customers with local service in a given area code. Under the traditional system, a carrier wishing to serve only a few customers in an area was allocated telephone numbers in blocks of 10,000 for each rate center in that area. That system worked reasonably well as long as only one incumbent local exchange carrier required telephone numbers. Yet, with the opening of the local exchange market to competition, together with the growth in the competitive market for wireless and advanced technological

telecommunications services, the traditional number assignment system could no longer keep up with the growing demand for numbers from multiple carriers serving the same customer base. The traditional system did not lend itself to efficient distribution of numbers in a competitive market where numbers are assigned to multiple carriers to serve customers in each rate center.

From 1947 to January 1997, the number of area codes in California increased gradually from 3 to 13. During the next three years, however, the number of area codes in California nearly doubled. By the end of 1999, California had 25 area codes statewide, and because of inefficient management of telephone numbers, the industry projected we would need 17 more area codes by the end of 2002. Today, because of aggressive and successful conservation efforts in California, we have not split a single area code since 1999.

The FCC has exclusive jurisdiction over numbering in the United States. Only by the FCC's delegation of authority to the states can the states implement number conservation policies. Recognizing the substantial social and economic burdens associated with constant area code changes, in April 1999 the Commission petitioned the FCC for the delegated authority to implement specific telephone number conservation measures in California in order to slow down unnecessary area code proliferation. The FCC granted the Commission's request in September 1999.[1] As a condition of that delegated authority, the FCC has required that the Commission must take steps to provide additional telephone

[1] In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, Order, CC Docket No. 96-98, FCC 99-248 (FCC Order).

numbers through an area code split or overlay if telephone numbers are in imminent danger of being exhausted.

A. History of Procedural Actions Taken to Split the 909 Area Code

The 909 area code includes cities and communities in parts of the counties of Los Angeles, Riverside, and San Bernardino, and currently serves a portion of Local Access and Transport Area 730.

In March 1998, the NANPA[2] first declared a "jeopardy" situation[3] in the 909 area code. Beginning in April 1998, the Commission initiated a monthly rationing system, or "lottery," for distributing 10,000-number blocks of telephone numbers in the 909 are code. The industry then proceeded through the prescribed process required to implement a new area code in response to the forecast at the time that the 909 area code was about to run out of telephone numbers.[4] An initial round of public meetings were held by the industry team in August 1998 in response to the initial notification of NANPA of impending number exhaust in the 909 area code in conformance with Pub. Util. Code § 7930. By letter to the assigned Administrative Law Judge (ALJ) dated December 7,

---

[2] NANPA is an independent third-party administrator responsible for managing the nation's supply of telephone numbers under policies and guidelines established by the individual states and the FCC. NeuStar, Inc. performs this service.

[3] As defined by the Central Office Code Assignment Guidelines, a "jeopardy" situation exists when the forecasted and/or actual demand for central office code resources will exceed the known supply during the planning implementation interval for implementing a new area code.

[4] The planning process for NPA Relief is established in the industry-approved document INC 97-0404-016 "NPA Code Relief Planning and Notification Guidelines," to be used by NPA Relief Coordinators. The document lists the assumptions, constraints, and planning principles used in NPA Code relief planning efforts.

1998, the NANPA presented two alternative plans for creating more numbers in the geographic area covered by the 909 area code.

By Decision (D.) 99-09-059, dated March 18, 1999, the Commission determined that a new area code was required to relieve code exhaust in the 909 area code and approved an industry plan that entailed a two-phase geographic split of the 909 area code followed by an overlay. Implementation of the 909 area code relief plan was suspended, however, pursuant to Commission decision D.99-12-051, as part of a broader statewide Commission initiative under our delegated authority to undertake a comprehensive menu of measures to assure that numbering resources were being utilized as efficiently as possible before imposing any further area code changes on Californians.

In view of the passage of time since the initial, 1998 meetings and the subsequent issuance of updated relief plan proposals for the 909 area code submitted by the industry in the summer of 2002, the Commission scheduled a new round of public and local jurisdiction meetings in July 2003.

Although these latter meetings were not required by statute, they provided the public and local jurisdiction officials an opportunity to express their views concerning the more recent proposed area code change plans for the 909 area code filed in June 2002.

