

Decision 00-07-053 July 20, 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 order a deferral of the previously adopted implementation schedules for new area codes in the 707 and 760 Numbering Plan Areas (NPAs). The Commission previously adopted area code relief plans for the 760 and 707 NPAs in Decision (D.) 99-07-017 and D.99-12-049, respectively. Deferrals of these relief plans will provide an opportunity to determine the feasibility of extending the life of existing numbering resources through more efficient number utilization measures in each of the NPAs. In view of the well documented disruption to customers caused by changes to their area code, it is in the public interest to assure that new area codes are opened only after all feasible means of utilizing existing number resources have been exhausted.

An Administrative Law Judge (ALJ) ruling was issued on May 1, 2000, soliciting comments concerning the proposal to defer the implementation schedule for the above-referenced 707 and 760 NPA relief plans. Comments in response were filed by Pacific Bell (Pacific), GTE California, Inc. (GTEC), and

GTE Wireless, Inc., the Cellular Carriers Association of California (CCAC), and joint comments were filed by the California Cable Television (CCTA), AT&T Communications of California, MCI WorldCom, Inc. NEXTLINK California, Inc. Time Warner Telecom, LP, Advanced TelCom Group, Inc., and PacWest Telecom, Inc. We have reviewed parties' comments and take them into account, in preparing this order.

### **Parties' Positions**

Parties filing comments all oppose any deferral in the implementation of either the 707 or 760 NPA splits. While the parties generally acknowledge the desirability of deferring the creation of new area codes on a statewide basis, they argue that the Commission must not do so unless there is evidence that relief can be deferred without depriving customers of telecommunications services from their provider of choice, as is required by federal law. They claim there is no evidence before the Commission to support deferral of 707 or 760 NPA relief.

The ALJ Ruling noted that the Commission's Telecommunications Division (TD) was due to release a status report providing updated information on the 707 NPA number utilization and conservation measures. The TD Report was issued on May 1, 2000. After review of that Report, parties argue that it offers nothing to legitimize the overturning of the past Commission decisions.

The Report concludes that the Commission is "actively studying" the feasibility of various number conservation measures and exploring the limits of its authority under recent Federal Communications Commission (FCC) rulings and state legislation, and that what will happen in the 707 NPA will depend heavily on those studies. The parties argue that the Report's reliance on future studies provides insufficient justification to suspend area code relief in the 707 NPA now. Likewise, the parties claim the absence of any status report for the

760 NPA suggests the Commission lacks justification for the rescission of D.99-07-017.

GTEC questions whether pooling could be implemented in the 707 or 760 NPA soon enough to prevent, or delay to any significant extent, the need to implement area code relief. In both the 707 and 760 NPAs, there are a number of rate centers that are non-Local Number Portability (LNP) capable. For example, in the 707 NPA, there are 75 rate centers of which GTEC has 12. Eight of GTEC's rate centers are not located within the top 100 Metropolitan Statistical Areas (MSAs). These rate centers could not participate in any pooling effort ordered. Further, if the Commission, as with the 310 pooling effort, were to set aside for pooling purposes one code per rate center, this would significantly impact the number of codes left over for use by non-pooling carriers (including wireless carriers) and in rate centers which are not LNP capable. For example, in the 760 NPA, there are 83 rate centers, of which GTEC has 52. Twelve of GTEC's 52 rate centers are not LNP capable and 17 are not located within one of the top 100 MSAs. Additionally, the part of the 760 area code is within the top 100 MSA split between two of those MSAs, Riverside-San Bernardino and Bakersfield.

Parties also argue that reducing the number of codes available in the lottery each month does not address the real issue of ensuring that adequate resources are available, but is simply limiting the carriers' ability to obtain numbers. The FCC Order granting the Commission additional number authority<sup>1</sup> stated that the additional authority was not intended to allow the

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<sup>1</sup> *In the Matter of California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area Code Relief and NXX Code Conservation Measures*, CC Docket No. 96-98, FCC 99-248 (Sept 15, 1999) (FCC Order).

Commission to engage in number conservation measures to the exclusion of, or as a substitute for unavoidable and timely area code relief.

