STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 15, 2005 Agenda ID #5108

TO: PARTIES OF RECORD IN RULEMAKING 95-04-043 AND INVESTIGATION 95-04-044

This is the draft decision of Administrative Law Judge (ALJ) Thomas Pulsifer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov/PUBLISHED/RULES PRAC PROC/44887.htm.. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:sid

Attachment

Decision **DRAFT DECISION OF ALJ PULSIFER** **(Mailed 11/15/2005)**

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)

OPINION ON PETITION FOR MODIFICATION

I. Introduction

By this decision, we address the Petition, filed on August 3, 2005, by Douglas F. Carlson, to Modify Decision (D.) 96-12-086. Specifically, Carlson seeks to modify the dialing requirements in D.96-12-086 applicable to calls originating in, and destined to, telephone numbers in the geographic area served by an overlay. Under D.96-12-086, customers were required to dial the prefix "1" followed by the three-digit area code and seven-digit line number for all such calls (commonly referred to as 1+10-digit dialing).[1] Carlson seeks modification of

[1] The "1" preceding the 10 digits signals that the following three digits will be an area code rather than a central office prefix. For calls involving telephone numbers of some wireline carriers, their networks within California are currently configured to require that the "1" prefix be dialed preceding the 10 digits. The "1" prefix is not mandated by the Federal Communications Commission, but reflects the protocol currently used by the telecommunications industry within California. The networks for wireless carriers

Footnote continued on next page

D.96-12-086 to eliminate the requirement that the prefix "1" be dialed before the area code and seven-digit line number for calls within an overlay region. Carlson describes his proposed modification as 10-digit dialing (as opposed to 1+10-digit dialing). Carlson seeks to have this proposed modification incorporated into the implementation of the 310/424 area code overlay that was previously approved by D.05-08-040, as well as for prospective area code overlays within California.

Comments in support of Carlson's Petition were filed by the California Association of Competitive Telephone Companies (CALTEL). Comments in support were also filed by the Telephone Connection of Los Angeles and The Telephone Connection Local Services, LLC (collectively, TCLA). TCLA concurrently filed a motion to reopen the evidentiary record relating to the 1+10-digit overlay dialing requirement for areas subject to overlays. A response in opposition to the TCLA motion was filed jointly by Pacific Bell Telephone Company dba SBC California (SBC) and Verizon California Inc. (Verizon). A separate joint response in opposition to TCLA was filed by Verizon Wireless and T-Mobile.

We decline to adopt this proposed modification for purposes of the 310/424 overlay, but leave open the possibility of adopting the proposed modification for future overlays implemented within California. We provide for parties to file an additional round of comments on this issue, as outlined below

---

currently do not require that the prefix "1" be dialed preceding a 10-digit-dialed number. In the discussion in this decision, references to 10-digit dialing should be understood as recognizing the "1+" prefix for calls involving some wireline telephone numbers.

as a basis for rendering a final decision on the applicability of 10-digit dialing to future overlays.

II. Timeliness of Filing

Rule 47(d) requires a petition for modification to be filed within one year of the effective date of the decision proposed to be modified. Carlson's petition was filed over eight years after the issuance of D.96-12-086. Carlson argues, however, that his petition should be considered timely filed because the Commission is only now implementing the first overlay, as ordered for the 310 area code in D.05-08-040. In D.01-11-043, the Commission directed that "decisions regarding 10-digit dialing should be made in the context of the circumstances that exist at the time an overlay is implemented." (D.01-11-043 at 9.) Carlson thus argues that his petition for modification relating to 10-digit dialing is timely filed in view of the currently pending implementation of the 310/424 area code overlay.

In view of our previous directive in D.01-11-043 that decisions regarding the 10-digit dialing issue should be made in the context of circumstances that exist at the time that an overlay is implemented, we shall accept Carlson's Petition as timely filed, and resolve it on the merits of the issues raised therein.

