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Decision 98-10-061 October 22, 1998

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking On The Commission's Own Motion Into Competition for Local Exchange Service. | R.95-04-043 |
| Order Instituting Investigation On The Commission's Own Motion Into Competition for Local Exchange Service. | I.95-04-044 |

# ORDER DENYING REHEARING OF DECISION NO. 98-06-018

## I. Summary

A joint application for rehearing of decision D.98-06-018 was filed on July 1, 1998 by the California Small Business Association, Utility Consumer Action Network and the League of California Cities, San Diego Division (hereinafter, "Applicants."). In the decision, the Commission approved a three-way geographic split of the Numbering Plan Area ("NPA") that had previously been assigned the 619 area code. Pursuant to the decision, the geographic area is to be separated into North, Central, and East regions. The North and East regions will each be designated by new area codes, while the Central region, which includes downtown San Diego, will retain the 619 area code. By this decision, the Commission rejected plans which included using a new area code as an overlay of part of the 619 NPA.

The Applicants favored a partial or complete overlay relief plan. In their request for rehearing of our decision, they claim that the Commission:

1) ignored the recommendations and preferences that had been expressed by some local government and small business representatives, and individual consumers in public meetings; 2) erred in relying on a survey conducted two years ago without proper consideration of the validity of the survey; and 3) failed to consider measures to mitigate the impact of providing numbering relief in the San Diego area.

The Commission received on July 20, 1998, a joint response of the California Cable Television Association, AT&T Communications of California, Inc., and Time Warner AXS of California, L.P. expressing opposition to the rehearing application. The Commission also received on July 20, 1998, comments of Pacific Bell in support of granting rehearing of D.98-06-018.

After reviewing the matters raised in the Application, and the filings made in support and in opposition, we conclude that Applicants have failed to demonstrate legal error, as required in seeking rehearing by Cal.Pub.Util. Code Section 1732 .[1] Instead, the rehearing request expresses opposition to the choice the Commission made after thorough consideration of several alternatives which were recommended by various parties to relieve the number exhaustion problem in connection with the 619 area code. Applicants have not shown the Commission's election to order a geographic split was not within its mandate and discretionary authority, or that the decisionmaking process failed to comply with the consumer protection objectives of Sections 7130 and 7930.

Upon review, therefore, we cannot find legal error in the process or in the decision reached. However, we will address Applicants' contentions here so that there should be no doubt our deliberations were thorough, rigorous, and fair.

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[1] Hereinafter, all statutory references shall be to the California Public Utilities Code unless otherwise indicated.

## II. Background

As described in D.98-06-018, our investigation included the development and evaluation of alternative plans by an industry team consisting of members of the staff of the California-Nevada Code Administrator (CNCA), Commission staff, and representatives of several telecommunications carriers, including local exchange, interexchange, wireless and competitive local carriers. The proceeding also provided for the filing of comments and several meetings for 619 area code customers were held, one local-jurisdictional meeting for city and county government representatives, on September 9, 1997, and four public meetings, two on November 11 and two on November 12, 1997.

From the information and opinions received, ten alternatives were formulated by the industry team, including both overlay and geographic split relief plans. After an evaluation of each plan, on December 4, 1997 the industry team voted to forward to the Commission two variations of a geographic split, Alternatives10A and 10C, which were then submitted by the CNCA on behalf of the group. During that December 4 meeting, however, a new partial overlay plan, Alternative 11, was proposed for the first time. It included the adoption of two new area codes, the first to be implemented in a geographic split, and the second as an overlay of the remaining 619 area code region.

Although the CNCA did not advance Alternative 11 as an industry sponsored alternative, the position papers in support of this alternative were provided to the Commission. Despite the lateness of its submission, the position papers were reviewed and Alternative 11 was given full consideration as a potential relief plan option. (D.98-06-018, at 9-10.) By a special ruling of the assigned Administrative Law Judge, two additional public meetings were convened, April 28 and 29, 1998, to permit the presentation and consideration of Alternative 11. Interested parties also were given the opportunity to file additional written comments on the proposal. (D.98-06-018, at 11.)

Based, then, on all the information and advice thus provided by the industry team, government officials, and consumers with regard to both overlays and geographic splits, it was the Commission's judgment that a three-way geographic split best satisfied the criteria established to address 619 NPA number exhaustion problems. (D. 98-06-018, at 6, 20.)

## III. Discussion

Applicants' first contention is that the Commission ignored the views regarding overlay relief plans which were expressed by local government and small business representatives, and by individual consumers at the public meetings. Applicants are mistaken.

In support of their argument, Applicants extensively quote from comments made at the public meetings. (Application for Rehearing, at 4-9.) They have thereby succeeded in putting the views of the proponents of overlay relief plans before us once again, but this presentation does not establish that the Commission ignored the comments of these individuals in our decisionmaking. Our decision gives ample evidence of the attention we gave to remarks made at the meetings by elected officials, community leaders, and others regarding the use of overlays. (See e.g., D.98-06-018, at 14-17, where the position of the Alternative 11 and overlay proponents is detailed, and at 17-20, where contrasting aspects of overlays and splits are weighed.)

