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Decision 97-12-100 December 16, 1997

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.

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

Order Instituting Investigation on the
Commission's Own Motion into Competition
for Local Exchange Service.

L95-04-044
(Filed April 26, 1995)

ORIGINAL

**ORDER DENYING PETITION FOR
MODIFICATION OF DECISION 97-02-017**

Decision (D.) 97-02-017 ordered a geographic split of the 213 Numbering Plan Area (NPA)¹ to relieve the impending exhaustion of available telephone number in the 213 area code. The Commission's action in D.97-02-017 was predicated on D.96-12-086, in which the Commission required that geographic splits be used to relieve all exhausting NPAs through the year 2000.²

On March 12, 1997, Pacific Bell (Pacific) filed what it characterized as an "application for rehearing" of D.97-02-017 in which Pacific argued that an overlay rather than a split should be used to provide relief for the exhausting 213 NPA. Responses to Pacific's pleading were filed by GTE California Incorporated (GTEC), the Office of Ratepayer Advocates (ORA), and the California Telecommunications Coalition

¹ An NPA is the geographic area served by an area code.

² D.96-12-086 left open the possibility of implementing an overlay in the 310 NPA.

(Coalition).³ GTEC supports Pacific's application while ORA and the Coalition oppose it.

We have carefully reviewed Pacific's pleading and have found that it contains no colorable claim of legal error. What Pacific has apparently done is to use the rubric of "legal error" to cloak its disagreement with the policy established in D.96-12-086 and implemented in D.97-02-017. Since Pacific's pleading contains no arguably meritorious claim of legal error, such as would constitute a basis for rehearing, its application for rehearing must be denied. We will, nevertheless, exercise our discretion to treat its pleading as a petition for modification rather than an application for rehearing in order to efficiently resolve Pacific's policy arguments.⁴

In this decision we have carefully considered the contentions raised by Pacific in its pleading and are of the opinion that good cause for modification of D.97-02-017 has not been shown.⁵

³ The members of the Coalition joining in this response were as follows: AT&T Communications of California, Inc.; California Cable Television Association; Cox California Telecom, Inc.; MCI Telecommunications, Inc. (MCI); Sprint Communications Company L.P.; Teleport Communications Group; and TimeWarner AxS.

⁴ Pacific also filed what it characterized as an "application for rehearing" of D.96-12-086. In D.97-09-050 we denied the application since it contained no colorable claim of legal error. We did, however, treat its pleading as a petition to modify D.96-12-086, and in D.97-09-050 we denied Pacific's petition except for one proposed modification which had been granted in D.97-08-065.

⁵ Pacific's claims of legal error were reviewed and evaluated by the staff of our Legal Division. Proposed Commission decisions on applications for rehearing are prepared by our Legal Division, while proposed decisions on petitions for modification are prepared by our Administrative Law Judge (ALJ) Division. Since Pacific's pleading has been treated as a petition for modification, this decision was prepared by our ALJ Division. This procedure for treating an application for rehearing as a petition for modification, following our Legal Division's analysis of claimed legal error, is identical to the procedure we followed in dealing with a similar filing by Pacific when it challenged D.96-12-086, the decision on area-code relief policy. (See D.97-09-050.)

**Consideration of Customer Inconvenience,
Expense, and Confusion**

Pacific argues that D.97-02-017 failed to give proper weight to the inconvenience, expense, and confusion caused by a geographic split of the 213 NPA.

D.97-02-017 implemented for the 213 NPA the policy established in D.96-12-086 that geographic splits shall be used to relieve exhausting area codes through the year 2000. In D.96-12-086 the Commission gave due consideration to the advantages and disadvantages of overlays by virtue of the weight given by the decision to three consumer surveys⁴ which together provided a statistically meaningful profile of consumers' preferences for overlays versus splits.⁷ In conducting the surveys, respondents were told in extensive detail about the advantages and disadvantages of both splits and overlays. Thus, the surveys accurately gauged consumers' perceptions of the advantages as well as the disadvantages of both options. All three surveys yielded results showing a majority preference for splits, including a split of the 213 NPA, even after taking into account the advantages of an overlay.

Because the Commission considered the advantages and disadvantages of both overlays and splits for all NPAs through the weight given to the consumer surveys, the Commission properly concluded that the net advantages of a split outweighed the net advantages of an overlay as a policy option through the year 2000. Therefore, Pacific has failed to show that adoption of a geographic split for the 213 NPA constitutes error of any kind. Accordingly, we decline to modify D.97-02-017 regarding this matter.

Avoidance of Complaints

Pacific argues that D.97-02-017 erred by failing to consider the possibility that adopting a split for the 213 NPA may cause overlay proponents to file complaint cases.

⁴ Pacific, GTEC, and the Coalition each conducted its own consumer survey.

⁷ D.96-12-086, slip op. at p. 20.