III. TCLA Motion to Augment the Record

In support of the Carlson Petition for Modification, TCLA filed a motion to reopen the record in order for the Commission to receive the following additional materials:

1. A North American Numbering Plan Administration (NANPA) Report showing that the majority of Numbering Plan Areas (NPAs or area codes) subject to overlays in North America utilize 10-digit dialing.

2. A Declaration of Scott Sarem, Vice President of Strategic Relations at Mpower Communication Corp., stating that Mpower's switching equipment allows for the use of 10-digit dialing within the 310 NPA.

3. A Declaration of Marc O'Krent, President of TCLA, regarding customer perceptions about 1+10-digit dialing.

SBC and Verizon argue that TCLA's motion is procedurally flawed in failing to articulate a legal standard by which to measure the merits of the motion. SBC and Verizon argue that the legal standard normally used to reopen an evidentiary record is the discovery of new evidence that could not be offered during the proceeding. By contrast, they argue, the additional materials that TCLA seeks to introduce are not "newly discovered" and could have been presented during the course of this proceeding.

Verizon Wireless and T-Mobile likewise oppose the TCLA motion to reopen the record. TCLA characterizes its motion as seeking to "reopen" the evidentiary record to receive evidence regarding the 10-digit dialing issue. A "reopening" of the record, however, implies that the record has been "closed." Although the Commission has issued D.05-08-040 implementing the 310/424 area code overlay, the underlying proceeding R.95-04-043 in which statewide area code issues are addressed remains open. Moreover, the Carlson Petition addresses 10-digit dialing on a statewide basis even though the immediate focus of the Petition is on the 310/424 area code overlay currently being implemented. Thus, the Commission decision on the 310/424 overlay did not close the record or preclude consideration of additional evidence relating to generic statewide dialing policies.

We therefore interpret TCLA's intent as seeking to augment the open record in R.95-04-043 rather than to "reopen" a closed record. Interpreted in this

manner, we grant TCLA's motion. There is no need, however, for a ruling formally "admitting" the TCLA attachments into the record under technical rules of evidence. There were no evidentiary hearings or separately marked exhibits underlying D.05-08-040 in which the 310/424 overlay was adopted. More generally, rulemaking issues relating to numbering and area code relief matters have routinely been addressed through written comments without formal hearings. The Commission relied only upon written comments filed by parties as the basis for D.96-12-086, as well as for D.05-08-040. Likewise, since the materials that TCLA seeks to add to the record are attached to the TCLA motion, those materials are already incorporated as part of those comments which are in the formal file in R.95-04-043.

Thus, we take into account the additional information presented in TCLA's attachments, as appropriate, in ruling upon Carlson's Petition to Modify. On a similar basis, we shall also consider countervailing statements made in the pleadings of SBC and Verizon concerning technical and consumer-related issues that would be involved in converting switches from 1+10-digit dialing to 10-digit dialing. We also take into consideration comments made by Verizon Wireless, Nextel of California, Inc., Sprint, Cingular Wireless, and T-Mobile.

IV. Parties' Positions

Carlson's general recommendation is for the Commission to modify D.96-12-086 to eliminate the 1+10-digit dialing requirement prospectively for all overlays on a statewide basis. Alternatively, Carlson proposes that the Commission could limit the applicability of the 10-digit dialing requirement only to the current 310/424 area code overlay, and then evaluate the results before applying the policy more broadly to future area code overlays.

In support of his Petition, Carlson claims that no technical or legal barriers exist in implementing 10-digit dialing (rather than 1+10-digit dialing) for calls originating from and destined to telephone numbers within the geographic area served by an overlay. Carlson argues that customers should have the option of dialing 1+10-digits for calls within the overlay region on a permissive basis, but should also have the option not to dial the "1" prefix.

CALTEL expresses general support for Carlson's Petition, but CALTEL is primarily interested in a Commission reevaluation of the statewide 1+10 digit dialing plan for calls initiated on wireline networks, at least insofar as it impedes the ability of any carrier to implement 10-digit versus 1+10-digit dialing in area code overlays. CALTEL claims that constraints with the 1+10-digit dialing only apply to wireline carriers' systems, but not to those of wireless carriers. As a result, CALTEL claims, dialing the prefix "1" is not technologically neutral, and no longer appears to be providing the dialing parity benefits that it was originally designed to ensure.

SBC, Verizon, Verizon Wireless, Nextel of California, Inc., Sprint, Cingular Wireless, and T-Mobile claims that there is no time left to address the 1+10 digit issue for the 310/424 overlay, and that to do so would unreasonably delay implementation of the urgently needed area code change in the 310 NPA. However, they did not provide any evidence supporting this claim. None of them provided actual data or estimates of time, activities, and resources supporting this claimed delay if the prefix "1" was removed. SBC and Verizon further claim that the proposed transition to 10-digit dialing would lead to customer confusion because customers are already accustomed to dialing a "1" preceding calls requiring the area code and seven-digit line number. They also assert that there are technical impediments to transitioning from 1+10-digit to

only 10-digit dialing. Yet, they did not provide any evidence supporting the existence of these technical impediments.

V. Discussion

Although Carlson claims that the added burden of dialing the "1" is the primary reason why the public objects to overlays, he offers no factual support for his contention. Carlson also ignores other characteristics of an overlay other than dialing the prefix "1," that could have an equal or greater impact on public reaction. For example, irrespective of whether the "1" is dialed, the area code and seven-digit line number must be dialed between and within area codes in the region subject to an overlay. With a geographic split, by contrast, only seven-digit dialing is required for calls within the same area code region. The public therefore must give up seven-digit dialing with an overlay irrespective of whether an extra "1" is to be dialed along with the area code. Also, with an overlay, the public cannot readily identify the affected geographic region with a unique area code. Moreover, customers may object to being assigned a new overlay area code because it may be less recognizable or associated with a less desirable geographic region than would be true with the original area code. By not addressing the extent to which such factors may provide more significant reasons for public objection to an overlay, Carlson fails to show that the dialing of a "1" preceding the area code is the primary reason for public objection to an overlay.

Similarly, the Declaration of Marc O'Krent, attached to the TCLA motion, provides no persuasive evidence that the additional dialing of the prefix "1" is the primary reason that customers object to an overlay. O'Krent merely indicates that customers expressed concerns about the 1+10-digit dialing requirement during the previous attempt of an overlay in 1999. Yet, as noted above, the

overlay meant the loss of seven-digit dialing irrespective of whether or not an additional "1+" was needed to be dialed. Thus, the additional burden of dialing an area code before every number was also a reason for customers to object to an overlay, irrespective of whether the "1+" dialing the prefix "1" was also needed.

In addition, O'Krent claims that there is a customer perception that dialing a "1" indicates that the customer is making a call outside the geographic area. Yet, it is not just the dialing of the prefix "1," but also the dialing of a different area code that traditionally has signaled to a customer that the call is being made to a number outside the originating caller's local geographic area.[2] With an overlay, therefore, customers will need to learn new rules for dialing irrespective of whether the prefix "1" is needed as do customers who find themselves on the boundary of a new area code split.

For this reason, the Commission implemented a Public Education Program to make sure customers understand that the dialing of an overlay area code does not mean that a different geographic area is being called. Likewise, the Public Education Program will educate customers that calls within or between telephone numbers with the 310 and 424 area codes, preceded by a "1," still remain within a single geographic region. Thus, neither the Carlson Petition nor the O'Krent Declaration support a conclusion that "1+10-digit" dialing (as opposed to 10-digit dialing) is the primary reason for customer objections to overlays. Accordingly, we are not persuaded that mere elimination of the prefix "1,"would significantly affect customer opposition to overlays or confusion

[2] Of course, customers who live near an existing area code boundary have learned through experience that dialing into another area code does not necessarily equate to dialing outside the customer's local calling area.

about their dialing pattern. In any event, a Public Education Program would still be necessary to facilitate understanding and acceptance of the overlay.