In considering the comments made, we noted, for example, that an overlay plan would create problems regarding "...the availability and effectiveness of permanent Local Number Portability, assurance of an adequate supply of NXX codes for CLCs as required by the FCC, and nondiscriminatory access to 619 telephone numbers." (D.98-06-018, at 20.)[2] We also commented on the statements regarding customer impact explaining that if an overlay were used,

[2] As part of this decision, we will correct the inadvertent error in the structure of the sentence from which the quotation is taken.

customers who retained the 619 area code, as well as those with the new overlay code, would be required to dial a 1 plus ten digits for all calls. (D.98-06-018, at 18.) This means all telephone users within one area code would have to use a ten-digit number, even when calling a close neighbor. In response to comments from business owners who spoke of the expense of changes in stationery and advertisements if they were assigned a new area code, we noted that with an overlay plan, a single household or business with multiple lines could have different area codes depending on when the numbers were assigned and which telecommunications carrier assigned them. In comparison, as we stated in our decision, with a geographic split of area codes, approximately one-half of all the customers involved would have a new area code, but all customers would retain the ability to dial only a seven-digit number for calls within their area code. (Ibid.) Furthermore, most businesses are located in the downtown San Diego region which will retain the 619 area code.

We find, therefore, that Applicants' claim that the Commission ignored their preferences and recommendations is factually incorrect. The decision adequately demonstrated that the pros and cons of the various plans were carefully weighed. The extensive quotations in the application for rehearing only reiterate information considered by the Commission. Neither the content of the opinions expressed in those statements, nor their reiteration identifies legal error in the Commission's decision.

With respect to Applicants' second claim, that the decision improperly relies on two-year old customer surveys, we again find no legal error or other grounds to rehear the matter.

In the Commission's review of the eleven relief plan alternatives, which included consideration of the recommendations of the industry team, the CNCA, and the comments received at public meetings, we also took into account the policy and criteria set forth in D.96-12-086. (D.98-06-018, at 3-4.) In that

1996 decision, we considered the benefits and disadvantages to consumers of geographic splits and overlays, and expressed our reservations regarding the use of overlays. This determination was based in part on independently conducted, broad-based consumer surveys. In adhering to that policy in the present case, we have also extended our reliance, in part, on the information obtained from those consumer surveys.

Applicants contend that they were not given the opportunity to challenge the 1996 survey results. However, they do not cite anything in the record which shows the Commission refused to consider different or additional consumer surveys submitted by Applicants or other individuals who advanced overlay plans, or that anyone was denied filing written comments with respect to customer preferences or surveys. Applicants have not indicated, moreover, that they were unaware of the existence of the customer surveys which were involved in the conclusions reached in D.96-12-086. Quite to the contrary, Applicants rest their argument on a claim that in 1996 they did not contemplate the need for further relief in the 619 NPA, and thus did not challenge the surveys at that time. (Application for Rehearing, at 11.) Applicants also claim that they were not aware the surveys would be given any consideration by the Commission in the present matter. (Ibid.) Basically, Applicants argue that in the present case, they did not take into consideration all the information on which the general policy regarding overlays versus geographic splits was based. We find, therefore, that Applicants' inactions, or their failure to evaluate available information, does not substantiate a due process violation by the Commission.

Furthermore, apart from Applicants' admission they did not act on available information, they have not demonstrated by their argument that the 1996 consumer surveys are no longer reliable or valid as a basis for our decision in 1998. We are not aware that the essential characteristics of geographic splits and overlays were altered during the two year period, or that in the relatively short

passage of time, the fundamental impacts of geographic splits versus overlays on customer telephone use changed.

Further, the Commission has not received compelling evidence of a material shift in consumer attitudes to require a change in our policy in dealing with the 619 NPA problem. Applicants argue that there might have been a conversion of consumer preferences in favor of an overlay plan since the 1996 surveys. After the surveys were conducted, some telephone customers in the San Diego area experienced a geographic split with the assignment of the 760 area code. These customers who have already changed their area code, however, will not be affected by the currently relief plan. With respect to those who will be affected, there remains significant public support for a geographic split.

When the additional series of public and local jurisdiction meetings were conducted on April 28 and 29, 1998, specifically to have Alternative 11 presented by its proponents, 46% of the show-of-interest forms indicated a preference for one of the geographic split options. (California-Nevada Code Administrator (CNCA) Report, May 6, 1998, at 5.) While this was not a "majority vote," it was significant enough to indicate that in meetings convened primarily for those sponsoring an overlay proposal, those in attendance did not "overwhelmingly," as Applicants erroneously claim, opt for the Alternative 11 or any other overlay solution. The preference of the 46%, we also noted, was consistent with the results of the 1996 surveys which had used a statistically more significant population sampling.

