

ALJ/TRP/sid

Mailed 6/25/99

Decision 99-06-091 June 24, 1999

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)

INTERIM OPINION**Summary**

This decision approves a temporary suspension of the implementation of new 424 area code in response to a petition for modification filed by Assemblyman Wally Knox and other petitioners. The suspension shall prohibit the assignment of numbers in the 424 area code to customers pending the Commission's consideration of the remaining issues raised in the petition for modification.

Procedural Background

On June 9, 1999, a Petition to Modify Decision (D.) 98-05-021 (the Petition) was filed by a group of petitioners seeking a halt to the opening of the new 424 area code overlay scheduled to occur on July 17, 1999. Petitioners are also seeking to end mandatory 1+10-digit dialing for the 310 area code which was previously instituted as part of the overlay relief plan pursuant to D.98-05-021. Petitioners also seek an order shortening time for responses to the Petition due to their belief that expedited Commission action on the Petition is needed prior to

the scheduled opening of the new area code on July 17, 1999, in order to prevent irreparable harm.

A joint assigned commissioner's and administrative law judge's ruling (the joint ruling) was issued on June 11, 1999 granting the motion shortening time. The joint ruling set two dates for replies. Interested parties were to reply by June 18, 1999 on the issue of temporarily suspending the implementation of the 424 area code overlay to permit time to act on the full merits of the Petition. Parties were given until June 25, 1999 to reply to the full merits of the Petition. (Joint Ruling at 3.)

Responses to the issue of temporarily suspending the implementation of the 424 area code were filed by Pacific Bell; the Cellular Carriers Association of California; jointly by Mediaone Telecommunications of California, Inc., ICG Telecom Group, Inc, Nextlink of California, Inc., AT&T Communications of California, Inc., and the California Cable Television Association (Joint Commentators); MCI WorldCom; and the Commission's Office of Ratepayer Advocates. This order solely addresses the first issue – temporary suspension of the 424 area code – and does not address the full merits of the Petition.

Positions of the Responding Parties

Pacific Bell urges that the temporary suspension not be granted. Its principal argument expresses a concern over future availability of numbers in the 310 area code given the currently remaining number of unassigned NXX codes. Pacific Bell asserts that the remaining NXX codes may exhaust in July 1999 and that this, in turn, will create a situation in which only those carriers that have unassigned numbers available will be able to offer new local service.

The Cellular Carriers Association also urges that the temporary suspension not be granted. They evaluate the request for temporary suspension as though it

were a request for a preliminary injunction and apply the various traditional tests applicable to such a request. They believe it unlikely that the ultimate relief sought in the Petition will be able to be granted due to current Federal Communications Commission (FCC) restrictions on state number plan relief flexibility, and discuss various matters recently and currently pending before the FCC. They, like Pacific Bell, discuss the number of remaining NXX codes in the 310 area code and state that delay in implementing the 424 area code will result in a demand for 310 NXX codes that cannot be met. They state that 60 NXX codes have already been requested in the 424 area code, asserting that this gives some indication of the "pent up demand for codes in the area." They contend there is no irreparable harm from implementing the overlay area code and that all the problems cited by the petitioners are either "fixable," e.g., by customer programming changes, or are merely inconveniences that customers will get used to, i.e., dialing the extra numbers for every call. They assert that the real harm will be to carriers, who will not have adequate numbers available, and, therefore, will not be able to compete.

The Joint Commenters also oppose the temporary suspension of the 424 area code. They contend that certain carriers, including members of the Joint Commenters, have secured NXX codes in the 424 area code and absent the ability to issue numbers in those codes to customers in the next few weeks, will not have any numbers to issue to customers. They state that they regret being in the position of opposing the Petition since they had initially opposed an overlay relief plan for the 310 area code. They object to considering the Petition at this late date and question whether the concerns raised by the Petitioners, although real, constitute irreparable harm. They too discuss the Petition in the analytical context of a preliminary injunction and the standards applicable to such relief. Finally, they challenge the temporary suspension being in the public interest due

to the reliance parties have placed on the decision establishing the overlay and its schedule.

