

Decision 00-05-026 May 4, 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 the Petition for Modification of Decision (D.) 98-06-018 filed by Robert M. Kuczewski (Petitioner) to consider an overlay relief plan for the 619 area code incorporating seven-digit dialing.

Background

D.98-06-018 approved a three-way geographic split for the 619 area code to relieve code exhaustion. Under the plan adopted by the Commission, a portion of the City of San Diego would retain the 619 area code while the northern and eastern areas would each receive a new area code in two separate phases. Mandatory dialing of the new 858 area code for Phase 1 in the northern area began December 11, 1999. On August 27, 1999, Petitioner filed a Petition for Modification of D.98-06-018, seeking to rescind the three-way split and to replace it with a "seven-digit overlay." The Petition was denied on January 6, 2000, by D.00-01-023. Petitioner subsequently filed a new Petition for Modification of D.98-06-018 on January 13, 2000, renewing his request for consideration of the seven-digit overlay.

Petitioner asks that the dates for the beginning and end of mandatory dialing for all phases of the area code split as described in D.98-06-018 be extended indefinitely so that the Commission can consider the option of a seven-digit overlay similar to one in effect for New York City.

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 all phases of the split, as adopted in D.98-06-018. Petitioner's petition was filed on the heels of the previous denial of his prior petition filed on August 27, 1999. In the prior petition, Petitioner requested that these dates for the first phase of the three-way split for the 619 Numbered Plan Area (NPA) be extended six months to allow for evaluation of a seven-digit overlay option. The previous petition was denied by D.00-01-023.

Petitioner seeks to justify the filing of a second petition seeking essentially the same modification previously denied based on the claim that there was a "recent discovery" of "new facts" relating to a "seven-digit overlays" in effect in New York City. Petitioner claims that at the January 6, 2000, Commission meeting where his first petition was denied, some of the Commissioners expressed that they were unaware of the "New York seven-digit overlays" and investigation of these facts might have materially affected their votes. Petitioner argues that the existence of the New York seven-digit overlays justifies reconsideration by the Commission of the seven-digit overlay option for the 619 NPA.

One response in opposition to the Petition was filed by jointly by NEXTLINK California, Inc., Pac-West Telecomm, Inc., and the California Cable Television (collectively, the Joint Parties).

Joint Parties claim that Petition should be rejected because it fails to raise any new facts of which the Commission was not aware, nor failed to consider in issuing D.00-01-023. The Joint Parties argue that in the filed dissent of two Commissioners to D.00-01-023, there is a specific discussion of the New York overlay. Moreover, the Joint Parties argue that the circumstances permitting the New York overlay to exist do not apply to the situation in California, and do not negate the fact that both federal and California rules prohibit seven-digit overlays. Finally, the Joint Parties reiterate their prior arguments as to why they believe a seven-digit overlay is not in the best interests of consumers nor competition.

Discussion

Both the current and prior Petitions raise two separate questions, namely: (1) whether it is feasible or desirable to suspend the previously approved 619 NPA three-way geographic split to consider an alternative remedy, and (2) if so, whether a seven-digit overlay is an appropriate alternative remedy.

As previously stated in D.00-01-023, 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. In D.00-01-023, however, we concluded, that a suspension of at least the first phase of the three-way split relief plan for the 619 NPA is not feasible at this late date. The new 858 NPA code has already been assigned to customers, and mandatory dialing of the new area code began in early December. Affected customers have already begun to use the new 858 area code. Previously assigned prefixes in the 619 NPA are scheduled to become available for assignment in the 858 NPA beginning in March 2000. There is no discussion or analysis presented in Petitioner's latest Petition to provide a basis to change our conclusions in D.00-01-023 as to the practical constraints on

reversing the already accomplished Phase 1 area code conversion of the 619 NPA.

Since the three-way geographic split of the 619 NPA was to be implemented in two phases, however, permissive dialing of the second new area code is not scheduled to begin until June 6, 2000. Although we rejected the seven-digit overlay as a solution for the second phase of relief in the 619 NPA, we did direct in D.00-01-023 that further consideration be given to other means of deferring opening the second new area code through number pooling and other conservation measures.

We have already addressed in detail in D.00-01-023 the substantive reasons why the proposed modification of D.98-06-018 to pursue a "seven-digit overlay" is not an appropriate solution. The only additional reason offered in Petitioner's second Petition is the claim that there are "new facts" relating to a seven-digit overlay in operation in New York City. Petitioner argues that the existence of a seven-digit overlay in New York City calls into question the Commission premise that the Federal Communications Commission (FCC) would not allow a seven-digit overlay.