In arriving at our decision, therefore, we weighed the results of the show-of-interest forms from the April, 1998 meetings and the 1996 surveys in conjunction with the analyses and recommendations of the industry team and the CNCA. All the views of the public and the parties to the proceeding became part of our consideration of a complex and multifaceted problem, the resolution of which cannot, we realize, satisfy 100% of the population involved.

Applicants' third claim for rehearing alleges the Commission failed to "mitigate the impact" of area code relief. (Application for Rehearing, at 13-14.) Actually, Applicants' contention is in regard to suggestions offered in supplemental comments filed by Utility Consumers' Action Network (UCAN) with respect to overlay plans. (Application for Rehearing, at 14.)

We acknowledge that we did not expressly acknowledge UCAN's suggestions in D.98-06-018. Given the extensive proceedings devoted to selecting a relief plan for the 619 NPA and the broad spectrum of expertise represented by the industry team, and given that the industry team and the CNCA did not present UCAN's suggestions as a comprehensive alternative relief option, the Commission did not specifically discuss them in D.98-06-018. To assure the Applicants, however, that we have considered the resolution of the number exhaustion problem from all perspectives, we will here supplement our decision with the following observations.

According to the application for rehearing, UCAN recommended in supplemental comments that the Commission: 1) consider convening a workshop to develop a competitively neutral plan for number conservation; 2) consider using an overlay exclusively for certain wireless and data transmissions; 3) consider using an incremental overlay approach, first for Pacific Bell until full number portability was achieved, and then for all other carriers; and 4) have Pacific Bell finance and conduct a public education campaign to eliminate customer disruption and confusion if Alternative 11 (preferred by Pacific Bell) were adopted.

With respect to UCAN's first recommendation that another workshop be held on number conservation issues, the Commission has already established such workshops. (D.98-08-037). However, as all parties are well aware, the schedule for the 619 NPA requires that the chosen relief plan be prepared for implementation by June,1999. It would have been impracticable to defer our decision until the conclusion of the workshops and thereby seriously risk having

no plan to implement when new telephone numbers are no longer available for the San Diego area. We could not jeopardize leaving customers without telephone service by prolonging the proceeding on the 619 NPA matter.

As for UCAN's second and third recommendations, there was no persuasive evidence before us that adopting only a partial overlay for wireless and data transmissions, or a plan with successively introduced overlays by carrier, was preferable or permissible. The FCC has stated that area code relief plans may not be based on segregated services and technologies. (Declaratory Ruling and Order Concerning Ameritech, FCC Docket 95-19, IAD File No. 94-102, January 12,1995.)

As for the fourth item in UCAN's list of ideas, while we have weighed the impact on consumers and considered the relative confusion that could result from each alternative plan, the allocation of the costs of consumer education was not dispositive in rejecting overlay alternatives. It was the Commission's judgment that in resolving the 619 NPA problem, there would be fewer negative impacts on consumers with the three-way geographic split. (D.98-06-018, at 17-18.)

Finally, the Application for Rehearing, at page 15, suggests that the Commission should make certain modifications to its proceedings on area code changes, each involving the dissemination and recording of information and views of the parties. Applicants do not substantiate, however, the implied premise that we have not provided adequate information to all parties to the proceeding or to the public, or that we have not provided sufficient opportunities for all interested persons to make their views known to the Commission. There is ample opportunity for such participation either at the public meetings we will continue to hold, or in the formal proceedings and workshops. As other regions in California face the likelihood of number exhaustion, the paramount objective of our efforts

remains adopting a solution that is the most convenient and the least costly for the consumers effected.

## IV. Conclusion

Because Applicants have not established legal error in our decision, the application for rehearing of D.98-06-018 shall be denied. We have, however, supplemented our discussion of the issues to respond to Applicants' concerns as to whether we weighed the opinions of those advocating an overlay plan. It should be clear that our deliberations were thorough and fair, and included consideration of Alternative 11 and other overlay plans. Rehearing, we conclude, is not warranted. We will make, however, one minor, non-substantive edit of a sentence in our decision, as we have indicated in footnote 2.

IT IS THEREFORE ORDERED:

1. In D. 98-06-018, the last sentence on page 19 begins with, "If relief were..." and ends on page 20 with "...619 telephone numbers." A typographical error shall be corrected so that the sentence shall read:

> "If relief were to have been provided with an overlay, there would have been additional, complicated issues to resolve, such as the availability and effectiveness of permanent Local Number Portability, assurance of an adequate supply of NXX codes for CLCs as required by the FCC, and nondiscriminatory access to 619 telephone numbers."

2. D.98-06-018 having been so modified, the Application for Rehearing is denied.

This order is effective today.

Dated October 22, 1998, at San Francisco, California

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners