

Decision 00-06-043

June 8, 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)

ORDER DENYING THE REHEARING OF DECISION (D.) 00-03-054**I. SUMMARY**

In this decision, we deny the joint rehearing application of D.00-03-054, which initially establishes fill rates and sequential numbering requirements that carriers must meet in order to obtain additional blocks of numbers in the 310 Numbering Plan Area (NPA). We find that D.00-03-054 does not contravene the FCC's *Numbering Resource Optimization Order*, as the FCC gives state commissions additional time to conform pooling trials already underway to the newly-promulgated fill rate and sequential numbering assignment requirements. Nor does D.00-03-054 violate the FCC's *Order Delegating Additional Authority* because it was not the Commission's intent to set forth a relief back-up plan for the 310 NPA in this Decision.

II. BACKGROUND

On March 16, 2000, pursuant to FCC-delegated authority, the Commission issued D.00-03-054, as part of its overall plan to extend the life of the 310 NPA.¹ D.00-03-054 (hereinafter, the Decision) adopts rules relating to the use of sequential number assignment and minimum usage or "fill" rates that carriers must meet in order to obtain additional blocks of numbers in the 310 NPA.

Prior to the issuance of the Decision, comments concerning an 80 percent fill rate, as proposed by Commission staff in comments before the Federal Communications Commission (FCC), were solicited by means of an Administrative Law Judge (ALJ) ruling of November 15, 1999. In addition, the ALJ ruling requested comments regarding what restrictions and conditions may be warranted concerning prescribed fill rates and rules for sequential number assignments for the 310 NPA. Comments were filed on November 30, 1999; reply comments were submitted on December 7, 1999.

The Decision adopted a 75 percent fill rate and was mailed on March 17, 2000, the same day that the FCC adopted its *Numbering Resource Optimization Order*.² However, the FCC Order was not released until March 31, 2000. The FCC Order includes, among other provisions, mandatory utilization data reporting requirement, a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently, a single system for allocating numbers in blocks of 1,000 (thousand block number pooling), numbering resource reclamation requirements, and also mandates that carriers fill their need for numbers out of "open" thousand blocks before beginning to use numbers from new blocks to facilitate reclamation. The Order also provides that

¹ *California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures, Order*, 14 FCC Rcd 17485 (1999)(Order Delegating Additional Authority).

² *In the Matter of Numbering Resource Optimization* (FCC 00-104; CC Docket No. 99-200)(rel. March 31, 2000).

currently it will not require minimum fill rates to be imposed on the assignment of thousand-number blocks for LNP-capable carriers who participate in pooling.

On April 17, 2000, a joint application for the rehearing of D.00-03-054 was filed by the California Cable Television Association, AT&T Communications of California, Inc., MCI WorldCom Network Services, Inc., Pac-West Telecomm, Inc. and Nextlink California, Inc. (hereinafter, "Joint Applicants"). The Joint Applicants challenge the Decision on the ground that Ordering Paragraph (OP) 1 requires minimum fill rates, in violation of the *Numbering Resource Optimization Order* which does not permit minimum fill rates for the assignment of thousand-number blocks for LNP-capable carriers who participate in pooling. They further object to OP 9, which permits a pooling carrier the discretion to assign numbers in whatever sequence it deems warranted, so long as the overall fill rate of 75 percent is observed. This, they allege, runs afoul of the FCC Order in that it may be too inflexible to meet customers' needs. The Joint Applicants also allege that the Commission fails to have an area code relief back-up plan for the 310 NPA, in contravention of the FCC's limited grant of authority to the Commission in the *Order Delegating Additional Authority*.

III. DISCUSSION

A. **D.00-03-054's Minimum Fill Rate for the Assignment of Thousand-Number Blocks for Pooling LNP-Capable Carriers Is Permissible Until September 1, 2000 .**

OP 1 imposes a minimum fill rate of 75 percent as a prerequisite for the assignment of NXX codes for non-LNP-capable carriers, and thousand-number blocks for LNP-capable carriers. OP 1 is challenged by the Joint Applicants on the ground that it is superseded by the new FCC Order. (Joint Rhg. App. at 3.) The Joint Applicants assert, without qualification, that the FCC has affirmed that no minimum fill rate is to be imposed on the assignment of thousand-number

blocks for LNP-capable carriers who participate in pooling.³ They concede that the FCC gives state commissions until September 1, 2000 to conform pooling trials already underway to the new standards, but they see no practical value in waiting until then to revise OP 1.

