Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	NSD File No. L-97-42
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

RECEIVED
DEC - 9 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, N.W.
Suite 610
Washington, D.C. 20006
202-261-2000

December 9, 1998

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

Page

SUMMARY i

I. THE COMMISSION SHOULD RECONSIDER THE MEMORANDUM OPINION 2

II. THE COMMISSION SHOULD AUTHORIZE STATE COMMISSIONS TO ORDER CODE LOTTERIES AND OTHER CONSERVATION METHODS IN AN NPA ONCE THE STATE COMMISSION HAS COMMENCED THE NPA-RELIEF PROCESS 9

CONCLUSION 12

SUMMARY

In this Petition, MediaOne Group asks the Commission to reconsider its Memorandum Opinion and Order and Order on Reconsideration (Memorandum Opinion) in this proceeding. Though well intended, the Memorandum Opinion will have detrimental effects on attempts to introduce local competition in areas facing shortages of central-office codes.

The Memorandum Opinion adopted rule changes that would grant state commissions the authority to implement code lotteries and other conservation methods only by industry consensus or when the state commission has in place a definite plan for area-code relief, with a date-certain for implementation. In California, where MediaOne began providing local service to residence customers in April, most of the industry supports a code lottery, but consensus on a specific plan is not possible. Moreover, the process required by California law to implement area-code relief precludes the Public Utilities Commission from settling on a specific relief plan until many months into the process – by which time all remaining codes will have disappeared, absent a code lottery. The Memorandum Opinion thus could effectively preclude California from ever having a lottery, resulting in chaos and a total absence of codes for new entrants.

In Massachusetts, where MediaOne began serving residence customers in September, the industry has reached consensus on a code lottery, which is thus unaffected by the Memorandum Opinion. The Massachusetts Department of Telecommunications and Energy has opened a docket to consider other code-conservation measures, which could help to ensure the supply of codes in the future. Under the Memorandum Opinion, however, any such measures must be voluntary, and thus practically ineffective. That could frustrate the plans of new entrants to grow their services.

Given these concerns, MediaOne believes the Commission should reconsider the Memorandum Opinion. We propose rules changes that would enable a state commission to implement a code lottery, or other code-conservation measures, once it has begun the area-code-relief process. To preclude foot-dragging, we suggest that the Commission require a state commission – as a prerequisite to code-conservation authority – to have on file with the Commission a timeline showing the processes required by its state laws to implement area-code relief, together with the time necessary to complete the various steps. If the relief process significantly lags behind the timeline, the Commission can take action.

We believe this proposal would give the state commissions the ability to manage code shortages, without affording them license to delay area-code relief.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717	)	NSD File No. L-97-42
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's rules,[1] MediaOne Group (MediaOne) petitions the Commission to reconsider its Memorandum Opinion and Order and Order on Reconsideration in this proceeding (Memorandum Opinion). As discussed in greater detail below, the changes in code administration wrought by the Memorandum Opinion seriously jeopardize the ability of MediaOne and other competitive local exchange carriers (CLECs) to compete. The Memorandum Opinion will especially hamper efforts to bring competition to the residence market.

The third-largest cable operator in the United States, MediaOne also offers facilities-based local exchange service to residential customers in the Atlanta, Boston, Los Angeles and

[1] 47 CFR §1.106.

Richmond areas and in Jacksonville and Pompano Beach, Florida. We intend to bring our service to consumers in additional cities in the coming months.

