

Decision 00-01-023 January 6, 2000

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)

O P I N I O N

By this decision, we decline to grant a Petition for Modification of Decision (D.) 98-06-018 to consider an overlay relief plan for the 619 area code incorporating seven-digit dialing. We leave open the possibility, however, of deferring the second phase of the three-way split to study the feasibility of using number pooling or other conservation measures to extend the 619 Number Plan Area (NPA) life.

Background

On August 27, 1999, a Petition for Modification of D.98-06-018 was filed by Robert M. Kuczewski (Kuczewski or Petitioner). D.98-06-018 approved a three-way geographic split as a relief plan for the 619 area code. With the split adopted by the Commission, a portion of the city of San Diego, including the downtown area, a small portion of Lemon Grove, and National City, would retain the 619 area code. The northern and eastern areas would each receive a new area code in separate phases, with the northern area receiving its new code in Phase 1 and the eastern area receiving its new code in Phase 2. Mandatory

dialing of the new area code in the northern area is scheduled to begin December 11, 1999. Petitioner seeks a stay in the implementation of this mandatory dialing period so the Commission can consider the option of a seven-digit overlay.

Parties' Positions

Petitioner seeks to modify the decision with respect to the scheduled dates for "Start of Mandatory Dialing" and "End of Mandatory Dialing" for Phase 1, as adopted in D.98-06-018. Petitioner requests that these dates be extended six months to allow for evaluation of a seven-digit overlay option. In order to provide for a favorable outcome for 619 NPA customers, Petitioner requests extending the 619/858 permissive dialing period until the public has been educated to the benefits of an overlay, which permits seven-digit dialing. At that time, Petitioner suggests either the 858 or the 935 area codes could be overlaid on top of the entire 619 area or on a smaller subregion, as decided by popular opinion. Petitioner claims this approach extends the life of the 619 area code because it allows for complete exhaustion of the 619 numbers before any of the alternates are given out. Petitioner further claims this approach provides for the possible re-integration of the 619/858/935 NPA with the 760/442 NPA by spanning all regions with all five area codes while not disturbing any existing phone service.

Responses in opposition to the Petition were filed by Pacific Bell (Pacific) and jointly by California Cable Television, Time Warner Telecom of California, L.P., AT&T Communications, Inc., ICG Telecom Group, Inc., and NEXTLINK California, Inc. (collectively, the Joint Respondents).

While agreeing that the Commission should generally consider seven-digit overlays for most areas needing area code relief, Pacific argues that the need for new NXX codes in the 619 NPA is too urgent to delay implementing area code

relief there. Pacific points out that the 619 NPA has virtually exhausted all of its NXX code supply. As of September 1, only 58 NXX codes remained available for assignment to carriers. At the current rate the lottery distributes these codes — 11 codes per month — the 619 NPA will be exhausted in less than six months. Even now, carriers need more NXX codes to serve their customers than they can receive through the lottery.

Moreover, Pacific states, many customers have already completed, or at least begun, making changes to stationery, signage, brochures, and other materials to reflect the new area code in reliance on the split ordered by D.98-06-018. Pacific argues they should not have to spend the time and money needed to undo these changes.

Additionally, Pacific believes that Petitioner's request would delay area code relief longer than the six months he has requested. The six-month delay would simply permit time to evaluate the merits of a seven-digit overlay for the 619 NPA. If the Commission adopted an overlay, Pacific claims it could take up to a year to implement the overlay because of statutory requirements. For example, notice must be given to customers of the specific geographic area that will be included in a new area code at least 12 months prior to the date adopted by the Commission for opening the new area code.

Joint Respondents claim that Petitioner failed to meet the procedural requirements of Rule 47 of the Rules of Practice and Procedure since the Petition was filed more than one year after the effective date of the decision.

Under Rule 47(d), a petition for modification is to be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year. If the Commission determines

that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

Joint Respondents argue that Petitioner fails to point to any unverified fact in the record that supports his position now or indicates a change of facts that was not considered by the Commission in D.98-06-018 or D.98-10-061. Joint Respondents argue that an extensive review occurred in the 619 area code before the adoption of the three-way split in D.98-06-018, involving consideration and development of 10 area code relief alternatives by the industry, the North American Number Plan Administrator, and in several public meetings for 619 area code customers, and one local jurisdictional meeting for city and county government representatives.

Discussion

As an initial issue, we consider whether the Petition for Modification should be simply dismissed on the grounds that it is procedurally defective. Petitioner concedes that the Petition was filed after the one-year deadline prescribed under Rule 47(d), but he argues that extenuating circumstances justify the Commission's consideration of the Petition on its merits. Petitioner has not been a participant in Commission proceedings previously. He states that reliance on media sources for information led to his initial belief that nothing could be done to stop the pending 619 area code split. It was only after the educational efforts of the Utility Consumers' Action Network and the Commission's own San Diego Outreach Office that the Petitioner became aware of the legal process for seeking reconsideration or modification of a Commission decision.

Moreover, although he did not meet the formal filing deadline, Petitioner did informally communicate his concerns over the 619 area code split in a series

of e-mail messages sent to Commission staff members on June 6, 1999, exactly one year after the issuance date of D.98-06-018.

Although Petitioner failed to satisfy the one-year filing requirement, we are still inclined to consider the substance of the Petition for Modification on its merits. In view of Petitioner's lack of familiarity with the Commission's procedural rules and given the strong public interest in the issues raised by the Petition, extra latitude is in order. We conclude that, notwithstanding the procedural defects in the filing, substantive consideration of the issues raised in the Petition for Modification is warranted.

The Petition raises two separate questions: (1) whether it is feasible or desirable to suspend the implementation of the previously approved 619 NPA three-way geographic split for consideration of an alternative remedy, and (2) if so, whether a seven-digit overlay should be implemented as the appropriate alternative remedy. Since the adopted 619 NPA three-way geographic split called for implementation of two new area codes in different phases, we shall address the Petitioner's proposal with respect to each of the two phases of implementation.

We acknowledge the concerns raised by the Petitioner regarding the disruptions and adverse impacts of splitting the 619 NPA, as approved in D.98-06-018. We conclude, however, that a suspension of the currently adopted schedule for at least the first phase of the three-way split relief plan for the 619 NPA is not an appropriate alternative course of action.

Although the Petitioner seeks to draw analogies to our decision suspending the 310/424 NPA overlay, the circumstances that led us to suspend implementation of the 310/424 NPA overlay are different from the circumstances here. First, the 310/424 NPA suspension was undertaken prior to the date that the new 424 area code began to be assigned to customers. In this case, the new

858 NPA code has already begun to be assigned to customers, and mandatory dialing of the new area code was due to begin in early December. The suspension of the 310/424 NPA overlay did not require any action on the part of customers since no customers had yet begun to use the new area code. By contrast, the new 858 area code was opened for permissive dialing on July 12, 1999. Mandatory dialing began in early December 1999. At this late date in the implementation process, most affected customers in the 858 NPA have likely already undergone the time and expense to incorporate use of the new 858 area code.

In comments to the draft decision, Kuczewski claims this problem is easily overcome by simply allowing customers to retain *both* their 619 and 858 area codes, reinstating the permissive dialing period indefinitely. We find Kuczewski's suggested solution to be unrealistic. Aside from the additional time for switch conversions and customer confusion that would be entailed in reverting from mandatory back to permissive dialing, there are simply insufficient number resources to continue a permissive dialing period. As of September 1, 1999, only 58 NXX codes remained for assignment in the 619 NPA. At the rate of 11 codes per month being assigned through the lottery, the 619 NPA would have completely exhausted within six months absent the final implementation of the 619/858 NPA geographic split.

To provide sufficient numbers during an extended permissive dialing period, Kuczewski suggests that numbers could be assigned within the 619 NPA by drawing from several surrounding area codes (i.e., 760, 858, 442, 935), apparently as multiple simultaneous "overlays." Beyond the generic problems with instituting a single overlay, Kuczewski's proposal would compound these problems by extending the overlay to include up to five simultaneous area codes. Kuczewski's proposed solution ignores the potential for customer confusion,

chaos, and disruption from having to figure out which of five different area codes may apply within a single geographic area. Kuczewski ignores the time that would be required to provide affected customers in those affected NPAs the opportunity to provide input on his new "multiple NPA overlay" relief plan, and to notify and educate customers in the event such a plan was actually adopted. For all of these reasons, the reinstatement of permissive dialing of the 858 area code is not a realistic option at this point.

Since the three-way geographic split of the 619 NPA was to be implemented in two phases, the beginning of permissive dialing of the second new area code is not scheduled to begin until June 6, 2000. Although the consequences of a suspension in the implementation schedule for the second new area code is not as severe as those for the already existing 858 area code that took effect last summer, we still do not believe that a seven-digit overlay is the proper solution.