The Joint Applicants do not tell the whole story with respect to the FCC's Order. They neglect to state that the prohibition against minimum fill rates for LNP-capable carriers participating in pooling may be subject to change. The FCC Order states that "at the current time, we will not require carriers participating in thousands-block number pooling to meet a utilization threshold to receive growth codes."⁴ The FCC Order reinforces the temporary nature of this provision, as follows:

"Carriers that participate in pooling will not be required to meet utilization thresholds to obtain growth codes *initially*. We may, however, *revisit the question of whether all carriers* should be subject to meeting a utilization threshold to obtain growth codes *if we find that such thresholds significantly increase numbering use efficiency.*"⁵

Like the FCC, this Commission is concerned with increasing numbering use efficiency. For that reason, the Commission concluded that "*at least initially, a 75% fill rate strikes a reasonable balance...thereby promoting efficient number utilization....*" (Decision, *mimeo* at p. 6; emphasis added.)

However, now that the FCC has spoken in the *Numbering Resource Optimization Order*, we will endeavor to conform our pooling trials to this FCC

³ Joint Rehearing App. at 3.

⁴ *Numbering Resource Optimization Order, supra* at ¶142.

⁵ *Id.* at ¶156 (emphasis added).

Order with all deliberate speed. The FCC Order gives state commissions until September 1, 2000 to conform pooling trials already underway to the new Order.

B. The Commission Is Not Required to Conform D.00-03-054's Sequential Number Assignment Requirements to the FCC's *Numbering Resource Optimization Order* Until January 1, 2001.

The Joint Applicants object to OP 9 because it allows a pooling carrier the discretion to assign numbers in whatever sequence the carrier deems warranted, so long as the overall 75 percent fill rate is observed. They opine that this requirement may be too inflexible to meet specific customer requests. (Joint Rhg. App., p. 6) The Joint Applicants acknowledge that the FCC gives state commissions until January 1, 2001 to conform their existing sequential number assignment rules to the requirements of the *Numbering Resource Optimization Order*, but they urge the Commission not to wait until then to implement the FCC's mandatory sequential numbering requirement.

The Joint Applicants are correct in asserting that the FCC Order adopts a requirement which mandates that carriers first assign *all* available telephone numbers within an opened thousand-block before opening another thousand-block, unless the available numbers in the opened thousand-block are not sufficient to meet a customer request.⁶ This is a fairly stringent requirement, as the Joint Applicants acknowledge on page 7 of their rehearing application. On the other hand, OP 9 provides as follows:

"9. Carriers shall assign numbers in the 310 NPA in 1,000-number block sequence, moving to the next block only once a 75% fill rate has been attained in the prior block. Within a given 1,000-number block, however, carriers shall have discretion in assign [sic] numbers in whatever sequence they deem warranted as long as the overall 75% fill rate criterion is observed."⁷

⁶ Joint Rhg. App., p. 5-6, referring to *Numbering Resource Optimization Order*, ¶244.

⁷ We make a clerical correction in the last sentence here, so that "assign" now reads "assigning."

In the opinion of the Joint Applicants, OP 9 may be too inflexible to meet specific customer requests. We disagree. The Commission is sensitive to the need to provide flexibility in order to meet customer demands. Out of concern for customer demand, we rejected the 80 percent fill rate initially proposed in the ALJ ruling as possibly being too inflexible.⁸ However, the issue is academic now that the FCC has issued its *Numbering Resource Optimization Order* mandating the assignment of all available telephone numbers within an opened thousand-block before opening another, unless the available numbers in the opened thousand-block are insufficient to meet customer requests.

In sum, the Joint Applicants neither allege nor prove legal error. To the extent that legal error is not specifically alleged, the Joint Applicants fall short of PU Code §1732.⁹ They state their preference that the Commission comply with the FCC's *Numbering Resource Optimization Order* now, rather than take the time allowed by the FCC Order. These do not constitute sufficient grounds for a rehearing. Moreover, the Joint Applicants' request is premature and forecloses the Commission's right to take whatever time is required, up to September 1, 2000 or January 1, 2001, respectively, to conform the Decision to the fill rate or sequential number assignment requirements of the *Numbering Resource Optimization Order*.