As part of the 909 area code outreach efforts, Assigned Commissioner Loretta Lynch sent letters to some 320 public agencies and elected officials notifying them of the public and local jurisdiction meetings, asking them to attend, and enclosing informational materials regarding the potential area code changes. Letters were sent to city council members, mayors, city managers, fire chiefs, police chiefs, Riverside and San Bernardino County Boards of Supervisors, California State assembly members and senators, and U.S.

congresspersons and senators associated with regions covered by the 909 area code.

Two local jurisdiction meetings were held, one each in Riverside and San Bernardino Counties, on July 11, 2003 to review potential area code split and overlay alternatives for the 909 area code. In addition to these local jurisdiction meetings, the Commission held five meetings to present the proposed alternatives to the general public and hear their views. These meetings were held in Riverside City on July 12, San Bernardino on July 15, Murrieta and Moreno Valley on July 16, and Ontario on July 17, 2003.

We welcome the opportunity to receive comment the from public and local officials in considering options for area code planning that are in the public interest.

B. California's Innovative Number Conservation Measures Have Extended the Life of the 909 Area Code

Working with the NANPA, the Commission immediately took steps to implement its delegated authority to conserve telephone numbers in 2000. Beginning in March 2000, the Commission adopted various number reporting and conservation measures which collectively have slowed significantly the pace of area code splits in California.

In exercising its delegated authority from the FCC, the Commission has found that industry claims of impending telephone number exhaustion were based merely upon carriers' forecasts of future telephone number usage within each area code, not their respective historical or actual use of telephone numbers. In essence, marketing predictions, not actual number use, formed the basis of each carrier's forecast number requirements – and the national numbering policy. No independent analysis had been provided, however, concerning the reliability of such forecasts or carriers' actual utilization of telephone numbers.

First, California now considers new area codes based on actual need for new numbers, not carriers' unaudited forecast demand. Beginning in March 2000, the Commission initiated the first-ever utilization study of actual number use in California, in the 310 area code – where we found three million unused telephone numbers in an area code that was allegedly entirely out of available telephone numbers. The Commission completed its audit of the 909 area code in November 2000, finding 3.9 million unused numbers. By the end of 2001, the Commission had completed a utilization study for each of the state's other 24 area codes. In every case, we found that each area code actually contained between 40-80% of the available numbers classified by the carriers as unused.

Second, under its delegated authority, the Commission distributes new telephone numbers to carriers more efficiently. By far the most effective number conservation tool is number pooling. Number pooling allows telephone companies to receive numbers in smaller blocks than the traditional 10,000 numbers, enabling multiple providers to share a 10,000-number block and therefore use this limited resource much more efficiently. In March 2000, California began the state's first number "pool," in the 310 area code. Number pooling in the 909 area code followed in December 2000. Today, every area code in California has implemented number pooling, operated by a neutral third-party Pooling Administrator.[5] By allowing the state to distribute numbers in smaller blocks of 1,000, we can better match the numbering needs of new, smaller companies without stranding the remaining numbers in the 10,000-number block.

[5] NeuStar, Inc. is the Pooling Administrator for all area code number pools in the United States.

The technology that enables the network to support the assignment of smaller blocks is referred to as Local Number Portability, or LNP. LNP was originally mandated in 1996 by the FCC as a means to enable customers to retain their telephone numbers when they switch telephone service to another local telephone company. This same technology is utilized for number pooling. The FCC required all wireline[6] carriers to become LNP-capable by the end of 1998 in the top 100 Metropolitan Statistical Areas (MSAs) in the country.[7] Without LNP, a customer is inhibited from changing carriers because he or she must change both the equipment and the telephone number.

Though LNP technology has existed for several years and the wireline carriers became LNP-capable by 1998, the FCC has subsequently granted cellular and PCS companies three separate extensions of time, until November 2003, to become LNP-capable.[8] The FCC further gave paging companies a permanent exemption from the LNP requirement. Until November 2002, only wireline carriers could participate in number pooling, and those carriers received telephone numbers solely through the number pool; wireless carriers received numbers in 10,000-number blocks through the Commission-administered monthly rationing system, or lottery, and through emergency

---

[6] Incumbent and competitive local exchange carriers providing traditional "land-line" service.

[7] FCC's Opinion and Order on Telephone Number Portability FCC 97-74, issued March 6, 1997.