In two of MediaOne's service areas – Boston and Los Angeles – a chronic shortage of central office codes has led to the implementation of code "lotteries" to ration remaining codes until the regulatory commissions can implement Numbering Plan Area (NPA) relief, thereby making more codes available. The rulings adopted in the Memorandum Opinion could end the California lottery, which would lead to chaos and prevent MediaOne from receiving the numbers it needs to compete effectively. Though the Massachusetts lottery appears to comport with the requirements established in the Memorandum Opinion, those requirements will greatly limit the ability of the Massachusetts Department of Telecommunications and Energy to attempt innovative conservation methods that might help to forestall code exhaust situations.[2]

Because code shortages promise to be an ongoing problem for several years to come, state regulators must have the necessary tools to ensure the most efficient use of the available codes. We believe the Memorandum Opinion, though well-intended, goes too far in restricting the states' ability to manage code shortages, and for that reason, MediaOne asks the Commission to reconsider its rulings there.

I. THE COMMISSION SHOULD RECONSIDER THE MEMORANDUM OPINION.

The Memorandum Opinion arose from a series of orders adopted by the Pennsylvania Public Utility Commission adopting code lotteries and other conservation measures in several Pennsylvania NPAs.[3] Dissatisfied with those orders, several CMRS providers filed a petition

---

[2] The Massachusetts DTE has under way a proceeding to investigate code conservation techniques. Area Code Conservation, D.T.E. 98-38.

[3] See, Memorandum Opinion, ¶¶11-17.

asking the Commission to declare that the Pennsylvania PUC had no jurisdiction to implement these measures.[4]

The Commission agreed. Though it had delegated authority to the states to "resolve matters involving the introduction of new area codes,"[5] the Commission determined in the Memorandum Opinion that it had not delegated authority to the states to administer or allocate central office codes.[6] The Commission then delegated authority to the states to implement code-rationing measures "if the carriers operating in the area have been unable to reach consensus on a rationing plan [but] only if the state commission has decided on a specific form of area code relief . . . and has established an implementation date for that relief."[7]

Thus a state may implement code rationing only by industry consensus or after the state commission has in place a specific relief plan. California will not likely see either condition in time for code rationing to have meaningful effect.

The demand for telephone numbers has skyrocketed in California, driven by huge increases in the use of wireless services and the entry of new CLECs.[8] The impact of these developments on California number resources is exacerbated by the large number of rate centers there, particularly in the most populous areas of the State – the areas most attractive to competition. For example, the 213, 310 and 323 NPAs (greater Los Angeles) have 16, 20 and 13

---

[4] See, id., ¶1.

[5] Rules, section 51.219(a), 47 CFR §51.219(a).

[6] Memorandum Opinion, ¶23.

[7] Id., Appx. B, revised section 51.219(a).

[8] At last count, the California PUC had certificated 88 facilities-based CLECs.

rate centers, respectively. At present, a CLEC must have a separate central-office code for each rate center it serves. Thus, to serve the entire area encompassed by the 213, 310 and 323 NPAs, a CLEC would need 49 central-office codes.[9]

The shortage of central-office codes most dramatically impacts CLECs – such as MediaOne – who have elected to focus on the residence market. While business customers tend to cluster in a relatively few areas, residence customers are dispersed throughout the NPAs in which MediaOne provides service. To reach all of its target market with any effectiveness, MediaOne needs many central-office codes. Absent the lottery, all central-office codes will disappear, leaving MediaOne with no hope of obtaining any new codes. Yet, the California lottery will likely end, unless the Commission reconsiders the Memorandum Opinion.

The concept of conducting a lottery as a means of rationing central-office codes has broad industry support in California, but that support is not universal, and there is no consensus as to the precise contours of the plan. Thus the California PUC had to step in to resolve several issues: whether the lottery should be weighted to favor requests for initial codes over requests for growth codes; whether the lottery should have an "override" for carriers of last resort to ensure their ability to serve customers at all events; and whether the lottery should be weighted on the

[9] The California PUC has begun to investigate the possibility of consolidating rate centers as a means of conserving central-office codes. Re Commission's Own Motion Into Competition for Local Exchange Service, R.95-04-043 I.95-04-044 (Decision No. 98-08-037, August 6, 1998) The PUC there asked Pacific Bell and GTE-California to identify rate centers that could be consolidated with neighboring rate centers without serious impact. Pacific and GTE reported that they have no such rate centers. Rate-center consolidation – if it ever happens – is years away in California.

basis of a carrier's existing codes.[10] Absent that action, California could not have a lottery: the industry simply would not have reached consensus (let alone unanimity) on these issues.[11] But by taking this action, the California PUC may have put itself outside the scope of the Commission's delegation of authority to the states.

