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Decision 96-10-075 October 25, 1996

CONFIDENTIAL

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)**

By this decision, we deny the Petition to Modify Decision (D.) 96-08-028 filed by the Cities of Burbank and Glendale (Petitioners).

Background

On August 2, 1996, the Commission adopted D.96-08-028. In the decision, the Commission set forth its policy for competitive neutrality in the implementation of area code overlays. Specifically, the Commission determined that parties shall not propose an overlay as a relief option until or unless permanent Local Number Portability (LNP) and mandatory 1+10-digit dialing are in place throughout the Numbering Plan Area (NPA) at the time the overlay is implemented. On August 16, 1996, the Cities of Burbank and Glendale, California (Burbank and Glendale) filed a Petition for Modification of D.96-08-028 (Petition) to permit an overlay to be considered for a NPA earlier than would otherwise be permitted by the terms of the decision. Burbank and Glendale propose that if the local exchange carriers (LECs) serving an NPA can assure the Commission in timely fashion that permanent LNP can be implemented earlier than the date otherwise prescribed in the decision, an overlay may be permitted to become operational at such earlier time.

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Burbank and Glendale claim this modification would permit an overlay to be considered as an alternative to a geographic split for relief of exhaustion of the 818 area code. On December 28, 1995, the California Code Administrator (Administrator) submitted a plan to the Commission proposing a geographic split to remedy exhaustion of the 818 area code. Burbank and Glendale understand that the Administrator is now forecasting that exhaustion will occur during the second quarter, 1998. The 818 NPA currently covers the San Fernando and San Gabriel Valleys on the northern side of the greater Los Angeles metropolitan area.

On March 1, 1996, Burbank and Glendale filed a complaint in Case 96-03-006 opposing the geographic split proposed by the Administrator on the grounds that it would sever the San Fernando Valley (Valley) communities of Burbank and Glendale from the rest of the Valley. As an alternative, Burbank and Glendale proposed a split that would establish a dividing line between the old and new NPAs at the San Rafael Hills.

Since filing their complaint, Burbank and Glendale claim that overlay has become a viable alternative to the proposal of the Administrator. The Petitioners believe the Commission adopted an unnecessarily rigid timing requirement for installation of permanent LNP in order for an overlay to be implemented. The Commission stated in Ordering Paragraph 3 of D.96-08-028 that no overlay shall be permitted to become operational before the full deployment of permanent LNP in an affected NPA under the deadlines adopted by the Federal Communications Commission (FCC) Order 96-286, plus an additional nine months to allow for the maximum extension of time that might be permitted by the FCC for installation of permanent LNP. Adding nine months to the FCC's deadline of December 1997 for implementing permanent LNP for the 818 NPA would mean that overlay could not be available for the 818 NPA until after the currently projected 818 exhaust date. Yet, the Petitioners believe that the LECs serving the 818 NPA, Pacific Bell (Pacific) and GTE California Incorporated (GTEC), can meet the December 1997 date, particularly if the

LECs are able to concentrate their resources on implementing permanent LNP in the 818 NPA before moving to the rest of the Los Angeles metropolitan statistical area (MSA). 1+10-digit dialing is already available on a permissive basis in California. Accordingly, Burbank and Glendale request that the Commission modify D.96-08-028 so as to permit an overlay to become operational for an affected NPA earlier than the FCC deadline plus nine months if the responsible LECs can assure the Commission in timely fashion that they can install permanent LNP by the earlier date. Burbank and Glendale believe that the LECs should be considered to have provided assurance to the Commission in timely fashion if they provide notice a reasonable time before the date that the six-month permissive dialing period would be required to begin in order to implement a geographic split. Burbank and Glendale understand that the Administrator now projects June 1997 as the time by which permissive dialing must commence in order to implement a geographic split for the 818 NPA. Thus, for the 818 NPA, assurance would need to be given a reasonable time before June 1997.

Responses to the Petition

Responses were filed by GTEC and the Office of Ratepayer Advocates (ORA). Pacific did not file a response.

Burbank and Glendale, however, circulated this petition to the attorney for Pacific and the Administrator for pre-filing review. Burbank and Glendale have been authorized to state that Pacific supports in principle the proposed modification of D.96-08-028 requested by Petitioners, while the Administrator is neutral on this issue.

On September 10, 1996, GTEC filed a response in support of the Petition. GTEC believes the proposed modifications will allow the LECs serving a particular area code to give the Commission assurance of permanent LNP availability. However, GTEC is concerned that the Petition also requests that the LECs give such assurance in regard to the 818 NPA. (Petition, ¶¶ 9, 10.) GTEC believes that this request for assurance is premature until the Commission agrees to modify D.96-08-028, if it so chooses.

Commission does modify D.96-08-028; then the Petitioners' request for assurance would more appropriately be entertained in the Petitioners' pending complaint case d AIN 818 (C.96-03-006); according to GTEC...

