

Decision 99-09-020 September 2, 1999

**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)

**INTERIM OPINION GRANTING TEMPORARY SUSPENSION  
OF INTRALATA DIALING PARITY REQUIREMENTS**

**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. Meanwhile, we will consider applicants' petitions for an order delaying dialing parity in their service areas while they negotiate with Pacific Bell to terminate financial pooling arrangements for local toll calls.

## 2. Background

At the request of Pacific, applicants are negotiating 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 in approximately January of 1999. At the time, there was no set date by which applicants were required to implement local toll dialing parity. 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 complied 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.

In May of this year, according to the applications, the parties to the pool termination negotiations concluded that the timing of the FCC order could create

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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).

customer confusion and complicate revenue flows between Pacific and the small phone companies. The parties state that they expect to complete their negotiations soon and present to the Commission a plan amending the manner in which local toll revenue is provided in small telephone company service areas. The change in pool revenue procedures would occur in January of the year 2000.

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 a delay in their obligation to implement dialing parity until a date in January 2000.

Under the FCC order, if a state commission had not acted on a dialing parity implementation plan by June 22, 1999, local exchange carriers were required to file their plans with the FCC. Since the dialing parity plans had been withdrawn, they no longer were before this Commission on June 22, 1999. Applicants filed a notice with the FCC advising it of the status of their dialing parity plans, i.e., that in lieu of a plan, the small phone companies had filed these Section 251(f)(2) applications with this Commission to suspend the dialing parity obligation until a date in January 2000. The FCC placed the filing on public notice and allowed comment.<sup>2</sup> Comments and reply comments were due on July 6 and July 12, 1999, respectively. No comments were filed.

### **3. Discussion**

In these two applications, the local exchange carriers petition for a delay in dialing parity implementation while they negotiate with Pacific to terminate various revenue pooling arrangements.

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<sup>2</sup> See CC Docket No. 96-98, NSD-L-98-121, DA 99-1246 (released June 23, 1999).

Given the unusual circumstances applicable to the smaller independent local exchange carriers, the date on which they must implement dialing parity is not now clear. However, because the parties have amended their applications in order to make certain corrections, the Commission cannot act until after the time for comments and reply comments has passed in September 1999.

In order that applicants not inadvertently be in violation of the FCC's dialing parity implementation schedule, the parties seek an interim order suspending dialing parity for the smaller independent local exchange carriers while the Commission considers the applications.

Section 251(f)(2) of the Telecommunications Act of 1996 (47 U.S.C. § 251(f)(2)) contemplates the type of interim order sought by the parties. This section provides in part that:

"Pending such action [on an application to suspend or modify a Section 251(b) or (c) obligation], the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers."

Accordingly, the Commission has the authority to issue an interim order that will ensure that applicants remain in compliance with applicable FCC requirements while the Commission considers the applications to delay dialing parity implementation. For the reasons set forth in the applications, and in the absence of opposition to this request, our order today grants that request in order that we may have adequate time to consider the applications on their merits.

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.

### **Comments on Draft Decision**

The draft decision of Administrative Law Judge Walker in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by applicants, all urging that the Commission adopt the draft decision without change at the Commission's meeting on September 2, 1999. The Office of Ratepayer Advocates commented that it does not oppose the temporary suspension of dialing parity requirements for these small incumbent local exchange telephone companies, but it urged further discussion of equal access obligations of these carriers. We will deal with that subject in our consideration of the substantive provisions of applicants' petitions for relief.

### **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 negotiations with Pacific Bell on revenue pooling arrangements for intrastate calls.
3. Pursuant to 47 U.S.C. § 251(f)(2), this Commission may suspend the dialing parity obligation while it considers these applications.

### **Conclusion of Law**

The Commission should suspend enforcement of the Section 251 requirements while it considers applicants' petitions for relief.

**INTERIM ORDER**

**IT IS ORDERED** that, pursuant to 47 U.S.C. § 251(f)(2), enforcement as to applicants of the requirements of 47 U.S.C. § 251 is suspended pending this Commission's consideration of applicants' petitions for relief from such requirements.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

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