While we recognize that a seven-digit overlay is presently in effect within New York City, that fact does not change our previous conclusion in D.00-01-023 concerning the FCC prohibition against overlays absent mandatory 1+10-digit dialing for all calls. The existence of the seven-digit overlay in New York City does not indicate that the FCC has reversed its policy prohibiting seven-digit overlays. The New York overlay continues due to a stay that is effective in the State of New York, not the State of California. The circumstances under which the stay was imposed evolved under conditions that are different from conditions in California. Specifically, the New York order implementing the overlay was issued prior to the passage of the Telecommunications Act of 1996

(Act) and the issuance of the FCC's rules implementing the Act. The passage of the Act gave the FCC plenary authority over numbering issues, including policies concerning the creation of new area codes. The New York overlay is currently the subject of an appeal before the US Court of Appeals for the Second Circuit (Court). The New York overlay has been allowed to continue only because the court issued a stay of the FCC rules, effectively maintaining the status quo in New York while the Court considers the underlying merits of the request to waive the FCC's mandatory 10-digit dialing requirement.

Thus, the unique circumstances permitting the New York overlay to continue do not indicate that the FCC has changed its policy prohibition against seven-digit overlays. Likewise, since California did not have an overlay in effect prior to the passage of the Act, the circumstances that led to the stay of the FCC rules in the State of New York do not apply to California. In any event, nothing concerning the circumstances surrounding the seven-digit overlay in New York leads us to reach any different conclusion that we reached in D.00-01-023 concerning the FCC's mandatory 1+10-digit dialing requirement for overlays and its applicability to California.

Moreover, we disagree with the premise underlying the Petition that our disposition of Petitioner's previous request to modify D.98-06-018 would have been different had we believed that the FCC prohibition on seven-digit overlays could be overcome. Even if the Petitioner were correct that the New York City overlay indicated that the FCC prohibition was not a barrier to implementation of a seven-digit overlay in the 619 NPA, we would still have declined to pursue implementation of a seven-digit overlay. Independently of the FCC prohibition, we set forth several substantive reasons in D.00-01-023 why a seven-digit overlay would not be a desirable remedy to address number exhaustion in the 619 NPA.

In his latest Petition, Petitioner presents no arguments to refute any of the substantive problems with the seven-digit overlay.

For example, as we explained in D.00-01-023, 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. A plan would still be needed to educate the public to the new overlay dialing process whereby the area code is no longer identified with a unique geographic area.

The perceived benefits of a seven-digit overlay, such as they may be, also ignore the adverse impacts on customers seeking new lines. Even if the seven-digit dialing feature were to be implemented as proposed, the perceived 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 initially underpopulated, and calls to the 619 NPA would still require dialing 11 digits. Over time, as the number of customers assigned the 858 NPA grew, the perceived advantages of seven-digit dialing for customers assigned the 619 NPA would progressively diminish. An increasing percentage of calls within the same geographic region would require that customers assigned the 619 NPA would still have to dial 11 digits as numbers assigned the 858 NPA increased. Customers would lose the ability to know whether 7 or 11 digits must be dialed merely based on geography.

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. This perceived anomaly could have adverse economic impacts on the 619 NPA region, discouraging the entry or growth of new businesses that may otherwise

seek to do business in that region. Implementing such a new relief plan would also take additional time, also delaying carriers' access to numbering resources and their ability to provide competitive telephone service within the 619 NPA. Moreover, newer telecommunication service providers that could only obtain numbers in the new NPA could be competitively disadvantaged by being unable to offer their customers numbers for new lines in the more desirable 619 NPA.

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 uncertain when or if such a waiver by the FCC might be granted. For all of these reasons, we reaffirm our previous conclusion 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. The existence of the New York overlay provides no basis to reach a different conclusion.

While we find no basis to further consider the seven-digit overlay for the 619 NPA, we do acknowledge the concerns the Petitioner has previously raised concerning the hardships on customers resulting from having to change their area code. In order to address this broader concern, the assigned Administrative Law Judge (ALJ) has recently issued a ruling calling for comments on the prospects for deferring the implementation of the second phase of the three-way split of the 619 area code through the use of number pooling and other conservation measures. Since mandatory dialing has already taken effect for the 858 area code effective beginning in December 1999, it is too late at this point to return those customers to the 619 area code whose NPA has already been

changed in Phase 1 of the three-way split. Nonetheless, on a prospective basis, we intend to continue promoting expanded use of all feasible number conservation measures throughout California with the goal of stemming the proliferation of area codes.