In a competitive environment, or (more significantly) in an environment where dominant incumbent providers face the threat of competition, industry providers will rarely, if ever, reach consensus on the means of rationing a scarce resource. The California experience confirms this. The Commission thus should not rely on industry consensus as the primary means – and certainly not the only means – of instituting effective code conservation.

In the absence of industry consensus, the revised rules permit a state commission to impose code rationing only if it has in place a firm plan (with an implementation date) for NPA relief. In California, the process for NPA relief is governed by statute, which requires a "telephone corporation" to give the PUC and its subscribers at least 24 months' notice of its intent to establish a new NPA.[12] Legislation set to take effect on January 1, 1999, will increase that notice period to 30 months. The new legislation requires all providers in the affected area to

---

[10] Interim Opinion, Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service, Decision 96-09-087 (CPUC September 20, 1996), Slip Op. at 20-25.

[11] Even if the Commission chooses not to reconsider the rule changes prescribed in the Memorandum Opinion, it should at least clarify what it means by "consensus," the term used in the revised rule. In the Memorandum Opinion itself, the Commission stated that the trigger for state authority is the industry's inability "to agree on a rationing plan" (Memorandum Opinion, ¶25), which could be read to require unanimity before the industry can implement a rationing plan. At least in California (and probably elsewhere) unanimous agreement to a rationing plan will never happen.

[12] Public Utilities Code §7930(a).

notify their customers, and the PUC staff must hold meetings with representatives of local jurisdictions and at least three meetings with the public. The California coordinator for area-code relief then submits its plan to the PUC; anyone may contest the plan. The PUC ultimately decides on a relief plan and an implementation date.

Under the rules established in the Memorandum Opinion, the act of prescribing a relief plan and an implementation date gives the PUC authority to impose a code-rationing plan. But the process prescribed by California law ensures that this act will not occur for many months – probably well over a year – after the coordinator has declared jeopardy status. Absent an effective code-rationing scheme, all central-office codes will be long gone by the time the PUC prescribes its plan. Yet, actual NPA relief may still be over a year away: the statute requires twelve months' notice to the general public, and to each affected subscriber, of the specific area covered by the new NPA (the new statute apparently permits the PUC to waive these notice requirements).

Given the procedures mandated by California law, the requirements of the Memorandum Opinion will produce long droughts in which no central-office codes are available.

The situation in Massachusetts is better, though still precarious. There, the industry has reached consensus on a lottery to ration codes in all four current NPAs; the lottery thus complies with the Commission's rules. The lottery alone, however, does not provide CLECs the ability to develop an effective long-range business plan for entering new communities because it does not guarantee a CLEC's ability to obtain the necessary codes.

Recognizing this, the Massachusetts DTE has initiated a proceeding to consider additional means of conserving central-office codes. It has before it an industry-consensus proposal for "thousands-block" number conservation methods. Under the Commission's rules, as

clarified in the Memorandum Opinion, the DTE can implement a code-conservation plan only if carrier participation is voluntary.[13] A voluntary rationing plan is likely to survive only until one or more carriers begin to feel the pinch of rationing. A short-term ability to increase the availability of numbers will provide a powerful incentive to carriers to "drop out," thus stymieing the effectiveness of the rationing plan.

The Common Carrier Bureau has initiated a proceeding to take comments on the report of the North American Numbering Council (NANC) concerning number optimization measures. That proceeding, and the report that gave rise to it, will provide the industry with an excellent opportunity to develop conservation techniques that will help to overcome the chronic problem of code shortages. But we are many months – perhaps years – from any relief on that account.