CCAC also objects to the shortness of time for parties to file objections to the proposed NPA split plan deferrals. CCTA argues that a single round of comments does not afford parties adequate notice and opportunity to be heard on the proposal, as is contemplated by Section 1708 of the Public Utilities Code. Section 1708 requires that the Commission provide parties notice and opportunity to be heard as provided in the case of complaints anytime it desires to rescind, alter or amend a prior order or decision. The California Supreme Court has determined that “opportunity to be heard” in this context has been defined to mean:

The phrase “opportunity to be heard” implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal.<sup>2</sup>

CCAC argues that the opportunity to submit one round of comments on only 15 days’ notice does not permit any party an adequate opportunity to prove the substance of their objections to the proposal to defer NPA relief. CCAC accordingly requests that the Commission convene evidentiary hearings or similar proceedings on the proposal to modify the two decisions implementing the NPA relief plans.

Pacific also raises the concern that deferral of the NPA implementation schedules at this late date may create the risk that persons will not be able to complete calls into these area codes and customers may not be able to receive

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<sup>2</sup> *California Trucking Ass’n v. Public Utilities Comm’n*, 19 Cal. 3d 240, 244 (1977) (“**CTA**”).

calls from other areas because previously completed switch translations to the new area codes may not be reversed in time. When an area code split is ordered, the prefixes that are moving to the new area code are posted in the Local Exchange Routing Guide (LERG). This allows carriers nationwide to begin translations work in their switches, which in turn allow calls to be accurately routed. If the area code splits are not implemented as scheduled, Pacific thus raises the possibility that any translations work that has already begun will not be timely reversed.

### **Discussion**

We conclude that the previously adopted schedules for implementation of the geographic splits of the 707 and 760 NPAs should be deferred to allow time to make a further assessment concerning the prospects for using existing numbering resources more efficiently. Although parties object to the deferral of the NPA implementation schedules, they fail to offer compelling reasons to force new area codes on the public prior to confirming that those area codes are needed and that all reasonable measures have been employed in those area codes.

The currently adopted implementation schedules for the 707 and 760 NPA split plans are based upon industry demand forecasts and presumed dates for NXX code exhaustion. Yet, in adopting those implementation schedules, we relied upon those industry forecasts without fully taking into account the actual use of numbers in those area codes and the impacts of using various new strategies for number conservation to make more efficient use of existing numbering resources. The Commission has gained additional flexibility to implement a variety of new number conservation measures pursuant to the FCC's grant of delegated authority in its order issued on September 15, 1999.

As noted in the TD Report, the Commission is actively studying the feasibility of various number conservation measures in the 707 NPA and is exploring the limits of its authority under recent FCC rulings and state legislation. The outcome of these studies could have a significant bearing on the prospects for extending the life of the 707 NPA beyond the time assumed by the forecasts underlying the previously adopted 707 NPA relief plan implementation schedule. Likewise, the Commission is actively studying the 760 NPA in the same fashion.

The parties note that uncertainty remains concerning how much additional number utilization efficiency can be realized as a result of the various conservation measures that are underway. Parties argue that this uncertainty is a reason not to defer implementation of relief. Yet, we conclude that this uncertainty is the very reason justifying a cautious stance, and not to prematurely rush forward with new area code implementation before the need for new area costs and the full potential of alternative conservation measures has been assessed. Once a new area code is opened, and used to assign numbers to customers, the new area code cannot be undone after the fact. On the other hand, a prudent deferral of the implementation preserves the Commission's options to take appropriate action on a going forward basis as more information concerning the status of number resources becomes known. Customers should be spared the disruptions associated with changing their area code until or unless all feasible alternatives of using existing numbering resources as efficiently as possible have been exhausted and until or unless the Commission is certain a new area code is actually needed.

We acknowledge the arguments of carriers concerning this Commission's obligation to provide timely area code relief in those instances where it is unavoidable. Yet, the FCC also delegated authority to this Commission to make

use of various number conservation tools as a means of maximizing the life of existing area codes before unnecessarily creating new area codes. Particularly in view of the marked proliferation of new area codes in recent years, it is important to confirm that we have tapped the potential for using all available number conservation measures to maximum advantage before opening yet another new area code.

On June 1, 2000, carriers were scheduled to submit data concerning their actual utilization of NXX codes in a number of NPAs, including the 707 NPA. Likewise, on February 1, 2001, carriers are scheduled to submit data concerning their actual utilization of NXX codes in the 760 NPA. We believe it would be premature to rush forward with implementation of the new area codes before we have an opportunity to review the results of those utilization studies, and assess to what extent number resources are being used.

The TD staff has also proposed that the Commission take comments on the feasibility of number pooling in the 57 rate centers within the 707 NPA that are served by an ILEC whose switch is already NPA-capable. We agree that parties' input is appropriate in considering the timing and extent of number pooling implementation for the 707, as well as for the 760, NPAs. We shall solicit comments on this issue in a subsequent ruling.

The Commission is also considering the prospects of extending additional number conservation measures adopted for the 310 NPA to other NPAs, including the 760 and 707 NPAs. An ALJ Ruling, issued on April 13, 2000, solicited comments on extending the conservation measures adopted for the 310 NPA relating to number utilization and demand criteria to apply to other NPAs within California. We conclude that the prospects for extending these measures should be determined, and any resulting benefits evaluated prior to opening new area codes in the 707 and 760 NPAs.

The suspension of the 707 and 760 NPA relief plan implementation schedules, at least until the results of code utilization studies and related number conservation measures can be assessed, will not cause numbering resources to exhaust. Each month, numbering resources are being allotted to carriers in the 707 and 760 NPAs through the lottery process. By letter dated April 10, 2000 from the Director of the Commission's TD to the Regional Director of NeuStar (in its capacity as the North American Numbering Plan Administrator (NANPA), the monthly lottery allotment of NXX codes rationed each month was reduced for various NPAs, including the 707 and 760 NPAs. The allotment for the 707 NPA was reduced from nine to three NXX codes per month. The allotment for the 760 NPA was reduced from eight down to three NXX codes. As explained in the April 10 letter, Telecommunications Division, in consultation with the Commission President, has determined that it is in the public interest to change the number of codes being issued in these area codes while it performs utilization studies and implements various number conservation measures.

Permissive dialing of the new area code for Phase 1 of the 707 NPA relief plan was previously scheduled to begin on December 2, 2000, with mandatory dialing to begin on June 2, 2001 and to end on September 8, 2001. As of May 1, 2000, the NANPA reported that 139 NXX codes remained unassigned in the 707 NPA. In the relief Central Office Code Utilization Survey (COCUS) December 1999 update, the NANPA forecasts NXX codes will not exhaust in the 707 NPA until the third quarter of 2001. After adjusting the NANPA's forecast for the reductions in the monthly lottery rationing effective with the April 2000 lottery, the TD staff projects code exhaustion in the 707 NPA would not occur before the first quarter of 2004.

In the case of the 760 NPA, permissive dialing of the new area code was previously scheduled to begin on October 21, 2000. Mandatory dialing was

scheduled to begin on April 14, 2001, and to end on July 21, 2001. As of May 2000, the NANPA reported that 133 NXX codes remained available for assignment. With the reductions in the monthly lottery for the 760 NPA down to three codes per month, remaining codes in the 760 NPA would last through the next 3-1/2 years.

In view of the measures either planned or already underway to make more efficient use of existing numbering resources in the 707 and 760 NPAs, it is in the public interest to defer the implementation schedules for geographic splits in these NPAs for the present time. Accordingly, we hereby modify D.99-07-017 and D.99-12-049 to defer the previously adopted implementation schedules for each of the approved split plans for the 707 and 760 NPAs, respectively. Pending a further determination of how existing numbering resources in these NPAs are being used and of how those resources can be used more efficiently, we shall make a subsequent assessment of the need for and timing of any subsequently required NPA relief in conformance with FCC requirements.

Carriers providing service in either the 707 or 760 NPA are directed to take any necessary actions to recognize the effects of the area code deferrals ordered by this decision. For example, any previously planned customer notices announcing the scheduled dates for implementation of the new area codes shall be suspended. By letter from the Commission's Executive Director to Pacific dated June 7, 2000, all carriers have already been granted an extension of time in which to provide customer notice concerning the new area codes previously scheduled for the 760 NPAs pending further Commission action. By today's decision, the extension granted by the Executive Director shall continue and shall also apply to the 707 NPA until further notice. Carriers serving the 707 and 760 NPAs shall promptly prepare and mail new notices to customers in those NPAs, informing them of the indefinite deferral of the previously scheduled area code

splits no later than 30 days from the effective date of this order. We deny the request of GTEC to permit carriers to have up 75 days to notify customers. GTEC seeks the additional time so that customer notices can be mailed as an insert to customer's bills. GTEC's normal billing cycle would require a minimum of 60-75 days (after the wording of the notice is approved). We shall not permit carriers to delay notifying customers.

In order to minimize any adverse impacts on customers that may otherwise undertake preparations for the new area code, it is imperative that notification of the deferral be issued as soon as possible. If necessary, carriers shall send the customer notice through a special separate mailing in order to meet the 30-day deadline. Carriers must also promptly take any necessary actions to reverse any switch translations that may have already been implemented for the 707 or 760 NPA splits to ensure that calls to those NPAs will be properly completed.

We find no basis to require an evidentiary hearing or similar proceedings as proposed by CCAC prior to modifying the Commission's decisions on the 707 and 760 NPA split plans as outlined above. The filing of comments in response to the ALJ ruling provided parties an adequate opportunity pursuant to Section 1708 to set forth the basis for any objections they have to the proposed deferral of the NPA split plans. It is unnecessary to expend the time and resources for an evidentiary hearing or other further proceedings in order to adopt the limited modifications of these decisions as ordered herein. The Commission initially adopted these decisions without first convening evidentiary hearings. Likewise, no evidentiary hearings are required to modify the decisions to permit a deferral of the NPA implementation schedules.

The Commission conducts many types of proceedings without evidentiary hearings. Often our investigations, as in this case, appropriately are

characterized as legislative in nature and in such instances, the California Supreme court has held that evidentiary hearings are not required. In *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292, petitioners claimed that tariff regulations adopted through the advice letter process violated their constitutional rights of due process because evidentiary hearings were not conducted before the proceeding was concluded. In deciding that the Commission had acted properly and that petitioners' rights had not been violated, the Court opined:

“Although in the past the commission has authorized the adoption of similar credit rules following public hearings (citation omitted), the rules here challenged were adopted pursuant to advice letters that set forth the justifications for the rules and that were approved without hearings by resolutions of the commission. The adoption of the rules this way did not violate due process and was authorized by the statutes and regulations governing the commission's procedures.

“In adopting rules governing service and fixing rates, a regulatory commission exercises legislative functions delegated to it and does not, in so doing, adjudicate vested interests or render quasi-judicial decisions which require a public hearing for affected ratepayers.” (*Id.*, at 292, emphasis added.)

Similarly, here, in modifying the subject decisions to defer the implementation schedules for the 707 and 760 NPAs without an evidentiary hearing, we properly exercise our quasi-legislative authority. All parties have been provided a fair opportunity to express their opinions and provide information to assist us in reaching the proper decision in the public interest through the filing of written comments. Thus, we find no basis to grant CCAC's request for evidentiary hearings or further proceedings prior to adopting the modifications to the 707 and 760 NPA split plan implementation schedules as adopted herein.

### **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 77.7 of the Rules of Practice and Procedure. Comments were filed on July 10, 2000. We have taken the comments into account in finalizing this order.

### **Findings of Fact**

1. Pursuant to D.99-07-027 and D.99-12-049, geographic split relief plans were approved by the Commission for the 760 and 707 NPAs, respectively.

2. Under the adopted implementation schedule, permissive dialing of the new area code for Phase 1 of the 707 NPA relief plan is currently scheduled to begin on December 2, 2000, with mandatory dialing to begin on June 2, 2001 and to end on September 8, 2001.

3. In the case of the 760 NPA, permissive dialing of the new area code is currently scheduled to begin on October 21, 2000. Mandatory dialing is scheduled to begin on April 14, 2001, and to end on July 21, 2001.

4. By FCC Order dated September 15, 1999, the Commission was granted additional delegated authority to implement various number conservation measures intended to extend the life of existing NPAs while deferring the need to create new area codes.

5. The implementation schedules for the 707 and 760 NPA relief plans were adopted based upon industry forecasts of code exhaustion that did not take into account the actual use of numbering resources in those NPAs or number conservation measures pursuant to the FCC delegated authority.

6. If the currently adopted implementation schedules for the 707 and 760 NPA geographic splits are not deferred, the new area codes would go into effect before the potential for number conservation measures could be used to extend the lives of the existing NPAs.

7. Sufficient time exists to provide an opportunity to determine the need for additional NPAs and the impact on the life of the 707 and 760 NPAs of more efficient numbering resource utilization without triggering NXX code exhaustion.

### **Conclusions of Law**

1. Particularly in view of the proliferation of new area codes in recent years, the need for adding new area codes should be assessed and the potential for using all available number conservation measures should be explored to maximum advantage before assuming that another new area code is the only remedy available.

2. The currently adopted implementation schedules for the 707 and 760 NPA geographic splits should be deferred pending a further determination of the potential of available number conservation measures whether there is a need to implement new NPAs in those areas and assessment on the lives of the existing NPAs.

3. The filing of comments in response to the ALJ ruling provides parties an adequate opportunity pursuant to Section 1708 to set forth the basis for any objections they have to the proposed deferral of the NPA split plans without evidentiary hearings.

4. There is good cause for modifying D.99-07-017 and D.99-12-049 to reflect a deferral of the implementation schedule for the previously adopted NPA relief plans, as ordered below.

**O R D E R**

**IT IS ORDERED** that:

1. The previously adopted implementation for the 707 Number Plan Area (NPA) relief plan as adopted in D. 99-12-049 is hereby suspended.
2. Carriers are directed to suspend further activities to implement the 707 NPA relief plan and to reverse any applicable switch translations that have already occurred. Decision (D.) 99-12-049 is modified to reflect the suspension of the implementation schedule.
3. The previously adopted implementation for the 760 NPA relief plan as adopted in D.99-17-017 is hereby suspended.
4. Carriers are directed to suspend further activities to implement the 760 NPA relief plan, and to reverse any applicable switch translations that have already occurred. D.99-17-017 is modified to reflect the suspension of the implementation schedule.
5. Carriers serving the 707 and 760 NPAs shall promptly prepare and mail new notices to customers in those NPAs, but no later than 30 days from the effective date of this order, informing them of the indefinite deferral of the previously schedule area code splits. If necessary, carriers shall make a separate mailing to customers in order to meet the 30-day deadline.
6. A further assessment shall be made concerning the projected remaining life of the existing 707 NPAs after reviewing the code utilization data due from carriers on June 1, and after assessing the prospects for number pooling in the 57 rate centers that are LNP capable.

7. A further assessment shall be made concerning the projected remaining life of the existing 760 NPA after reviewing the code utilization data due from carriers on February 1, 2001, and after assessing the prospects for other available number conservation measures to extend the life of the existing NPA.

This order is effective today.

Dated July 20, 2000, at San Francisco, California.

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

I dissent.

/s/ JOSIAH L. NEEPER  
Commissioner

I will file a dissent.

/s/ HENRY M. DUQUE  
Commissioner

R.95-04-043/I.95-04-044

D.00-07-053

Commissioner Henry M. Duque, dissenting:

Today's decision of the majority orders a deferral of new area codes for the 760 and 707 number planning areas. We determined over a year ago that 760 required a split, and seven months ago that 707 required relief.

The actions that the majority takes today constitute unwise policy. The emerging numbering policies of this Commission's majority, which refuses to provide relief to those areas of the state needing telephone numbers, will foul the engines driving the California economy. In particular, California's information infrastructure requires phone numbers, and restricting their supply places regulatory uncertainty and delay in the path economic growth.

Finally, today's order of the majority constitutes a last minute change that will adversely affect small businesses and manufacturers, which have invested in advertising, letterheads, and other materials as part of their planning for this expected change in phone numbers. Businesses will never recover the sales lost through the confusion that our last minute change in policy causes.

For these reasons, I must respectfully dissent.

/s/ HENRY M. DUQUE

Henry M. Duque  
Commissioner

July 20, 2000

San Francisco