[8] On September 1, 1998 the FCC's Wireless Telecommunications Bureau, under the authority delegated to it by the FCC, granted a nine-month extension to March 31, 2000; On February 8, 1999, the FCC granted an additional extension to November 24, 2002; and on July 26, 2002, the FCC granted a final extension, to the current deadline of November 24, 2003.

requests to the Commission. Now, although wireless carriers have not yet made local number portability available to their customers, they have implemented enough of the technology to enable their participation in number pooling beginning in November 2002. Currently, therefore, both wireline and wireless carriers in California receive numbers through the state's number pools. Only paging companies, which are still exempt from LNP requirements, now receive numbers through the monthly lottery system.

Third, in addition to more efficiently managing number distribution, California is also requiring companies to more efficiently manage the numbers they already have. These new requirements include requiring companies to return any 10,000-number block that the telephone company has held for more than six months without using it; requiring telephone companies to show they will be out of telephone numbers within six months before the Commission grants requests for additional numbers; and requiring telephone companies to show they have used at least 75% of the numbers they hold before they can request additional numbers (known as the "fill rate requirement"). Companies must assign numbers in thousand-block sequence (called "sequential numbering"), moving to the next thousand-block only after using 75% of their numbers.

Fourth, as an additional measure to extend the life of the 909 area code, the Commission filed a petition with the FCC on September 5, 2002,[9] seeking a waiver from the FCC "contamination" or number use, threshold

[9] See the *Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communication Commission's Contamination Threshold Rule*, dated September 5, 2002.

requirement. Specifically, the Commission requested that the FCC grant California the authority to increase the existing 10% "contamination" rate. Under FCC rules, carriers must donate to each area code's common number pool all thousand-blocks of telephone numbers that contain less than 10% "contaminated," or used, numbers. An increased level of allowable contamination or usage rates for poolable thousand-number blocks (from current 10% to 25%) increases the number of thousand-blocks that are available to all carriers through each area code's number pool. By increasing the number of available thousand-blocks in this manner, the life of the 909 area code can be extended.

The FCC acted upon this Petition by its Order adopted August 5, 2003 and released August 11, 2003. While the FCC declined to grant a statewide waiver of the 10% contamination rate, it did find good cause to justify raising the contamination level in the 310 and 909 area codes. The Commission directed carriers to comply with the new contamination rate in the 310 and 909 area codes by ruling dated August 21, 2003.

These policies have resulted in more numbers available in number pooling, to be allocated through the monthly lottery for each area code, or to be otherwise used by other companies. Indeed, since the CPUC extended the 75% use requirement in all California area codes, the demand for 10,000-number blocks in each area code's monthly lottery has declined.

C. Utilization Study and Audit of 909 Telephone Numbers

On November 28, 2000, the Commission's Telecommunications Division (TD) issued its "Report on the 909 NPA" (Report) presenting findings on how efficiently telephone numbers remaining in the 909 area code were actually being utilized by carriers. Parties were permitted to file responses to the Report.

As reported by TD, approximately 3.9 million unused numbers existed in the 909 area code as of November 28, 2000. The TD Report provided corroboration of the Commission's earlier caution in questioning whether prior carrier claims of number exhaustion were supportable. The number conservation measures that we have adopted, including requirements in D.99-11-027 for carriers to return unused codes, fill rate and sequential numbering rules in D.00-03-054, and thousand block number pooling for local number portability-capable carriers, help insure that the unused numbers in the 909 area code identified in the TD Report are allocated as efficiently as possible.

The TD Report also recognized that, even considering the large amount of unused numbers in 909, there are various constraints on the ability of carriers to make use of these unassigned numbers in meeting current customer service needs. For example, under FCC rules, a certain quantity of unused numbers must remain reserved for carriers' inventory needs. Also, in certain cases, carriers may need numbers in a particular rate center.[10] Even if there are unused numbers in other rate centers, a carrier may be unable to use those numbers to serve customers in a rate center where there is a shortage of 10,000-number blocks.[11] Of the 3.9 million unused numbers as of November 28, 2000, 486,000 were identified in the Staff Report as belonging to wireless carriers.

---

[10] A rate center is a specific geographic location within a local exchange that is used to determine the rating of calls as either local or toll, depending on the distance between the rate centers serving two calling parties. Each 10,000-number block of telephone numbers is assigned to a particular rate center.

[11] In the case of wireless carriers, however, is technically possible to use numbers from an adjacent rate center to provide customers with numbers even if there is a shortage of 10,000-number blocks in the desired rate center.