The Petitioner argues that his proposal for an overlay is superior because it would not require 11-digit dialing, as was the case in the 310/424 NPA overlay.

Kuczewski further claims that there is sufficient time to implement a seven-digit overlay before code exhaustion would occur. Kuczewski argues that numbers in the overlay NPA could be given out immediately without waiting for the end of mandatory dialing, and that no "permissive" or "practice" dialing period would be needed. Kuczewski claims that the seven-digit overlay could be implemented without affecting a single customer.

We disagree. Even though existing telephone numbers would retain the 619 area code, customers would still be affected by the overlay. Kuczewski fails to address the potential adverse affect on all customers as result of disrupting the long-held practice of identifying geographic regions by a single area code, even assuming away the mandatory 1+10-digit dialing requirement. Customers

would have to deal with the loss of this long-held practice, suddenly being subjected to one or more area codes within a single geographic region. A transitional dialing period accompanied by a public education plan would still be needed to prepare the public for the changes brought about by an overlay.

Even assuming the Petitioner's proposal for an overlay to preserve seven-digit dialing was legally sustainable, the remaining infirmities of an overlay would still exist. Customers would still have to deal with the confusion of potentially dialing a different area code merely to call a next-door neighbor, or being assigned different area codes within the same residence or business where multiple numbers were used.

Customers could no longer be certain as to the correct area code for a number within the overlay region simply by reference to the geographic location of the called party's number. Moreover, Kuczewski's proposal would permit seven-digit dialing only where both the calling and called party had the same area code. Yet, the likelihood that a neighboring number will share the same area code will diminish over time. Even though most holders of 619 NPA numbers may initially only need to dial seven digits for most numbers, new numbers assigned to the underpopulated 858 NPA will proliferate over time, while relatively few new numbers will be available in the 619 NPA which is already heavily populated. Thus, the likelihood will progressively increase of a 619 NPA customer having to dial the 858 area code to reach a neighboring number as time passes. If a next-door neighbor had been assigned the overlay area code, then 10-digit dialing would still be required for a 619 NPA customer to call that neighbor. Under Kuczewski's proposal, customers could be uncertain as to whether a number called within their own neighborhood requires seven or ten digits, depending on whether the area code is 619 or 858. This uncertainty would grow over time as more numbers were assigned with the new area code.

By contrast, Commission's adopted geographic split provides customers with the predictability of uniform seven-digit dialing for all calls within the prescribed geographic boundaries of the 619 NPA.

Additional time for a public education plan would still be needed to acclimate the public to the overlay dialing process whereby the area code is no longer identified with a unique geographic area. Even if the seven-digit dialing feature were to be implemented as proposed, this advantage would mean little to those customers forced to take a number in the overlay NPA. Such customers would still need to dial 11 digits for the vast majority of their calls since the 858 NPA would be underpopulated, and calls to the 619 NPA would still require dialing 11 digits. The institution of a seven-digit overlay for the 619 NPA would also isolate it from all other NPAs in the state, and force 619 NPA customers into an anomalous dialing pattern that is not used anywhere else in the state. Implementing such a new relief plan would take additional time, also delaying carriers' access to numbering resources and their ability to provide competitive telephone service within the 619 NPA. Moreover, newer competitors that could only obtain numbers in the new NPA could be placed at a competitive disadvantage by being unable to offer numbers for new lines in the more desirable 619 NPA.

In comments on the Draft Decision, Kuczewski argues that any competitive advantage that incumbent carriers may have with a seven-digit dialing overlay is only a short-term problem that will be resolved when local number portability (LNP) can be fully implemented. On this basis, Kuczewski claims that such a short-term problem should not be a constraint on approving a seven-digit overlay. LNP is already deployed in the 100 largest Metropolitan Statistical Areas (MSAs) nationally. In any event, the availability of LNP, of itself, does not fully address the problem of anticompetitive dialing disparities.

LNP only allows customers to retain their previously existing numbers when switching carriers. The ability to port existing numbers, however, does not address the needs of new customers to the 619 NPA or existing customers seeking additional lines with a 619 area code. Such customers would likely have to take new numbers from the new area code. Thus, the availability of LNP will not solve the anticompetitive dialing disparity problem in the case of customers seeking new numbers in the 619 NPA. In recognition of this concern, the Federal Communications Commission (FCC) has recently determined that the availability of LNP does not ameliorate the anticompetitive dialing disparity between the old and new area code sufficiently to justify the elimination of mandatory 1+10-digit dialing as explained below.