MCI WorldCom opposes the temporary suspension believing that a delay in implementing the 424 area code will threaten to totally exhaust all telephone numbers in the 310 area code. They argue that significant hardship will befall both customers and competitors if numbers are not available to satisfy new service requests. They do, however, see a different time frame for exhaust of 310 numbers stating "[a]t the current rationing rate the 310 area will be totally depleted of numbers within 12 months." They claim that the hardship alleged by Petitioners can be ameliorated through education and cooperation among customers and carriers but that no amelioration is possible for number exhaust and that Petitioners offer no solution for this problem. They assert that solutions to the numbering resource problem may require technical fixes that will not be available in a time frame to avoid number exhaust. Finally, like the Cellular Carriers Association, they believe this Commission lacks the authority to implement the desired relief.

The Office of Ratepayer Advocates recommends that the Commission temporarily suspend the implementation of the 424 overlay to allow for addressing Petitioners' substantive requests. They also discuss the issue in terms of the irreparable harm Petitioners may suffer and the need to consider equitable relief. They contend that the benefits of a comprehensive examination of the concerns raised by the petitioners will outweigh any impact on the telecommunications network or customers that might result from altering the implementation date for the 424 area code. While acknowledging that carriers have already been assigned NXX codes from the 424 area code, they recommend that the issues raised be investigated now rather than after overlays have been

implemented and that doing so will benefit both customers and stakeholders generally.

Discussion

The concerns with the Petition raised by those who filed responses are all legitimate issues, but most go beyond the issue for decision at this time. There are certainly significant concerns to be considered regarding the prospective availability of numbering resources and the jurisdiction, tools and technical elements that may be necessary to address the full request of the Petition. However, the sole question before the Commission today is whether to take the one step available that will allow us even the opportunity to adequately evaluate those concerns.

We are mindful of the fact that some of these very same issues were before the Commission when we initially considered relief for the 310 area code and that interested parties had the opportunity to participate in earlier relief activities. At the same time, we recognize that the pace of change in the telecommunications industry is dramatic, including changes that bear on the allocation of number resources and the types of relief that may be available.

This Commission is totally committed to taking the steps necessary and appropriate to encourage the flourishing of telecommunications competition and would not take steps that would jeopardize the development of competition. We have come to realize, however, that it is not so much that we are running out of numbers, but that we have not previously had the ability to allocate numbers efficiently. At this very time that we are considering the Petition, efforts are underway to secure appropriate technical and jurisdictional resources and expand our arsenal for addressing the numbering dilemma that telecommunications growth and competition has created.

We have operated a lottery for rationing NXX codes in the 310 area code since October 1996. In D.98-05-021, we noted that the lottery for the 310 area code was designed to permit rationing to continue through April 2000. By continuing to utilize the lottery for rationing the remaining NXX codes, exhaust can be forestalled for a period sufficient to permit careful consideration of the Petition. In the event it is necessary to remove the suspension of the 424 area code due to pending exhaust, activation of the new area code would not be technically complex. Since at this time we are only suspending the implementation of the new area code but not rescinding mandatory 1+10-digit dialing, the logistics involved in reactivating the 424 area code would be minimal.

What is clear, however, is that our failure to take the step of suspending the 424 area code prior to its July 17 implementation date would foreclose any possibility of considering the Petition in light of on-going developments.

Just as this decision indicates the limited step we are taking with this order – preserving our options for deciding the Petition on its merits – the people of California and the telecommunications industry should not read into our action today more than that. Until we have considered the Petition on its merits and determined whether the rescission of an overlay plan and corresponding 1+10-digit dialing is reasonable and in the public interest, area code relief efforts will, of necessity, continue for this and other California area codes facing crisis. Therefore, the technical and public information elements associated with on-going or approved relief planning efforts will continue. In much the same way that temporarily suspending the implementation of the 424 area code preserves our options to consider the Petition, diligently proceeding with prudent relief planning efforts preserves our options in the event the technology and jurisdictional relief we are pursuing is not available in a timely fashion.