The Commission further deferred taking any action to split or overlay the 909 area code pending independent confirmation that carrier-reported utilization data underlying telephone number exhaust forecasts for the 909 area code were accurate and reliable. Considerable effort went into preparing the TD Report on number utilization in the 909 area code, but the results of the Report reflected only the representations of carriers. In order to rely on the findings underlying the TD Report, therefore, we required independent confirmation that representations made by carriers were valid and that they properly conformed with the state and federal rules adopted for reporting purposes. Thus, by ALJ Ruling dated June 14, 2001, we directed TD staff to conduct an independent audit of the number utilization data underlying the TD Report on the 909 area code. The audit report findings were released on December 21, 2001.

Based on the published audit findings, TD reached three overall conclusions. First, carriers did not deliberately misreport telephone number utilization data for the November 28, 2000 Report on the 909 area code. Second, the audit authenticates the utilization data that carriers submitted for the November 28, 2000 Report, except for certain recommended adjustments as noted in the audit report. Third, the TD staff concluded that the numbering needs of all carriers, including cellular carriers, in the 909 area code could probably be met through approximately 2003 from the 985 blocks then in the 909 number pool assuming cellular carriers were to begin number pooling in November 2002. At the time of the Audit Report, there were 13 prefixes available for the 909 lottery and 23 prefixes identified as reserved for the number pool.

Since the publishing of the Audit Report, additional codes have been assigned through the lottery. Moreover, additional codes have been opened to

provide inventory for the 909 area code number pool, and since the pool's inception carriers have donated or returned over 1,200 thousand-number blocks to the 909 area code pool. The TD audit report indicates that number pooling has been overwhelmingly successful in meeting the needs of pooling participants through better utilization of each area code's existing telephone numbers.

III. Discussion

In D.99-09-067, we stated that the public interest demanded an accounting of what numbers are actually in use before we set a date to split an area code. Now, with that accounting completed, we have undertaken a rigorous scrutiny of existing number utilization, and instituted the numerous telephone number conservation measures discussed above to ensure more efficient utilization of telephone numbers. These actions have spared customers the risk and inconvenience of being prematurely forced to undergo an area code change.

We remain cognizant of our obligation to provide for adequate telephone numbers in each area code so that the public may have a competitive choice in selecting a local carrier. At the same time, we are acutely aware of our responsibility to California consumers to efficiently manage California's telephone numbers, and to implement all possible number conservation measures before imposing the burden of an area code split or overlay on consumers. Toward that end, we believe it is important to carefully scrutinize carriers' claims of impending number exhaust, and to analyze the remaining numbers in the 909 area code in the context of the rate that carriers are withdrawing those numbers from the number pool, and our options for managing those remaining numbers.

A. Forecast versus Actual Demand for Telephone Numbers

The decision of whether or not to split or overlay an existing area code is based on analysis of whether adequate telephone numbers exist to meet the projected demand. Currently, six unassigned 10,000-number blocks remain available in the 909 area code for allotment through the semi-monthly lottery process, and two 10,000-number blocks remain available as a set-aside for replenishing the 909 area code number pool. In other words, there are eight whole prefixes, or 80 one-thousand number blocks available in 909. In addition, there are 712,000 unused one-thousand number blocks already assigned to various rate centers and currently available to be used by carriers within the 909 number pool.

Efficient management of the remaining 909 telephone numbers will be critical going forward. As the ALJ noted in a March 30, 2001 ruling regarding the 310 area code, the experience with California's number pools indicates that some of the 10,000-number blocks previously reserved for pooling are able to be reassigned to extend the monthly lottery without jeopardizing carriers' access to numbers through the pool. Reallocating the remaining unused 10,000-number blocks between the pool and the lottery gives us additional flexibility to extend the life of the 909 area code.

A group of joint commenters[12] responded to the ALJ ruling, opposing the idea of transferring 10,000-number blocks from the pool into the lottery, arguing that any reduction in the 310 number pool inventory below its

[12] The comments were jointly sponsored by the California Cable Television Association, AT&T Communications of California, ICG Telecomm Group, XO California, Inc, Time Warner Telecom of California, L.P., and WorldCom, Inc. (Joint commenters).

current level at that time would be inconsistent with FCC rules that require a six-month inventory of numbers in the pooling inventory. The joint commenters pointed to the 310 Pooling Administrator's inventory data account indicating that only approximately six months of inventory remained in the pool. The joint commenters therefore claimed that there are no excess codes in the number pool that were available to be transferred to the lottery in order to extend the life of the lottery.