Assuming all of the problems with the proposed seven-digit overlay plan could somehow be addressed, the fact remains that Commission policies as well as federal rules prohibit the implementation of an overlay without mandatory 1+10-digit dialing. It would be necessary for this Commission to amend its own prior decisions and then to seek a waiver from the FCC of this requirement. The FCC would then have to grant the waiver before such a proposal could be implemented. It is certain when or if such a waiver by the FCC might be granted.

In comments to the Draft Decision, Kuczewski argues that until we formally request a waiver of the mandatory 1+10-digit dialing requirement from the FCC and receive a denial, it is premature for the Commission to eliminate the seven-digit overlay proposal as a potential solution. Yet, the FCC has already issued an order (FCC 99-243) dated October 21, 1999, in which this identical issue was raised by several parties' petitions representing various telecommunications carriers and the Pennsylvania Commission. The Pennsylvania Commission explicitly requested that the FCC "make an exception to the mandatory 10-digit

dialing requirement when long term number portability becomes available."¹ Yet, the petitions were ultimately denied by the FCC. The FCC concluded that the anticompetitive problems with a seven-digit overlay were unacceptable, and reaffirmed that overlay plans must include 10-digit dialing for all local calls between and within the area codes in the area served by an overlay. The FCC order contained an exhaustive discussion of the various arguments presented in favor of this proposal, yet rejected them. In view of the recent FCC order, we find no basis to conclude that the FCC would reach a different conclusion in response to the same arguments if petitioned by this Commission. Thus, it would be unreasonable to institute an overlay based on the speculation that FCC rules requiring mandatory 1+10-digit dialing for overlays might be reversed anytime soon, thus permitting a "seven-digit" overlay to be implemented.

For these reasons, we conclude that a seven-digit overlay plan as an alternative to either of the two splits planned for the 619 NPA is not practical or appropriate in this instance.

Our denial of the Petition is in no way inconsistent with our suspension of the 310/424 NPA overlay. In the case of the 310/424 NPA relief plan suspension, we were relieving customers of the disruptions and confusion which an overlay was expected to cause. In this case, we are being asked to impose an overlay on customers where one was not previously contemplated. We decline to impose such a burden on 619 NPA customers.

We do believe, however, that the prospect of more efficient number utilization methods, potentially including the process of number pooling for

¹ Pennsylvania Commission Petition at 5.

deferring the need for the second new area code scheduled in the 619 NPA, is an idea that at least warrants further consideration. Whatever resources would be required to attempt to implement a seven-digit overlay in the 619 NPA could be put to more productive use through the further study of the prospects for more efficient utilization of existing numbering resources in the 619 NPA. We have previously discussed the benefits of number pooling in D.99-09-067 and D.99-10-022. We incorporate that discussion here by reference. It may be possible to realize similar efficiencies in the use of numbering resources in the case of the 619 NPA. We shall therefore direct that steps be undertaken to study the feasibility of potentially avoiding or deferring the implementation of the second new area code for the 619 NPA. We shall address the details for adopting such a plan in a subsequent order. We direct the assigned Administrative Law Judge (ALJ) to promptly issue a ruling taking comments on this issue.

Comments on Draft Decision

The draft decision of ALJ Thomas R. Pulsifer 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. Comments were filed on December 24, 1999 by Kuczewski and on December 27, 1999 by GTE Wireless Incorporated. Reply comments were filed by Kuczewski on December 30, 1999 and by other parties on January 3, 2000. We have carefully considered parties' comments in finalizing today's order.

Findings of Fact

1. D.98-06-018 approved a three-way geographic split for the 619 NPA to relieve impending NXX code exhaustion, resulting in the creation of two new area codes.

2. Permissive dialing of the first of two new area codes (858) began in June 1999, and mandatory dialing is scheduled to take effect in early December 1999.

3. Permissive dialing of the second of the new area codes (935) is scheduled to begin in June 2000, and mandatory dialing is scheduled to begin in December 2000.

4. At this late date in the implementation process, most affected customers in the 858 NPA have likely already undergone the time and expense to incorporate use of the new area code.

5. In the case of the second new area code split, however, the prospects of using number pooling for deferring the need for the opening of the new area code in the 619 NPA warrants further consideration.

6. Although the Petitioner's proposal for an overlay would preserve seven-digit dialing, the remaining infirmities of an overlay in terms of customer confusion and anticompetitive dialing disparities would still have to be addressed.

7. Present Commission policy and FCC rules both prohibit implementation of an overlay without a requirement for mandatory 1+10-digit dialing.

Conclusions of Law

1. The Petition to Modify D.98-06-018 to consider the option of a seven-digit overlay should be denied.

2. It is too late in the relief planning process to suspend implementation of the first of the two new area codes (858) scheduled for the 619 NPA.

3. The Commission should give further consideration, however, to the possibility of deferring the implementation schedule for the second of the two new area codes (935) and using number pooling as a means of extending the life of existing numbering resources in the 619 NPA.

4. The Commission has previously determined in D.99-09-067 that number pooling offers a means of significantly extending the life of an area code by making more efficient utilization of existing numbering resources.

5. A subsequent decision may be issued to address the prospects for potentially deferring the schedule for permissive and mandatory dialing for the second of the two new area codes in the 619 NPA, as outlined in Conclusion of Law 3 above.

O R D E R

IT IS ORDERED that:

1. The Petition of Robert M. Kuczewski to Modify Decision 98-06-018 to consider the option of a seven-digit overlay for the 619 Number Plan Area (NPA) is denied.

2. The currently adopted schedule for implementation of the 858 NPA shall remain in effect.

3. The Administrative Law Judge shall promptly issue a ruling calling for comments on the potential to defer the schedule for implementing the second new area code (935) for the 619 NPA three-way split through the use of number pooling or other conservation measures.

4. Following receipt of comments as referenced in Ordering Paragraph 3 above, the Commission may further consider the feasibility of extending the

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remaining life of 619 NPA and deferring the opening of the second new area code.

This order is effective today.

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

RICHARD A. BILAS
President
CARL W. WOOD
LORETTA M. LYNCH
Commissioners

We will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

/s/ JOSIAH L. NEPPER
Commissioner

Commissioners Josiah L. Neeper and Henry M. Duque, Dissenting:

Today's opinion of the majority rejects Mr. Kuczewski's petition to modify Decision 98-06-018 to permit the use of an overlay area code in San Diego that would use a 7-digit dialing pattern. This 7-digit dialing pattern would differ from the 11-digit dialing commonly ordered in conjunction with overlays, as required by the Federal Communications Commission (FCC) and by this Commission. Although we see no legal error in today's opinion of the majority, we dissent from the majority on matters of policy:

1. We believe that this Commission should examine whether its policy of requiring 11-digit dialing as part of an overlay continues to serve the interest of Californians.
2. We believe that this Commission should explore more closely the merits of whether to order an overlay with 7-digit permissive dialing.
3. We believe that this Commission should seek from the FCC the authority to permit the implementation of a trial overlay with 7-digit should we determine this best serves Californians.

Today's decision reasserting current policy precludes the Commission from taking any of these steps at this time.

Recently, it came to our attention that throughout all New York City there are overlays and seven-digit dialing. Manhattan now has three area codes – 212, 917 and 646. The outer boroughs of the Bronx, Brooklyn, Queens and Staten Island have two codes: 718 and 347. If you dial a number that has the same area code prefix as yours, you need only dial 7 digits. If you are calling a neighbor that has a different area code, you dial 10 digits but pay a local rate. It has been this way in New York City since July of 1999. Moreover, the New York Public Service Commission is squarely on the

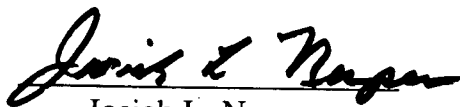
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record, both before federal courts and before the FCC, seeking the authority to continue this dialing mode and to apply it outside New York City.

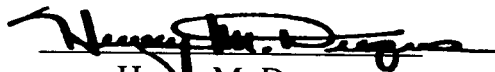
Californians' recent experience with 11-digit dialing, implemented in the first phase of an overlay, demonstrated that Californians find this unnecessary dialing pattern more onerous than previously assessed by this Commission. These developments should lead us to re-examine whether the Commission should continue our current policy of requiring 11-digit dialing when implementing an overlay and our support for the FCC's identical requirement.

Moreover, California's continuing area code crisis demonstrates the inherent local nature of numbering issues. Thus, we can see no justification for failing to take steps to seek further authority to deal with this problem. Most immediately, we believe that California should join New York in its efforts before the 2nd Circuit of the Federal Court of Appeals to obtain the authority for states to maintain 7-digit dialing even when implementing overlays.

For these reasons, we respectfully dissent.



Josiah L. Neper
Commissioner



Henry M. Duque
Commissioner

San Francisco, California
January 6, 2000