

Decision 00-01-004 January 6, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Evans Telephone Company (U 1008 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Company (U 1013 C), The Siskiyou Telephone Company (U 1017 C), and The Volcano Telephone Company (U 1019 C) For a Commission Order under Section 251(f)(2) of the Telecommunications Act of 1996 Granting a Limited Suspension of IntraLATA Presubscription Requirements.

Application 99-06-004  
(Filed June 1, 1999;  
amended July 22, 1999)

Joint Application of Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), The Ponderosa Telephone Co. (U 1014 C) for Delay of IntraLATA Dialing Parity Implementation Pursuant to 47 U.S.C. § 251(f)(2).

Application 99-06-009  
(Filed June 4, 1999;  
amended July 23, 1999)

**OPINION**

**1. Summary**

Pursuant to 47 U.S.C. § 251(f)(2), this order grants a temporary suspension of the requirement that applicants, all small local exchange telephone companies, implement dialing parity for local toll calls. The date for compliance with the dialing parity requirement will be 30 days after the Commission's decision in Application (A.) 99-09-044, in which applicants seek approval of a settlement

transition agreement with Pacific Bell (Pacific) to terminate financial pooling arrangements for local toll calls.

## **2. Background**

Applicants have negotiated to terminate the revenue pools that exist between Pacific and many of the small local exchange carriers operating in California. Under the pooling process, small telephone companies and Pacific pool revenues generated from the provision of access services, local toll calling, and extended area service. The revenues are then allocated among the pooling companies pursuant to a calculation that includes actual costs incurred to provide the services. For some small telephone companies, the revenues they receive from the pools account for more than 80% of their intrastate company revenues.

The negotiations to terminate pooling began in earnest early in 1999. At the time, there was no set date by which applicants were required to implement dialing parity for local toll calls. However, on March 23, 1999, the Federal Communications Commission (FCC) released an order setting forth an implementation schedule for dialing parity.<sup>1</sup>

According to the FCC order, all local exchange carriers were required to submit a dialing parity implementation plan by April 22, 1999. Each of the companies in these two applications sought to comply with this requirement by filing advice letters with this Commission. The FCC order set a deadline of June 22, 1999, by which time the Commission was to have approved each of the smaller phone company filings.

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<sup>1</sup> Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-54 (released March 23, 1999).

In May 1999, according to the applications, the parties to the pool termination negotiations concluded that the timing of the FCC order could create customer confusion and complicate revenue flows between Pacific and the small phone companies.

After consulting with the Commission's Telecommunications Division staff, applicants in early June withdrew their pending advice letters proposing dialing parity implementation plans. At about the same time, they filed these applications seeking more time in which to implement dialing parity.

On September 2, 1999, the Commission issued an interim order granting a temporary suspension in dialing parity requirements for applicants pending final action on these applications. (See Decision (D.) 99-09-020.)

On September 21, 1999, applicants and Pacific filed for approval of a proposed settlement transition agreement and implementation of replacement funding for small local exchange carriers. This request is being considered in A.99-09-044. The application has been protested by the Office of Ratepayer Advocates (ORA), which alleges, among other things, that the settlement agreement does not comply with the Commission's orders that the local exchange carrier be the default toll provider for local toll calling. (See D.97-04-083.)

At the same time that ORA filed its protest in A.99-09-044, ORA filed a statement of position in this consolidated application recommending that the Commission grant the requested suspension but set a date no later than April 1, 2000, for implementation of local toll dialing parity for these carriers.

### **3. Discussion**

In these two applications, the local exchange carriers petition for a delay in dialing parity implementation while the Commission considers their separate

application for approval of a settlement agreement with Pacific to terminate various revenue pooling arrangements.

Section 251(f)(2) of the Telecommunications Act of 1996 (47 U.S.C. § 251(f)(2)) permits this Commission to grant an extension of time in implementing dialing parity for certain small local exchange carriers. This section provides, in part, that:

"A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

"(A) is necessary—

"(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

"(ii) to avoid imposing a requirement that is unduly economically burdensome; or

"(iii) to avoid imposing a requirement that is technically infeasible; and

"(B) is consistent with the public interest, convenience, and necessity...."

We are considering in A.99-09-040 the manner in which these carriers will receive revenue once dialing parity is in place. It is clear that requiring parity before the revenue questions are resolved would be unduly economically burdensome on the carriers and would be likely to cause confusion for

customers. We find also that a relatively brief postponement is consistent with the public interest, convenience, and necessity. Accordingly, pursuant to 47 U.S.C. § 251(f)(2), we will require applicants to implement dialing parity no later than 30 days after the Commission's final decision in A.99-09-044.

We decline at this time to adopt ORA's proposal to require dialing parity no later than April 1, 2000. The Commission intends to act promptly on A.99-09-044, and there has been no evidence that small local exchange carriers are dragging their feet in processing that application. An April 1 date would be an arbitrary one, not supported by the record, and likely would have to be changed if a final decision in A.99-09-044 were on our agenda a short time after April 1. Naturally, we reserve the right to impose a date certain if A.99-09-044 is not resolved in timely fashion.

In Resolution ALJ 176-3017, dated June 10, 1999, the Commission preliminarily categorized these proceedings as quasi-legislative, and preliminarily determined that hearings would not be necessary.

#### **4. Comments on Draft Decision**

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Applicants seek no change in the draft decision. ORA correctly notes that there has been no finding that applicants' advice letter filings in April 1999 complied with an FCC order, and we have amended that reference accordingly.

#### **Findings of Fact**

1. By FCC order, smaller independent local exchange carriers are required to implement local toll dialing parity.

2. Applicants have petitioned this Commission for a delay in dialing parity implementation pending a decision in A.99-09-044 regarding a change in revenue pooling arrangements for intrastate calls.

3. Pursuant to 47 U.S.C. § 251(f)(2), this Commission may suspend the dialing parity obligation to avoid an unduly economical burden, provided such a suspension is consistent with the public interest, convenience, and necessity.

### **Conclusion of Law**

The Commission should temporarily suspend the requirement that applicants implement dialing parity for local toll calls until on or before 30 days after a final decision in A.99-09-044 dealing with changes in revenue pooling.

## **O R D E R**

### **IT IS ORDERED that:**

1. Pursuant to 47 U.S.C. § 251(f)(2), enforcement as to applicants of the dialing parity requirements of 47 U.S.C. § 251 is suspended until 30 days after the Commission has made a final decision in Application (A.) 99-09-044.

2. A.99-06-004 and A.99-06-009 are closed.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
Commissioners

I abstain.

/s/ LORETTA M. LYNCH  
Commissioner