We disagree with the claim that transferring 10,000-number blocks from a given area code number pool to the lottery violates FCC rules. Commenters' claim is based on the premise that the 10,000-number blocks remaining in the inventory will last no longer than six-months. Yet, comparisons of actual demand for thousand blocks versus forecasted demand since the inception of the 909 number pool indicate that carriers have consistently overestimated their actual demand for number blocks several times over. For example, for the year 2000, carriers forecasted 143 thousand-number blocks would be needed to meet demand. In reality, however, only 51 thousand-number blocks were actually used by carriers participating in the 909 area code number pool, representing less than one third of forecast demand. Likewise, in 2001, carriers forecasted that 426 thousand-number blocks would be required from the 909 area code number pool to meet demand. By contrast, only 128 blocks were actually assigned during the same period. Thus, only 30% of the forecast block demand was actually needed during 2001. For 2002, carriers forecast a need for 790 blocks, but actually took only 325 blocks. The relative increase in carrier “withdrawals” from the number pool in 2002 over 2001 was due to the effects of wireless carriers entering the number pool, and leaving the lottery system from which they had previously obtained numbers.

For the time period August 2002 through August 2003, carriers requested and were assigned 1,000-number blocks from the 909 number pool at an average rate of 55 blocks per month. This average reflects a significant jump in thousand-block codes from the number pool in November 2002 and May 2003. We believe that the increase in carrier requests for 231 thousand-blocks of telephone numbers from the 909 number pool in November 2002 correlates with the wireless carriers' entry into the 909 number pool in November 2002. Beginning in November 2002, the 909 number pool was the only way for wireless carriers to acquire new telephone numbers or to build up their respective six-month inventories in the 909 area code, and as a result, carrier draws from the pool spiked accordingly.

Further, the May 2003 spike of 231 thousand-number blocks requests correlates to the Commission's May 6, 2003 release of the draft decision to split the 310 area code. We fear that carriers were motivated by the draft decision on the 310 area code to emphasize the relative alleged scarcity of numbers in both the 310 and 909 area codes,[13] and that the May 2003 draws from the pool do not reflect the true market use. Indeed, after further investigation by Commission staff, one carrier subsequently returned 80 thousand-blocks back to the 909 number pool, and immediately after May 2003 carrier draws from the 909 number pool have returned to more average levels.

[13] Carriers collectively drew 161 thousand blocks from the 310 area code in May 2003, compared with an average of 14 thousand-blocks from the pool in each of the prior four months. In no other area code besides the 310 and 909 area code did carrier draws from the pool spike in May 2003. We note that only the 310 and 909 area codes had split and/or overlay proposals pending before the Commission at the time.

As the NANPA data indicates, these November 2002 and May 2003 spikes significantly skew the average amount of numbers taken from the pool. Without the influence of the November 2002 and May 2003 spikes, the carriers' average monthly draw from the 909 number pool was 23 thousand-number blocks.

Month	Thousand-block codes assigned from 909 number pool
August '02	7
September	13
October	6
November	231
December	22
January '03	10
February	14
March	19
April	43
May	231
June	31
July	44
August	40

We believe it is unreasonable to base our forecast of future assignments from the 909 number pool using the November 2002 and May 2003 data. For the reasons explained more fully above, those months do not reflect normal carrier draws of telephone numbers from the 909 number pool. It is more prudent to base our estimate on the average monthly draw from the pool over a year's time excluding those months, or approximately 23 thousand-blocks per month. Considering the 712 thousand-blocks currently in the pool, and the 80 additional thousand-blocks that could be added to the pool, an average draw of 23 thousand-number blocks per month leads us to conclude that adequate unassigned telephone numbers remain in the 909 area code to meet carrier and customer needs, and that splitting the 909 area code is not warranted at this time.

We direct our TD staff to monitor carefully the remaining telephone numbers in the 909 area code. We will reconsider this conclusion if the draw from the number pool increases significantly from our forecast discussed above.

In view of the consistent pattern of carriers' significant overforecasting of demand for thousand blocks, carriers' forecasts of blocks required to meet six-month inventory needs are also likely to be overstated.