In the meantime, the Commission should encourage the states to attempt their own solutions. They might provide some measure of relief, and they will certainly provide a testing ground for conservation schemes. That experience will help to inform the Commission's subsequent decisions on the NANC recommendations.

Finally, we note that the requirements announced in the Memorandum Opinion will increase the pressure on CLECs to accept overlay NPAs, a result that will have a detrimental impact on competition, particularly in the residential market. Overlays are easier for the ILECs to implement than NPA splits or boundary re-alignments because the ILECs need not change their existing customers' NPA. CLECs believe, however, that overlays put them at a competitive disadvantage because a higher percentage of their lines will have a "strange" area code. To be sure, customers won from the ILEC can retain their existing numbers, but when they go to add an

[13] Memorandum Opinion, ¶27.

additional line, they will always face the prospect of a different area code for that line. Though the ILEC might also give them a different area code for their additional lines, the chances are significantly greater that the ILEC will have numbers available in the "real" area code.[14] Indeed, consumer research consistently shows a strong preference for NPA splits over overlays. Consumers do not want multiple NPAs for their home or business, and they prefer seven-digit local dialing, which they lose with an overlay.[15]

For these reasons, CLECs oppose overlays; not surprisingly, ILECs tend to favor them. Though we recognize that continued splits will eventually result in NPAs too small to split further, postponing the inevitable overlays will benefit competition, particularly in its early stages. Once a CLEC has established credibility in the market, it will be in a better position to market its "strange" telephone numbers.

Today, CLECs know they may have difficulty getting central-office codes in California and some other states, but they also know they at least have a chance of getting those codes through a lottery. If the lotteries go away, CLECs will face the prospect of getting no numbers until NPA relief is implemented. The demise of lotteries (and other state-sponsored conservation schemes) thus may leave the CLECs no choice but to accept overlays.

MediaOne endorses the Commission's attempt in the Memorandum Opinion to prompt more expeditious state action on NPA relief. As we have shown, however, perceived delays in

---

[14] The Commission's rules require as a prerequisite to the implementation of an overlay that all carriers have at least one central-office code in the "old" NPA. 47 CFR §52.19(c)(3)(iii) That helps, but it allows a CLEC only to serve one rate center with a code from the old NPA. In many states, that will cover only a relative handful of potential customers.

[15] In research recently conducted for MediaOne, consumers expressed a preference for splits by better than three to one.

resolving the issues around NPA relief may result not from inattention or a lack of will, but from the need to follow rather drawn-out processes required by state law. Moreover, we must bear in mind that NPA relief, no matter how it is implemented, always produces consumer disruption, inconvenience and aggravation, and it always impacts the development of competition. If the public is to have any confidence in the NPA-relief process, affected consumers and competitors must have the opportunity to participate in that process.

Thus the Commission should reconsider the Memorandum Opinion. Below, we set forth our view of the changes the Commission should order to its rules.

II. THE COMMISSION SHOULD AUTHORIZE STATE COMMISSIONS TO ORDER CODE LOTTERIES AND OTHER CONSERVATION METHODS IN AN NPA ONCE THE STATE COMMISSION HAS COMMENCED THE NPA-RELIEF PROCESS.

In the Memorandum Opinion, the Commission expressed the concern that state commissions might use conservation methods "as substitutes for area code relief or to avoid making difficult and potentially unpopular decisions on area code relief."[16] By requiring the states to adopt a relief plan before implementing code rationing, the Commission would preclude this sort of behavior. As we have shown, however, this requirement may actually cause more harm than good: statutory processes for NPA relief might deprive the state commission of any opportunity to implement rationing before all the codes are gone. It will thus have a detrimental impact on those seeking to bring competition to local telephone markets.