Carlson further argues that, 10-digit dialing (i.e., a three-digit area code plus a seven-digit line number) is more logical and intuitive than 1+10-digit dialing because 10-digit dialing only necessitates the customer to dial the actual telephone number. Carlson argues that dialing the extra "1" preceding the 10 digits, by contrast, may be associated in customers' minds with calls to other area codes and long distance calls. To the extent that Carlson is correct in claiming that customers associate the dialing of a "1" with calls to another area code, callers with telephone numbers with the 310 area code dialing telephone numbers with the 424 area code would expect to dial a "1." Yet, under Carlson's proposed modification, customers with a 310 area code would dial numbers with the 424 area code without dialing a "1." Therefore, eliminating the need to dial the prefix "1" would be counterintuitive and contradictory to the familiar dialing pattern in California. With regards to the claim that customers associate dialing the prefix "1" with long distance calls, this does not apply to California since dialing the prefix "1" coincides with dialing into foreign NPAs, not making toll or long distance calls.

Thus, Carlson's proposed modification would introduce an added layer of complexity into customers' adjustment to the new 310/424 area code overlay. Customers would have to figure out whether dialing the prefix "1" is required depending on the location of the area code being called. If "the called area code" is within the geographic region of the overlay, then the prefix "1" does not have to be dialed. However, if the "called area code" was beyond the overlay region, then it does. Therefore, Carlson's proposed modification would require

customers to sort out alternative rules for dialing area codes depending on the "called area code's" geographic location.

Carlson also argues that customers may object to a "1+" dialing requirement because it would be perceived as a "regulatory requirement." The implication of this argument appears to be that customers would view the "1+" requirement as a regulation without any intrinsic purpose. To the extent that customers may have a negative perception about dialing patterns associated with the overlay, the proper vehicle to address this concern is through the Public Education Plan that was authorized in D.05-08-040.

Carlson also claims that 10-digit dialing, not 1+10-digit dialing, is required in nearly every other state that has implemented an overlay. Carlson argues that the Commission can reasonably infer from policies in other states that customers derive a benefit from, and prefer, dialing 10 digits, rather than 1+10-digits. TCLA provided as Attachment A to its motion, a North American Numbering Plan Administration (NANPA) Report showing that the majority of NPAs subject to overlays in North America utilize 10-digit dialing. The Report indicates that 67 out of 74 affected NPAs require only 10-digit dialing.

While we acknowledge the prevalence of 10-digit dialing in the majority of other states where overlays have been implemented, that fact does not, of itself, dictate, which dialing pattern is appropriate for California. Carlson presents no comparison of whether, or to what extent, the circumstances that led to 10-digit dialing in other states apply in California. Without such a comparison, we have no basis to infer that mandatory dialing policies adopted in other states necessarily warrant adoption in California. The specific effects within California of modifying the 1+10-digit dialing must also be considered.

Carlson further argues that requiring only 10-digit dialing (with the option of dialing 1+10-digits on a permissive basis) in California would help to standardize dialing patterns in areas subject to overlays, thereby helping to reduce customer confusion. Within California, however, consumers are already accustomed to 1+10 digit dialing. The Public Education Plan (PEP), with instructions about 1+10-digit dialing has been developed and we anticipate that it will be timely implemented for the 310/424 area code overlay. Thus, it could potentially create more, not less, confusion for customers within an overlay region to start changing the dialing pattern, as already explained by the PEP.

Carlson claims that there are no technical obstacles to implementing 10-digit dialing within the geographic region covered by an overlay. In making this claim, however, he ignores any technical issues that would be involved if affected carriers were required to reprogram existing switches to accommodate his proposal.