We conclude that flexibility exists to reallocate unused 10,000-number blocks between the pool inventory and the lottery allotments as deemed necessary to best provide for carriers' number resource needs. We direct TD staff to continue to monitor the remaining telephone numbers in both the number pool and the lottery, and to make any necessary reallocations in order to provide carriers with necessary telephone numbers.

B. Pending FCC Actions Could Extend the Life of the 909 Area Code

We expect two other number conservation measures to help increase the effectiveness of California's area code number pools and prolong the life of the existing 909 area code. First, we believe that the wireless carriers' implementation of local number portability technology will be another important number conservation tool for the 909 area code, as well as for California's other area codes. Using LNP technology, consumers can "port," or carry with them their existing phone numbers when they switch telephone providers. As discussed above, while wireline local telephone companies have already deployed this technology, the FCC has granted wireless carriers repeated exemptions. Finally, under current FCC rules, wireless carriers must implement LNP technology by November 24, 2003.

We believe that wireless local number portability will help to decrease the demand for new telephone numbers in the 909 and other area codes,

as customers exercise the option to keep their existing telephone number(s) if they switch carriers. Currently, any wireless customer who wishes to switch to a different wireless carrier must weigh the benefits of that switch against the time, cost and inconvenience of accepting a new seven-digit telephone number from the new carrier. Once wireless LNP is implemented this fall, consumers will have the option to keep, or port, their telephone number(s) from wireless carrier to wireless carrier, or between wireless and land-line carriers. This new option will impose fewer burdens on consumers, and will help to minimize the demand by carriers to assign new telephone numbers.

Wireless LNP could also expand the industry's participation in other number conservation measures that would allow carriers to receive numbers in even smaller "blocks" from an area code number pool, such as individual telephone number pooling (ITN) and unassigned number porting (UNP). Both of these measures require use of full LNP capability, and their effectiveness is limited until the wireless industry deploys the necessary supporting technology, LNP. We intend to work with the FCC to pursue these further conservation measures after the wireless industry achieves this milestone later this year.

Second, the Commission plans to file, in October 2003, a petition for FCC authorization to implement a technology-specific overlay proposal. We believe this option should be more fully explored as a means of prolonging the life of the 909 area code before taking action to impose a split or overlay on its businesses and families.

All of these considerations and further options for additional number conservation lead us to conclude that it is premature to order implementation of the 909 split plan.

C. Continued Requirements for Effective Number Conservation

In its August 2, 2000 motion, CCAC requests that the Commission discontinue rationing of 10,000-number blocks. At the time that the CCAC motion was filed, wireless carriers were still participating in the lottery and were not subject to number pooling. Since that time, wireless carriers (except for paging companies) have begun to participate in the 909 area code number pool, and thus no longer obtain telephone numbers through the 909 lottery. Thus, the request of CCAC to discontinue lottery rationing is moot to the extent its focus is on the telephone number requirements of non-paging wireless carriers.

The 10,000-number block lottery for the 909 area code currently continues in effect only for paging companies because they are not currently subject to number pooling or porting requirements. We note, however, that since non-paging wireless carriers have become the sole participants in the 909 area code number pool, no requests for 10,000-number blocks through the 909 area code lottery have been received. During this period, paging carriers have been able to meet their demand for numbers in the 909 area code without drawing additional codes from the 909 lottery. Nonetheless, in the interests of number conservation and preserving a supply of 10,000-number blocks, if needed, for paging carriers, we decline to discontinue 10,000-number block rationing in the 909 area code.

The existing thousand-block number pool for the 909 area code shall continue in operation. Continued operation of the 909 area code number pool will help assure that the positive efficiency gains that have been achieved in the 909 area code will continue. Pursuant to the FCC's awarding the national pooling contract, NeuStar, Inc. will continue to act as Pooling Administrator for the 909 area code number pool. Now that federal number pooling has taken

effect, the state-mandated 909 pool will operate pursuant to federal program rules.

As noted above, we ordered an independent staff audit to be conducted of number reporting of carriers in the 909 area code prior to implementing a schedule for the geographic split to proceed. We ordered the independent audit because otherwise, we had no independent verification of the representations made by carriers concerning number resource utilization. We note that a similar concern exists not just with the 909 area code, but is generic to all of the California area codes for which area code split plans are under consideration. Therefore, in recognition of this generic concern, it is in consumers' best interests that an independent staff verification of carrier-reported number utilization be made prior to our considering adopting a back-up plan for an area code split or overlay.