C. The Joint Applicants Fail to Prove that the Commission Is Not Taking All Necessary Steps to Prepare an NPA Back-Up Relief Plan for 310 NPA.

Finally, the Joint Applicants seek rehearing, alleging that the Decision fails to meet the FCC requirement of having a back-up relief plan for the 310 NPA. (Joint Rhg. App. at 7-8.) This argument has no merit. The Commission did not purport to set forth a back-up plan for the 310 NPA in this Decision. The purpose of this Decision is to adopt rules to promote efficient number utilization

⁸ See ALJ Ruling of November 15, 1999.

⁹ PU Code §1732 provides in pertinent part that an application for rehearing shall set forth specifically the ground(s) on which the applicant considers the decision to be unlawful:

regarding the use of sequential number assignments and to set minimum usage rates that carriers must meet in order to obtain additional blocks of numbers. The Joint Applicants assume that because a back-up relief plan for the 310 NPA was not unveiled in this Decision, there is none in the making. They are mistaken. With respect to area code back-up relief plans, the FCC requires state commissions to take all necessary steps to prepare an NPA relief plan when it seeks to implement a pooling trial in an NPA that is in jeopardy.¹⁰ The Commission is cognizant of that requirement and is doing all that it can to prepare such a plan. In adopting a back-up plan, the Commission must take into consideration, among other things, the results of the recent 310 NPA Number Utilization Study, and its application to the 310 NPA, or potentially to other similarly-situated NPAs. The Commission's preparation of a back-up relief plan continues on course, and will be issued in a subsequent order.

IV. CONCLUSION

We have reviewed each and every allegation by the Joint Applicants, and are of the opinion that legal error was not demonstrated. As noted in the previous discussion, we make a non-substantive modification in OP 9. Therefore,

IT IS ORDERED:

1. OP 9 is modified to read as follows:
"9. Carriers shall assign numbers in the 310 NPA in 1,000-number block sequence, moving to the next block only once a 75% fill rate has been attained in the prior block. Within a given 1,000-number block, however, carriers shall have discretion in assigning numbers in whatever sequence they deem warranted as long as the overall 75% fill rate criterion is observed."
2. The rehearing of D.00-03-054 is denied.

¹⁰ *Numbering Resource Optimization Order, supra* at ¶171.

This order is effective today.

Dated June 8, 2000, at San Francisco, California.

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

I will file a written dissent

/s/ JOSIAH L. NEEPER

I dissent.

/s/ HENRY M. DUQUE

Commissioner Henry M. Duque, dissenting:

Although I voted in support of the scheme to allocate numbers contained in D.00-03-054, the arguments of the Joint Applicants convince me that my earlier action contains legal errors that require reversal. Indeed, the Joint Applicants cite the very facts, laws, and regulations that have compelled my prior dissents to numbering policy.¹ Therefore, I must dissent from the decision of today's majority.

The Joint Applicants point out that in the face of continued refusal of the majority of this Commission to adopt an FCC mandated area code relief "back-up" plan, the exercise of authority to ration numbers constitutes legal error. When voting in January for the underlying decision, I could not imagine that in June we would still lack a back-up relief plan for the 310 NPA. The majority's inaction shapes the setting in which we must consider this application for rehearing of D.00-03-054. In this setting, the Joint Applicants' argument that in the absence of a back-up plan rationing plans violate the terms of the authority delegated by the FCC proves convincing.

The Joint Applicants also point out that our regulation of fill rates for the assignment of number blocks and our rules for sequential number assignment contravene FCC regulations. Although the majority's decision argues that these FCC regulations are not yet in affect, this technical argument should carry little weight. The FCC already requires that our actions not hinder the choice of consumers. Moreover, the FCC cites its concern over customer needs as the basis for prohibiting the regulations that D.00-03-054 adopts. In this context, the Joint Applicants argue compellingly that our regulations hinder customer choice, and thus constitute legal error.

For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

June 8, 2000

San Francisco

¹ I have filed related dissents to D.99-09-067, D.99-11-027, D.99-12-023, D.00-05-025.