In September, ORA filed a response in protest to the Petition. ORA states that the proposed modification would fundamentally change the terms and conditions under which an overlay could be implemented in California. Instead of requiring full deployment of LNP, the proposed change would only require LECs to express a commitment to implement LNP before an overlay would go into effect. ORA further notes that the FCC has imposed an additional condition before an overlay can be implemented. In its Second Report and Order, the FCC states that each "provider of telephone exchange service/ exchange access, and paging service must be assigned at least one NXX" in the old NPA. (Second Report, ¶¶ 286, 289, emphasis added.) Pacific and the cities interpret this language to mean that Pacific need assign only one NXX to a particular Competitive Local Carrier (CLC). ORA believes that if a CLC which today holds one NXX in the 818 area code were to request another NXX in the 818 NPA during the 90-day period preceding implementation of an overlay, the Administrator would be required to assign another NXX if one is available. Further, service providers who have not yet requested assignment of an NXX but do request one in that 90-day period before the overlay is implemented would be entitled to assignment of at least one NXX code. Given the acute shortage of NXX codes in the 818 area code, ORA fails to see how the FCC's requirement could possibly be satisfied in the 818 NPA in time to implement an overlay in 1998. If the LECs are wrong, and they fail to meet the FCC's LNP implementation date, they will have a monumental competitive advantage in the 818 NPA, according to ORA. ORA raises doubts about Pacific's claim that it can implement LNP during the fourth quarter of 1997, given that the LNP technology is still...

is concerned that the Petition also requests that the LECs give assurance in regard to the 818 NPA. (Petition, ¶ 9, 10). GTE believes that this request for assurance is

¹ An NXX refers to a central office code. Each NXX central office code provides 10,000 telephone numbers.

being developed, must be tested and results analyzed before it can be ultimately deployed.

ORA also objects to Petitioners' claim that the LECs can implement permanent LNP in time for an overlay to be employed in the 818 NPA, particularly if the LECs are able to concentrate their resources on implementing LNP in the 818 NPA before moving to the rest of the Los Angeles MSA. (Petition, p. 3.) ORA argues that the implementation of permanent LNP in the Los Angeles MSA should be dictated not by what will be convenient for Burbank/Glendale, but by the needs of the region as a whole. Phased implementation with a less competitive NPA being converted first will frustrate that goal in the Los Angeles MSA, according to ORA.

Discussion

We find no basis to modify D.96-08-028 as requested by Petitioners. While the Petitioners claim that D.96-08-028 adopted unnecessarily rigid timing requirements for installation of permanent LNP, they provide no sound basis to support this claim. The timing requirements incorporated the FCC schedule for implementing permanent LNP in the 100 largest MSAs in the U.S. Our basis for incorporating the FCC's nine-month extension waiver into the timing requirements was to provide a conservative estimate of when LNP will take place. We explained the importance of taking such a conservative approach to establishing LNP timing requirements in our decision:

Before considering an overlay, we require reasonable assurance that permanent LNP will be fully implemented in the entire NPA before the proposed overlay becomes operational. . . . [I]f there was an unexpected delay in the implementation of permanent LNP, the overlaid NPA might become operational before LNP was in place. For this reason, it is important to be cautious in assessing how long an implementation period is necessary for permanent LNP to be put in place.

We recognize that the FCC schedule orders LNP implementation at a faster pace than Pacific and GTEC had proposed in their own schedules. The FCC order requires carriers to complete implementation in the Los Angeles MSA

earlier than the date Pacific and GTE had estimated as a start date for LNP implementation. Because of this discrepancy, we recognize that the carriers may need to request a waiver or stay from the FCC. We prefer to make a conservative estimate of when LNP will be in place." (D.96-08-028, slip op., pp. 10-11.)

Given the LECs' own estimates of when they expected to implement LNP and considering the technical and economic challenges involved, we found it prudent to incorporate the nine-month extension for which the FCC provided. Petitioners provide no new evidence supporting a change in the standard of caution which we employed for determining LNP implementation timing in D.96-08-028. Merely because Pacific believes it may be able to implement LNP in the fourth quarter of 1997 in the Los Angeles MSA, early implementation is by no means guaranteed. Pacific, itself,

characterizes the prospect of fourth quarter 1997 implementation as "a formidable challenge." (Pacific Opening Brief in 818 Complaint Case.) On this basis, we view Pacific's estimated completion date as ambitious and optimistic, and not based on the conservative and cautious standard which we adopted in D.96-08-028. Even if there is an outside chance that Pacific could succeed in accelerating implementation, we did not use the standard of an outside chance as the basis for assessing LNP implementation timing in D.96-08-028.

In further support of their claim that Pacific could achieve early implementation in the 818 NPA in part, Petitioners claim that Pacific could, if necessary, implement LNP in the 818 NPA before other parts of the Los Angeles MSA. Yet, Petitioners provide no assessment of the impacts of such a reprioritization of the LNP implementation schedule on competition within other parts of the Los Angeles MSA. We find Petitioners' proposal to reprioritize the implementation of LNP to accommodate overlay preferences to be in conflict with the goal of maximizing the competitive marketplace. Focusing more resources on LNP implementation in the 818 NPA would tend to divert resources from implementation efforts in other NPAs where competitive opportunities may be greater. The FCC required implementation of

permanent LNP in the top 100 MSAs in their entirety to facilitate the development of a competitive market. It would frustrate the development to delay LNP implementation in the most competitive markets merely to help LECs to meet the conditions for overlays. Accordingly, Pacific could not rely on reprioritizing the LNP implementation schedule as a basis to accelerate LNP deployment in the 818 NPA. Consequently, the Petitioners have failed to justify a change in the expected LNP implementation schedule as adopted in D.96-08-026.