IV. Comments on Alternate Draft Decision

The alternate draft decision of Commissioner Lynch in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules and Practice and Procedure. Comments were filed on_____, and reply comments were filed on _____.

V. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

Findings of Fact

1. The Commission has undertaken reasonable audit and conservation measures to assure that telephone numbers in the 909 area code are being utilized as efficiently as possible.

2. In D.99-09-059, the Commission previously approved an industry plan that entailed a two-phase geographic split of the 909 area code, followed by an overlay to be implemented for creating additional number in the 909 area code. That plan was deferred to allow implementation of number conservation measures throughout California's area codes.

3. The Commission has a responsibility to California consumers to efficiently manage California's telephone numbers, and to implement all possible number conservation measures before imposing the burden of an area code split or overlay on consumers.

4. In view of the consistent pattern of carriers' significant overforecasting of demand for thousand blocks, carriers' forecasts of blocks required to meet six-month inventory needs are also likely to be overstated.

5. There exist eight whole prefixes, or 80 one thousand number blocks available in the 909 area code.

6. There are 712 one-thousand number blocks already assigned to various rate centers and currently available to be used by carriers within the 909 number pool.

7. Beginning in November 2002, the 909 number pool was the only way for wireless carriers to acquire new telephone numbers or to build up their respective six-month inventories in the 909 area code.

8. Carrier draws from the 909 number pool spiked significantly in November 2002 after wireless companies joined the number pool and no longer received 10,000-number blocks of numbers through the monthly lottery, and again in May 2003 after Commission publication of a draft plan to split the 310 area code.

9. Without the influence of the November 2002 and May 2003 spike, carriers' average monthly draw from the 909 number pool was 23 thousand-number blocks.

10. There are currently adequate telephone numbers for the 909 area code to meet carrier and customer needs.

11. An increased level of allowable contamination, or usage, rates for poolable thousand-blocks (from current 10% to 25%) increases the number of thousand-blocks that are available to all carriers through each area code's number pool.

12. FCC rules require wireless carriers to implement LNP technology by November 2003.

13. Wireless local number portability will help to decrease the demand for new telephone numbers in the 909 and other area codes, as customers exercise the option to keep their existing telephone number(s) if they switch carriers.

14. Wireless LNP could expand the industry's participation in other number conservation measures that would allow carriers to receive numbers in even smaller increments from an area code number pool.

15. Implementing a Technology-Specific Overlay on the 909 and other California area codes could make more telephone numbers available in the current 909 area code.

16. It is in consumers' best interests that an independent staff verification of carrier-reported numbers be made prior to adoption of a back-up plan for that area code.

Conclusions of Law

1. The Commission's telephone number conservation policies and actions to date have spared customers the risk and inconvenience of being prematurely forced to undergo an area code change.

2. It is important to carefully scrutinize carriers' claims of impending number exhaust, and to analyze the remaining numbers in the 909 area code in the context of the rate that carriers are withdrawing those numbers from the number pool, and the Commission's options for managing those remaining numbers.

3. Flexibility exists to reallocate 10,000-number blocks between the pool inventory and the lottery allotment as deemed necessary to best provide for carriers' number resource needs.

4. The significant draw on the 909 number pool resources was precipitated by the wireless carriers' joining the pool for the first time in November 2002, and by publication of a draft proposal to split the 310 area code in May 2003.

5. It is prudent to base our future estimates of carrier draws from the 909 number pool on an average that does not include the November 2002 and May 2003 data.

6. It is premature to implement a geographic split or overlay of the 909 area code until the data indicates that demand exceeds supply of numbers, and until the effects of other number conservation measures such as the increased contamination threshold, wireless local number portability, and a technology specific overlay, have been evaluated.

7. The wireless carriers' implementation of local number portability technology will be another important number conservation tool for the 909 area code, as well as California's other area codes.

8. The existing 909 area code number pool should continue pursuant to the federal number pooling program.

9. Lottery rationing of 10,000-number blocks in the 909 area code should continue.

O R D E R

IT IS ORDERED that:

1. It is not necessary at this time to implement a back-up area code split or overlay plan for the 909 area code.

2. The Director of Telecommunications Division is hereby delegated the task of reviewing the current lottery allotment and readjusting the allotment of 10,000 number blocks for the 909 area code between the lottery and the number pool as appropriate.

This order is effective today

Dated _____, at San Francisco, California.