Pacific's argument ignores the possibility that complaints might be filed even if we had adopted an overlay for the 213 NPA. For example, MCI filed Cases 96-03-039 and 96-03-040 against Pacific in an effort to prevent Pacific from implementing overlays for the 415 and 916 NPAs. In any event, we believe that choosing between splits and overlays based upon who can file the most complaints to be not only a poor basis for setting public policy, but also an invitation for parties to file vexatious and meritless complaints. On this point, Pacific has shown no justification for modifying D.97-02-017.

Efficiency of Splits versus Overlays

Pacific contends that an overlay should be adopted for the 213 NPA because an overlay will last longer than the half of the 213 split with the shorter life (i.e., 7.5 to 9 years for an overlay versus 5.5 to 7 years for the half of the 213 NPA split with the shorter life).¹ According to Pacific, this makes an overlay more efficient than a split in using telephone numbers.

Pacific's argument fails to consider that an overlay for the 213 NPA will not last as long as the half of the 213 split with the longer life (i.e., 7.5 to 9 years for an overlay versus 11 to 13 years for the half of the 213 split with the longer life).¹ By Pacific's own logic, this makes a split more efficient in using telephone numbers. Since an overlay cannot at once be both more and less efficient than a split in using telephone numbers, Pacific's argument is specious. Pacific has shown no grounds in this argument for modifying D.97-02-017.

Customer Preference for Splits in Small NPAs

Pacific claims that the reasons underlying customers' preference for splits are not valid for small NPAs such as the 213 NPA.

¹ Pacific's application, p. 8.

¹ Ibid.

Pacific's argument ignores the surveys described in D.96-12-086 which showed that customers in the 213 NPA favored a split.¹⁰ On this point, Pacific has shown no reason for modifying D.97-02-017.

Support for an Overlay at Public and Industry Meetings

Pacific argues that the Commission did not adequately consider the input at the public meetings where 11 speakers supported an overlay for the 213 NPA while only one speaker favored a split. Pacific also claims that the "industry" voted nine to three in favor of an overlay for the 213 NPA during a meeting held on October 9, 1996. According to Pacific, the preferences expressed at the public and industry meetings justify modifying D.97-02-017 to adopt an overlay for the 213 NPA.

As stated previously, the customer surveys described in D.96-12-086 showed a majority of customers favoring a split for 213 NPA. We find these surveys to be a better gauge of customer preferences than the statements made by 12 people at public meetings. We also find the survey results to be more persuasive than the vote at the industry meeting. Pacific here has shown no reason for modifying D.97-02-017.

An Overlay Provides for Faster Relief In a Jeopardy Situation

Pacific contends that the 213 NPA could reach a jeopardy condition (i.e., run out of telephone numbers) before the split can be completed. Pacific asserts that an overlay can be implemented faster than a split and, therefore, an overlay should be implemented to reduce the likelihood of running out of telephone numbers.

In D.96-12-086 we found that "[b]ecause an overlay has never been implemented in California, we believe there is still some uncertainty about whether unforeseen problems and learning curve constraints associated with an initial overlay might lead to delays, thereby risking premature code exhaust."¹¹ In short, there is no solid basis for

¹⁰ D.96-12-086, slip op. at, pp. 21-25, Finding of Fact 24, and Conclusion of Law 4.

¹¹ Ibid., pp. 29-30.

concluding that an overlay can be implemented faster than a split. Thus, Pacific has shown no grounds for modifying D.97-02-017.

Findings of Fact

1. Pacific filed what it characterized as an application to rehear D. 97-02-017 on March 12, 1997.
2. Responses to Pacific's application were filed by the Coalition, GTEC, and ORA.
3. Pacific has identified no factual or legal errors in D.97-02-017.
4. In D.96-12-086, the Commission required that geographic splits be used as the relief option for all exhausting NPAs (with the possible exception of the 310 NPA) through the year 2000.
5. D.97-02-017 implemented the policy established in D.96-12-086 by ordering a geographic split of the 213 NPA.
6. D.96-12-086 considered the advantages and disadvantages of an overlay via the weight given by the decision to three consumer surveys conducted by Pacific, GTEC, and the Coalition.

Conclusions of Law

1. Pacific's application to rehear D.97-02-017 identifies no legal error in the decision.
2. Pacific's application to rehear D.97-02-017 should be denied.
3. Pacific's application should be treated as a petition to modify D.97-02-017.
4. D.97-02-017, by relying on D.96-12-086, gave due consideration to the advantages and disadvantages of an overlay for the 213 NPA.
5. Pacific's petition to modify D.97-02-017 should be denied.

O R D E R

IT IS ORDERED that:

1. Pacific Bell's (Pacific) application to rehear Decision (D.) 97-02-017 is denied.
2. Pacific's application to rehear D.97-02-017 shall be treated as a petition to modify this decision.

3. Pacific's petition to modify D.97-02-017 is denied.

This order is effective today.

Dated December 16, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

I dissent.

/s/ HENRY M. DUQUE

Commissioner