Even if the modifications sought by Petitioners were granted, that would not necessarily lead to an approval of an overlay for the 818 NPA. Petitioners claim that D.96-08-028 found that permanent LNP and 1+10-digit dialing are "jointly sufficient conditions" for adopting an overlay. This claim is not accurate. While both of those conditions are necessary to render an overlay eligible for consideration, they were not found to be sufficient criteria, by themselves, to justify approving an overlay. We deferred to a subsequent decision for consideration of criteria under which an overlay should be adopted in preference to a geographic split. In addition, the FCC has established an additional requirement for overlay eligibility that each telecommunications provider who makes a code request in the 90-day period before an overlay is implemented must be assigned at least one NXX code in the old NPA. The Petitioners fail to address how this condition could be satisfied.

Accordingly, Petitioners have shown no good cause to modify D.96-08-028 to change the assumptions regarding LNP implementation timing. The petition to modify is denied.

Findings of Fact

1. In D.96-08-028, the Commission adopted as prerequisites for consideration of overlays as a relief option that permanent LNP and mandatory 1+10-digit dialing be in place at the time the overlay is implemented.

As a basis for determining when permanent LNP would be in place, D.96-08-028 relied on the schedule for implementation in the 100 largest MSAs as

adopted in the FCC order, including the nine-month extension which was allowed as a waiver by the FCC.

3. The incorporation of the FCC's nine-month extension waiver period in the LNP implementation dates provides a more conservative estimate of when LNP would be put in place.

4. Burbank and Glendale filed a petition to modify D.96-08-028.

5. The Petitioners proposed to modify the established standard for determining whether LNP can be implemented in time to permit an overlay to be considered as a relief option.

6. Under the modifications proposed by Petitioners to determine whether LNP could be implemented in time for an overlay, the incumbent LEC would merely need to provide timely assurance that LNP could be implemented in a particular NPA prior to a new overlay NPA becoming operational.

7. The Petitioners provided no new evidence to indicate that the conservative approach used in D.96-08-028 for estimating LNP implementation was an inappropriate policy.

8. While Pacific claims it can implement LNP in the 818 NPA by the fourth quarter of 1997, it acknowledges that doing so would be a formidable challenge.

Conclusions of Law

1. The Petitioners have demonstrated no legal error in D.96-08-028.

2. The conservative approach to establishing LNP implementation dates adopted in D.96-08-028 is appropriate given the adverse impacts on competition which would result if an overlay became operational before LNP was fully deployed in the NPA.

3. Replacing the schedule for LNP implementation adopted in D.96-08-028 with a claim by the LEC that it can implement sooner would be inconsistent with the conservative estimating approach adopted in the decision and would not be conducive to development of a competitive marketplace.

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4. The Petition filed by Burbank and Glendale should be denied.

ORDER

IT IS ORDERED that the Petition to Modify Decision 96-08-028 as filed by the Cities of Glendale and Burbank is denied.

This order is effective today.

Dated October 25, 1996, at Sacramento, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Daniel Wm. Fessler,
being necessarily absent, did not
participate.

I will file a written dissent.

/s/ HENRY M. DUQUE
Commissioner

R.95-04-043; I.95-04-044
D.96-10-075

Henry M. Duque, Commissioner, dissenting:

This decision denies the petition of the Cities of Burbank and Glendale for a modest modification to current policy that would enable their residents to benefit from an overlay technology for numbering telephones once long-term number portability was available in their area. Instead, the decision reaffirms our current policy that requires the residents to wait an additional 9 months after the deployment of long-term number portability.

Granting the modification requested by Burbank and Glendale could solve the emerging problem of telephone number shortages without requiring number changes by citizens and businesses. I support granting this modification. I conclude that requiring a wait of nine months after the implementation of long term number portability to permit the use of the overlay technology neither alters the competitive balance or serves a public purpose.

In my view, the policy that should guide the Commission's review of telephone numbering issues should consist of two simple principles:

1. ensure the availability of phone numbers.
2. respect the preferences of Californians regarding the deployment of area code splits or overlays as revealed by a systematic poll.

This decision errs by rejecting this practical policy that would enable citizens to avoid changes in their telephone numbers.

For these reasons, I must dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

October 25, 1996

San Francisco

R.95-04-043; I.95-04-044
D.96-10-075

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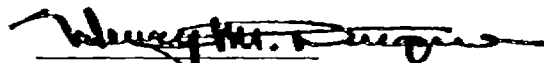
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Commissioner

October 25, 1996

San Francisco