The filings by TCLA and CALTEL indicate that at least some carriers would be able to implement 10-digit dialing without any significant technical implementation issues. SBC and Verizon claim that the conversion to 10-digit dialing would pose additional technical issues for them during the overlay implementation. In comments on the Carlson Petition, CALTEL notes that the "1+" dialing constraints only affect wireline carriers, but not wireless carriers. Thus, CALTEL argues that the "1+" dialing plan, no longer appears to be providing the dialing parity benefits that it was originally designed to ensure. Moreover, TCLA attached the Declaration of Scott Sarem stating that the switching equipment of MPower allows its customers within a geographic area served by an NPA to place calls to other numbers within the same geographic

area, using 10-digit dialing with no additional switch programming required (except to eliminate seven-digit dialing), and with no post-dial delay.

SBC and Verizon indicated that they have a number of switches in the 310 area code that would require significant time and resources to implement the required translations to accommodate 10-digit dialing. However, SBC and Verizon did not provide any evidence of the actual number of switches in the 310 area code that would require the translations. They also did not support with evidence the claim that the translations would need significant time and resources to complete. Without this type of evidence, there can be no conclusion that the required translations to accommodate 10-digit dialing would actually require significant time and resources.

As stated in D.99-09-067, the need for customers in California to dial the prefix "1" before an area code is a function of the manner in which incumbent local exchange carriers (ILECs) programmed their networks when the industry had to begin using area codes without a "0" or "1" as the middle digit. The prefix "1" needs to be dialed before an area code is dialed to address the existence of "conflict codes" (i.e., area codes and prefix codes assigned the same digits). To resolve these conflicts without requiring, the dialing the prefix "1," the ILECs contend, mandatory 1+dialing, a call timing delay of four to eight seconds would have to be programmed into the affected switches to allow the completion of the call during the Permissive Dialing Period. SBC and Verizon express concern that the claimed call timing delay would add to the reprogramming already required for calls to accept 10-digit dialing, and could increase system busy times, thus creating additional cost and potential customer confusion. However, SBC and Verzion did not provide factual support of the

extent of the increase in system busy times, added cost, and potential customer confusion.

In summary, we conclude that a modification of the 1+10-digit dialing pattern specifically for the 310/424 area code overlay has not been shown to be warranted. The risk of prolonging the implementation of the 310/424 area code overlay and creating more customer confusion during the implementation phase prevails over the potential advantages identified by Carlson. In addition, Carlson presents no analysis of the impacts that his proposal would have on customers of carriers required to make switch translations, particularly within the shortened time frame within which the 310/424 area code overlay is to be implemented.

Moreover, aside from the immediate concerns of the 310/424 area code overlay, we are not persuaded, based on the current state of the record, that carriers should be required at this time to incur the costs due to implementing 10-digit dialing for possible future overlays. We shall solicit an additional round of concurrent comments as to whether changes in the statewide dialing pattern should be modified for any subsequent, proposed area code overlays in California. Such comments shall be due 20 working days from the effective date of this order and shall provide more detailed and documented support for claims made. We shall issue a final decision on Carlson's Petition for Modification with respect to future overlays other than the 310/424 overlay in a subsequent order.

VI. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Thomas R. Pulsifer is the assigned ALJ in this proceeding.

VII. Comments on Draft Decision

The draft decision of ALJ Thomas Pulsifer in this matter was mailed to parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. In D.96-12-086, customers were required to dial the prefix "1" followed by the three-digit area code and seven-digit line number for all calls within an overlay region (referred to as 1+10-digit dialing).

2. Douglas Carlson's Petition for Modification of D.96-12-086 seeks to eliminate the necessity to dial the prefix "1" before the area code and line number for calls within an overlay region (referred to as 10-digit dialing).

3. Carlson seeks to have the proposed modification at least adopted for the implementation of the 310/424 area code overlay approved by D.05-08-040, even if not adopted prospectively at this time for all future overlays.