We are mindful that some carriers have been assigned NXX codes in the 424 area code and could be planning to open codes as early as July 17, 1999. We can consider mitigation measures as we review the merits of the Petition. To that end, we are requesting North American Numbering Plan Administrator (NANPA) to provide to the Telecommunications Division within seven days from the date of this order the following information: (1) a list of the carriers which have been assigned NXX codes in the 424 NPA; and (2) the number of NXX codes each carrier has been assigned in the 424 NPA by rate center. We further request the NANPA to submit this information as confidential. By this order, we also request the NANPA to suspend further assignment to carriers of NXX codes in the 424 NPA until the Commission has issued a final order on the Petition.

Because of the need to act on the temporary suspension of the 424 area code in advance of the date on which it is otherwise scheduled to become operational, there is a need to act on this matter no later than July 8, 1999, and this constitutes an unforeseen emergency situation for purposes of Pub. Util. Code § 311(g)(2) and Rule 81(f) of the Commission's Rules of Practice and Procedure. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The Petition was filed on June 9, 1999.
2. A ruling shortening time for responses was issued on June 11, 1999.
3. Timely responses to the limited issue of whether to grant a temporary suspension of the 424 area code were filed by various parties on June 18, 1999.

4. While the overlay area code relief plan has been in the process of implementation for some time, the potential for more innovative technical and jurisdictional tools to address area code relief has only come about recently.

5. A lottery for rationing of NXX codes in the 310 area code has been in operation since October 1996.

6. Continuation of the lottery in the 310 area code will provide sufficient numbering resources to allow the Commission time to consider the Petition on the merits.

7. No party cited any technical impediment to a temporary suspension of the 424 area code.

Conclusions of Law

1. This order responds to an emergency situation pursuant to Pub. Util. Code § 311(g)(2) and Rule 81 of the Commission's Rules of Practice and Procedure in that it presents a request for relief based on extraordinary conditions in which time of the essence; therefore, the otherwise applicable 30-day period for public review and comment should be waived.

2. A failure to order a temporary suspension of the implementation of the 424 area code prior to July 17 would preclude the Commission's consideration of the merits of the Petition.

3. A granting of a temporary suspension of the implementation of the 424 area code will not lead to number exhaust in the 310 area code prior to the time the Petition can be resolved on its merits.

4. This order does not in any manner affect any other area code relief planning efforts currently underway in this or any other area code in California.

INTERIM ORDER

IT IS ORDERED that:

1. The 424 overlay area code is temporarily suspended and customers shall not be issued numbers in that area code until further order of the Commission.
2. NXX codes in the 424 area code which have been assigned to carriers may continue to be held by those carriers until further order of the Commission.
3. The lottery shall continue to be utilized in the 310 area code at its current allocation to prolong the period prior to number exhaust while making NXX codes available to carrier on a reasonable basis.
4. The assigned Commissioner and administrative law judge are urged to take the steps necessary to address at the earliest possible time the merits of the Petition for Modification of Decision 98-05-021 filed June 9, 1999 to ensure that a decision is before this Commission for its consideration before the anticipated exhaust of available NXX codes in the 310 area code based on operation of the lottery.
5. The North American Numbering Plan Administrator (NANPA) shall suspend further assignment to carriers of NXX codes in the 424 NPA until the Commission has issued a final order on the Petition.
6. The NANPA shall provide on a confidential basis to the Telecommunications Division within seven days from the date of this order the following information: (1) a list of the carriers which have been assigned NXX codes in the 424 Numbering Plan Area (NPA); and (2) the number of NXX codes each carrier has been assigned in the 424 NPA by rate center.

7. A copy of this order shall be served on all incumbent local exchange carriers, facilities-based competitive local exchange carriers and wireless carriers, in addition to the service list for these proceedings.

This order is effective today.

Dated June 24, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner