

Decision 99-10-055 October 21, 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)

O P I N I O N

I. Procedural Background

On November 13, 1998, January 12, 1999, and February 25, 1999, the Telecommunications Division (TD) of the California Public Utilities Commission (CPUC or Commission) held a series of technical workshops to review the procedures of the California Central Office (NXX) Code Lottery. The workshop series was conducted in accordance with Decision (D.) 98-08-037 and the Administrative Law Judge's ruling dated September 3, 1998, which call for technical workshops to facilitate the development of potential reforms to promote the conservation and efficient utilization of NXX codes and promote competition in the telecommunications marketplace in California. The rulings directed the TD to conduct workshops with industry participants to identify possible shortcomings in the lottery process and develop methods to bring about a fair and more equitable system of NXX code rationing in the State. D.98-08-037 also acknowledged the need to revisit and refine the California lottery process

with a view toward increasing the opportunities of new entrants to obtain the NXX codes they need to compete successfully in the telecommunications market.

By this decision, we adopt certain revisions in the administrative procedures for conducting the lottery as set forth in the workshop report. We defer to a subsequent decision the issue of whether to change the actual allocation of codes among initial and growth categories.

TD staff mailed its report on June 15, 1999, setting forth the results of the workshop series and offering staff conclusions and recommendations. A ruling was issued on August 3, 1999, to provide parties an opportunity to comment on the accuracy of the TD workshop report and the conclusions and recommendations contained therein. Specifically, parties' commented on: (1) the proposal to limit the number of applications in each Numbering Plan Area (NPA) in the lottery to the number of codes being rationed that month; and (2) the corresponding form for tracking additional requests beyond the limit. Since adoption of a limit on the number of applications allowed in the lottery would not involve a change to the ordering paragraphs of D.96-09-087, TD staff recommended that the Director of the TD implement the change in the lottery procedures, provided that no significant objections are received. TD staff further recommended that the Director of the TD notify the North American Number Plan Administrator (NANPA) of the change in lottery procedures via letter and that the NANPA be responsible for notifying code applicants of the change.

Parties also commented on the following TD proposals:

- That the NANPA and industry develop a method to distribute the form tracking additional code requests to applicants. It is inappropriate for the CPUC to distribute the form.
- That the CPUC solicit proposals on how a lottery appeals process should be configured. Proposals should include how the appeal

process would work if the CPUC continues to administer the lottery and how the appeal process would work if the NANPA assumes administration of the lottery.

- That the administration of the NXX code lottery be transferred from the CPUC to the NANPA.

Several participants in the workshops filed comments including the Office of Ratepayer Advocates (ORA), MediaOne Telecommunications, Inc. and the California Cable Television Association (MediaOne), Cox Communications (Cox), Pacific Bell (Pacific) and GTE California (GTEC). The commenters generally agreed that the Report accurately represents the discussions that occurred during the three workshops held on the issue of NXX code lottery reform. In addition, the commenters generally concurred with the conclusions made by the TD.

II. Responsibility For Conducting The Lottery

A. Background

TD is currently responsible for conducting the monthly NXX code lottery. When the Commission approved creation of the lottery, Pacific was still the California Code Administrator. The industry reached consensus at that time that Pacific as a competing contender for NXX codes, should not conduct the lottery due to concerns about Pacific's objectivity, and recommended that the Commission staff conduct the lottery. The Commission approved the industry recommendation and ordered the Commission Advisory and Compliance Division (CAC), TD's predecessor, to conduct the lottery.

As the Workshop Report describes, the industry agreed that TD should continue to conduct the lottery. TD recommends, however, that responsibility for conducting the lottery should be transferred to the North American Numbering Plan Administrator (NANPA). The original rationale for

having the Commission conduct the lottery was that the then Code Administrator might act in ways that would benefit itself rather than in a competitively neutral fashion. With Lockheed Martin taking over the code administration responsibilities in its capacity as a neutral third-party (the NANPA), that rationale is no longer valid. Certain parties expressed concern that the industry would lose control over the cost of the lottery if it were transferred to NANPA.

Pacific, MediaOne, and Cox argue that the Commission should not authorize such a transfer until the industry can be assured that the costs of the lottery will be reasonable and controlled. Cox calls for a further Commission investigation into this matter before ordering a transfer of the responsibility for the lottery process to an independent administrator. Cox believes NANPA should present a proposal containing a cost estimate for administering the lottery for at least the next five years so that the Commission and the industry can be assured that the NANPA will administer the lottery at a reasonable cost.

B. Discussion

We conclude that the lottery administration functions should be transferred from the TD staff to an industry-sponsored third-party entity. The only reason the CPUC was originally charged with this responsibility was due to concerns over Pacific, as a contender for NXX codes, conducting the lottery in an objective manner. Since the duties of code administrator have since been transferred to the NANPA, the concerns over objectivity have become moot. The release of TD staff from lottery administration duties will enable the freed-up staff resources to be more productively spent in the implementation of number pooling and other numbering relief matters.

We are also mindful of the need to institute the transfer of lottery administration duties in the most cost-effective and efficient manner. Certain parties have expressed concerns that if the NANPA takes over the lottery administration functions, it could charge excessive fees. We agree that the NANPA should not be permitted to charge unreasonable fees for taking over the lottery functions. We shall therefore first determine the level of fees that the NANPA proposes to charge to take over these functions before scheduling a date for the transfer of functions to occur.

We shall direct the NANPA to submit a bid no later than 20 business days following the effective date of this decision as to fees it would charge to take over the lottery administration functions now performed by TD staff, and to provide necessary reporting, as described below. NANPA shall submit a copy of its proposed bid in writing to each NXX codeholder participating in the lottery. Any party objecting to the bid on the basis that it is excessive shall submit their objection in written comments filed and served in this docket within 10 business days following the submission of the NANPA's bid. Any objections to the proposed fees must provide support as to why the proposed fees are deemed excessive, and shall indicate what alternative entities might be available to take over the lottery functions at a lower cost. At that point, a further Commission order will be issued prescribing further steps necessary to transfer the lottery functions from TD to a third party.

We envision that once NANPA assumes the latter function, it will report aggregate information on lottery applications, additional NXX code requests, and assignments to the industry. The NANPA will also provide TD with both detailed and summary information regarding lottery applications, assignments, and priority lists. To the extent that the information provided to TD is proprietary, the CPUC's rules regarding confidentiality shall apply.

III. Limiting The Number Of Code Requests

A. Background

Parties generally express support for the proposal to limit requests to the number of codes actually available for lottery allocation each month in order to reduce the administrative burden of conducting the lottery by eliminating unnecessary paperwork. Parties also generally recommend adoption of "Proposal 1," which the industry selected as the preferred method of limiting NXX code applications.

Several participants in the workshop felt there was a need to estimate "unmet demand" if Proposal 1 were adopted. Some parties expressed the option that the number of requests each month was an indication of "unmet demand." Others, however, disagreed that the number of requests submitted was an accurate reflection of the unmet demand, as carriers may base the number of requests it submits on a variety of factors, and may not necessarily reflect unmet demand. Further, it was noted that the purpose of the lottery process was not to try to determine the extent of unmet demand, but to distribute NXX codes.

An Industry subcommittee was established to create a form that could be used on a voluntary basis by carriers to reflect the total number of requests a carrier would have submitted if the number of requests were not limited (as, for example, provided in Proposal 1). The TD staff suggested two minor changes to the form, reflected in Appendix F to the Report.

ORA supports adoption of an "unmet demand" form. (Workshop Report, Appendix F) and concurs that it is not efficient for the CPUC staff to distribute the form. However, ORA suggests the following revisions to the proposed form contained in Appendix F of the Workshop Report:

1. The form should specify that it only applies to the California lottery;
2. The form should contain a name and contact number for the NANPA in case companies submitting the form have questions;
3. The form should include an additional footnote showing the calculation, i.e., "Amount of NXX Codes Applicant Would Have Requested – Amount of NXX Codes Available For Allocation This Month = "Unmet Demand";
4. The text of the first footnote should read "Application limited to total number of NXX codes available for allocation in each NPA each month," and
5. The form should be available electronically.

B. Discussion

We shall adopt the workshop proposal to limit the number of applications in each NPA to the number of NXX codes being rationed for that month. The NANPA is hereby authorized to implement this change with the lotteries that are conducted subsequent to the effective date of this order. The NANPA shall be responsible for notifying code applicants of this change in the lottery process.

This revision will make the lottery administration more efficient, and will eliminate unnecessary paper work in processing requests that exceed the maximum number of codes that can be satisfied. We recognize, however, the continued need to keep statistics concerning the number of code requests which a carrier would have submitted if rationing did not limit the number of requests within the NPA. We shall adopt the form developed by the task force, as modified, and set forth in Appendix F to the Workshop Report. The form shall also incorporate revisions proposed by ORA, except for item number of ORA list. We direct the NANPA to take responsibility for distributing the form to code holders. We agree that there is no need for the Commission's TD staff to be

involved in the distribution of the forms. We shall adopt GTEC's suggestion that the NANPA distribute the form electronically as well as in hard copy each month concurrent with its distribution of the NANPA monthly Lottery Results Report to industry participants. During the interim time period while TD staff continues to conduct the lottery, the NANPA will aggregate the number of additional code requests per the Appendix F Form and include that information with the data it sends to the CPUC regarding the monthly lottery drawings. TD staff will also post on the CPUC website the total number of code requests for each NPA in the lottery during that period.

IV. Appeal Process To Resolve Disputes Between Providers And The NANPA

A. Background

The Report notes that disputes have arisen between telecommunications providers and the NANPA regarding NXX code requests that are subject to rationing. During the workshops, the participants discussed the idea of an appeal process to resolve such disputes, although no specific proposals were addressed.

The comments on this proposal are varied. MediaOne agrees that the Commission should facilitate the resolution of disputes between providers and NANPA through an expedited complaint process. GTEC also supports Commission involvement in this process, provided that the parties first engage in a good faith effort to resolve their dispute. GTEC also argues that the scope of any appeal process should be limited to interpretation or clarification of the lottery guidelines. Pacific does not see the need for a lottery appeal process, given the limited number of disputes to warrant a formal appeal process. Pacific believes providers may attempt to use the process to change the lottery system.

Cox believes an appeal process is necessary if the Commission transfers administration of the lottery to the NANPA, but that the issues subject to appeal should be limited to whether the NANPA has complied with the Commission's rules and orders in administering the lottery. Cox objects to use of the appeal process to attempt to change the lottery process itself.

Cox proposes that the Commission consider implementing for code lottery disputes the procedure it previously adopted in this docket to resolve disputes between incumbent local exchange carriers and competitive local exchange carriers. (See, Decision 95-12-056, Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, at 36-37 (December 20, 1995)). By that approach, the Commission determined that the parties must negotiate in good faith and escalate any dispute to the executive level prior to bringing the dispute to the Commission. If these informal attempts to resolve a dispute fail, Cox proposes that either party may file a motion to have the dispute mediated by an Administrative Law Judge.

B. Discussion

We agree that a dispute resolution process for lottery administration issues would help to dispose of any disagreements in an expeditious way. Since a model for dispute resolution has already been developed pursuant to D.95-12-056, it is reasonable to apply this model for dispute resolution of lottery administration issues. We shall therefore adopt the proposal of Cox to apply the D.95-12-056 dispute resolution process to lottery administration issues. This process shall be limited to disputes concerning compliance with existing Commission rules and orders relating to lottery administration. The expedited dispute resolution process shall not be used for seeking substantive changes in the adopted rules for the allocation of codes among carriers, or for seeking

special exemptions from the lottery rules. Parties seeking to use the expedited dispute resolution process must show that a good faith effort has first been made to resolve disagreements consistent with the Central Office Code Assignment Guidelines and/or lottery guidelines adopted in D.96-09-087 and any applicable FCC rules.

V. Comments of Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The Commission staff was originally charged with the lottery responsibility due to concerns over Pacific, as a contender for NXX codes, conducting the lottery in an objective manner.
2. Since the duties of code administrator have since been transferred to the NANPA, the concerns over objectivity have become moot.
3. Questions have been raised as to whether the NANPA would charge excessive fees for taking over the lottery responsibilities from the TD staff.
4. Limiting the number of code requests to no more than the number of codes being rationed would make the lottery more efficient, and eliminate unnecessary paper work in processing requests that exceed the maximum number of codes to be satisfied.
5. There is a continued need to keep statistics concerning the number of code requests which a carrier would have submitted if rationing did not limit the number of requests within the NPA.

6. There is no need for the Commission's TD staff to be involved in the distribution of the forms reporting unmet demand since the NANPA can distribute such forms more efficiently.

7. A dispute resolution process for lottery administration issues would help to dispose of any disagreements in an expeditious way.

8. A model for dispute resolution has already been developed, pursuant to D.95-12-056 for interconnection agreements, that can be applied to dispute resolution of lottery administration issues.

Conclusions of Law

1. The lottery administration duties currently performed by the TD staff should be transferred to a neutral third-party entity, such as the NANPA.

2. The NANPA should not be permitted to charge unreasonable fees for taking over the lottery functions currently performed by TD staff.

3. The Commission should first determine the reasonableness of the level of fees that the NANPA proposes to charge to take over the lottery administration functions before authorizing the NANPA to take over, and before scheduling the date for the transfer of functions to occur.

4. The D.95-12-056 dispute resolution process should be applied to resolving lottery administration disputes, but limited to issues concerning compliance with existing Commission rules and orders relating to lottery administration.

O R D E R

IT IS ORDERED that:

1. The lottery administration functions currently performed by the Commission's Telecommunications Division (TD) shall be transferred to a neutral third party.

2. The North American Number Plan Administrator (NANPA) shall submit a bid no later than 20 business days following the effective date of this decision as to fees it would charge to take over the lottery administration functions now performed by TD staff.

3. NANPA shall submit a copy of its proposed bid in writing to each NXX code holder in California.

4. Any party objecting to the NANPA's bid on the basis that it is excessive shall submit their objection in written comments filed and served in this docket within 10 business days following the submission of the NANPA's bid.

5. The Commission will address in a subsequent order the further steps necessary to implement the transfer of lottery duties to a third party following receipt of the above-referenced comments.

6. The workshop proposal is hereby adopted to limit the number of applications in each NPA to the number of NXX codes being rationed for that month, to be implemented with the lotteries that are conducted subsequent to the effective date of this order. The NANPA shall be responsible for notifying code applicants of this change in the lottery process.

7. Carriers may voluntarily submit the form in Appendix F of the Telecommunication Division's lottery report, as modified in this Decision, to the NANPA. The NANPA shall make this form available electronically and in hard copy each month concurrently with its distribution of the monthly lottery results to industry participants.

8. During the interim period, while TD staff continues to conduct the NXX Code lottery, the CPUC will post on its website the total number of NXX code requests for each NPA in the lottery.

9. The dispute resolution process adopted in D.95-12-056 shall be applied to disputes concerning lottery administration processes, but not at this time to disputes concerning allocations of codes among carriers.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

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