4. Because of the manner in which switches are programmed, currently at least some wireline carriers' systems need 1+10-digit dialing for all calls within an overlay region. Although wireless carriers' systems are not equally subject to such technical constraints.

5. The need for customers in California to dial the prefix "1" before an area code is a function of the manner in which ILECs programmed their networks when the industry began using area codes without a "0" or "1" as the middle digit. They decided that dialing the prefix "1" would be the preferred approach over experiencing a delay when making calls. Although, they never sought approval from the Commission to implement this approach.

6. Currently, the prefix "1" needs to be dialed to deal with the number of "conflict codes" (i.e., area codes and prefix codes assigned the same digits).

7. To resolve the issue brought on by conflict codes without mandatory 1+dialing, a call timing delay of four to eight seconds may have to be programmed into affected switches to allow the completion of dialing during the Permissive Dialing Period.

8. The additional switch reprogramming required to implement 10-digit dialing may increase system busy times for calls to affected numbers, thus creating additional cost and potential customer confusion.

9. There is insufficient time left to implement changes in the dialing pattern, 1+10-digit requirements for the 310/424 overlay without unreasonably risking delay or disruption in implementation of area code relief in the 310 NPA.

10. Forced modification of switches to eliminate the prefix "1" requirement could create more problems than it solves, particularly in the 310/424 area code overlay.

11. Carlson's proposed modification would introduce an added complexity into customers' adjustment to the new 310/424 area code overlay since customers would have to figure out whether dialing the prefix "1" dialing is needed depending on where the "called area code" is located.

12. Although 10-digit dialing is employed in the majority of other states where overlays have been implemented, that fact does not, of itself, dictate the dialing patterns for California.

13. Within California, customers are already accustomed to 1+10-digit dialing and the Public Education Plan, with instructions about 1+10-digit dialing, is in the process of implementation for the 310/424 area code overlay.

14. It could potentially create more, not less, confusion for customers within overlay region to start learning new dialing rules since the implementation of the Public Education Plan is already underway.

Conclusions of Law

1. In view of the previous directive in D.01-11-043 that decisions regarding the 10-digit dialing issue should be made in the context of circumstances at the time that an overlay is implemented, Carlson's Petition to Modify D.96-12-086 should be deemed timely filed.

2. The fact that the Commission has issued a decision on the 310/424 overlay does not preclude consideration of additional information relating to prospective statewide dialing pattern.

3. Although TCLA characterizes its motion as seeking to "reopen" the record to receive evidence regarding the 10-digit dialing issue, the record in R.95-04-043 regarding area code policy has not been "closed."

4. Although the Commission issued D.05-08-040 implementing the 310/424 area code overlay, the underlying proceeding in which statewide area code issues are addressed remains open.

5. The motion of TCLA should be granted to the extent it is interpreted as a request to consider the attachments to its motion in addressing the Carlson Petition for Modification as part of the ongoing proceeding in R.95-04-043.

6. The Petition of Douglas Carlson to modify the 1+10-digit dialing requirements has not been shown to be justified at this time. The request to implement 10-digit dialing for the 310-424 area code overlay should be denied, but further consideration should be given to adopting 10-digit dialing for future overlays.

O R D E R

IT IS ORDERED that:

1. The Petition of Douglas F. Carlson to modify Decision 96-12-086 is hereby denied in part, to the extent that it seeks to implement 10-digit dialing for the 310/424 overlay.

2. A final ruling on the petition to modify as it may apply to future overlays is deferred pending further review.

3. Comments shall be due 20 working days from the effective date of this order and shall provide more detailed and documented support for claims made. We shall issue a final decision on Carlson's Petition for Modification with respect to future overlays other than the 310/424 overlay in a subsequent order.

4. The Motion of TCLA is granted to the extent that the requested attachments shall be incorporated as part of the formal file and given appropriate weight in disposing of the Carlson Petition for Modification.

This order is effective today.

Dated _____, at San Francisco, California.