As we previously stated in D.00-01-023, we do believe that the prospect of more efficient number utilization methods, potentially including the process of number pooling for deferring the need for the second new area code scheduled in the 619 NPA, is an idea that 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. In D.00-01-023, we therefore directed 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 after review and receipt of the comments solicited by the ALJ.

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 April 19, 2000. We have reviewed the comments, and conclude no changes to the draft decision are necessary.

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 took effect in 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. A previous petition to modify the adopted 619 NPA relief plan to consider a seven-digit overlay was denied by D.00-01-023.

5. The only additional reason offered in Petitioner's subsequent Petition for further consideration of the seven-digit overlay is the claim that there are "new facts" relating to a seven-digit overlay in operation in New York City.

6. The New York overlay permitting seven-digit dialing continues in effect only due to a court-ordered stay that is effective in the State of New York, not the State of California.

7. Independently of the FCC prohibition, D.00-01-023 set forth several substantive reasons why a seven-digit overlay would not be a desirable remedy to address number exhaustion in the 619 NPA.

8. Although an overlay would preserve seven-digit dialing for calls within the same NPA, the remaining infirmities of an overlay in terms of the loss of geographic identification with a single NPA and anticompetitive dialing disparities would still remain.

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

10. Affected customers in the 858 NPA have already undergone the time and expense to incorporate use of the new area code, and prefixes assigned to the 619 NPA will become available for assignment in the 858 NPA beginning in March 2000. Accordingly, it is not feasible or practical to return those customers to the 619 NPA at this late date.

11. 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.

12. The Commission 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.

13. An ALJ ruling has been 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.

Conclusions of Law

1. The Petition filed January 14, 2000, to Modify D.98-06-018 to consider a seven-digit overlay should be denied.

2. The only additional issue raised as a basis to support the Petition is the claim that a seven-digit overlay in New York warrants a reversal of the Commission's D.00-01-023.

3. The unique circumstances permitting the New York overlay to continue in effect do not indicate that the FCC has changed its policy prohibition against seven-digit overlays.

4. The Petition fails to refute any of the substantive reasons why the proposal to adopt a seven-digit overlay for the 619 NPA was denied in D.00-01-023.

5. The Petition fails to address the timing constraints entailed with the implementation of a seven-digit overlay, and the resulting effects on code exhaustion and the availability of number resources in the 619 NPA.

6. The existence of the New York seven-digit overlay provides no valid rationale to reverse the findings of D.00-01-023, or to warrant further consideration of a seven-digit overlay as a remedy for relief in the 619 NPA.

O R D E R

IT IS ORDERED the Petition of Robert M. Kuczewski, filed January 14, 2000, to Modify Decision 98-06-018 to consider the option of a seven-digit overlay for the 619 Number Plan Area is denied.

This order is effective today.

Dated May 4, 2000, at San Francisco, California.

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

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

Commissioner Henry M. Duque, dissenting:

Today's decision of the majority rejects a petition by Mr. Kuczewski. His petition requests, among other things, that the Commission consider an overlay for the 619 area code incorporating 7-digit dialing. This decision of the majority, in my view, ignores an opportunity to explore an promising alternative to our current policy of rationing numbers.

Mr. Kuczewski is a single citizen attempting to take on big government. He is asking us to entertain a new idea – something that bureaucracies find very difficult. Mr. Kuczewski supports a 7-digit overlay, sometimes called the New York plan. Under it, New York City has managed to maintain 7-digit dialing, despite 3 area codes overlaid on Manhattan, and 2 codes overlaid on the outer boroughs. The New York Public Service Commission has fought to maintain its exemption. So far, California, however, has declined to support New York's efforts. Moreover, with today's decision of the majority, this Commission declines to explore whether this constructive approach might work in California.

Parts of the factual basis of this decision no longer holds. New York is no longer alone in its use of 7-digit dialing with an overlay. Illinois, which is implementing several overlays in the Chicago area, has obtained authority to delay the 10-digit dialing requirement until an entire group of area codes is exhausted. Only then will Illinois proceed to a regional implementation of 10-digit dialing. For the time being, it is proceeding with its version of the New York plan.

In summary, the FCC has shown flexibility in both New York and Illinois because of specific local circumstances. This Commission should support Mr. Kuczewski and should explore the potential of his idea for ameliorating the numbering crisis that California faces. Such a policy is clearly superior to the policy of the majority, which relies exclusively on number rationing.

For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

May 4, 2000

San Francisco