This is not to say, however, that the Commission's concern has no validity. Though code rationing may be essential in certain cases, it is a poor second to NPA relief, which must always

[16] Memorandum Opinion, ¶26.

remain the objective, once an NPA has gone into jeopardy status. We believe, however, that steps short of the adoption of a final relief plan can demonstrate sufficient commitment to the relief process to justify empowering the states to implement code rationing and other conservation methods.

Specifically, we propose the Commission authorize state commissions to implement code rationing and other conservation measures once they have commenced the NPA relief process. That authorization would continue in place so long as the state makes satisfactory progress toward completing that process. "Satisfactory progress" must be measured individually for each state in light of the specific requirements of its statutes. The Commission thus should require a state commission, as a prerequisite for code-conservation authority, to have on file with the Commission a timeline showing the required steps to effect NPA relief and the expected time to complete them. That would then provide a benchmark in any given case to assess that state commission's progress toward the ultimate goal of NPA relief. If a state's progress falls significantly behind its timeline, the Commission could step in to rectify the situation. In an egregious case, the Commission might go so far as to rescind, as to the offending state, the authority granted under section 52.19 of its rules.[17] We do not believe the Commission needs a reporting requirement to track a state's progress toward NPA relief, so long as affected carriers can complain to the Commission and obtain expeditious relief.

This proposal requires only that the states reduce to writing the milestones and timeframes involved in their particular NPA relief process, and then that they stick to those timeframes. The states most affected by code shortages surely have enough experience with

[17] 47 CFR §52.19.

NPA relief to determine with reasonable accuracy how long they will need for the various steps in the process. We do not think it necessary for the Commission to "approve" these submissions, but affected carriers should again have the ability to challenge them, if they believe the state commission has significantly misstated the timeframes for the process.

Once a state commission has submitted its milestones and timeframes, it would have the authority to order code rationing and other code-conservation measures in any NPA in which the commission has begun the relief process. It would retain that authority until relief has been implemented or the Commission determines to rescind the authority because of a lack of adequate progress. We believe this will provide adequate incentive to the state commissions not to drag their feet, but to step up to the difficult issues around NPA relief.

Attachment A to this Petition contains suggested rule modifications to effect this proposal.

CONCLUSION

In this Petition, MediaOne has demonstrated the unintended but serious detrimental effect on efforts to bring competition to local telephone markets that will flow from the Memorandum Opinion. We have proposed a solution that would enable the Commission to delegate significant authority to the states to implement code rationing and other conservation measures without giving them license to stall the process and delay NPA relief. For the reasons stated, the Commission should reconsider the Memorandum Opinion.

Respectfully submitted,

MEDIAONE GROUP, INC.

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Avenue, N.W.
Suite 610
Washington, D.C. 20006
202-261-2000

December 9, 1998

Attachment A

Revise paragraph (a) of section 52.19 (as amended by the Memorandum Opinion) as follows:

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes. State commissions may also order central office code rationing, or other code-conservation measures, in conjunction with area code relief decisions, if the carriers operating in the area have been unable to reach consensus on a rationing plan to extend the life of an area code, until implementation of relief,~~. A state commission may impose a central office code rationing plan only~~ and if the state commission: ~~has decided on a specific form of area code relief (*i.e.*, a split, overlay, or boundary realignment) and has established an implementation date for that relief.~~

(i) has on file with the Commission a statement of the specific processes it must undertake to effect area code relief consistent with applicable state statutes and rules, including significant milestones and timeframes for those milestones; and

(ii) has actually commenced the area code relief process for the area code in which the state commission proposes to impose a rationing plan.

The Commission may, as to any state, deny or rescind the authority granted in this paragraph if it determines that the state commission's filed statement (as described in subparagraph (i), above) significantly misstates the process, milestones or timeframes for area code relief, or that the state commission has significantly failed to meet the timeframes established in its filed statement.

DCDOCS: 138661.1 (2yzp01!.doc)

CERTIFICATE OF SERVICE

I, LeShawn M. Riley, hereby certify that on this 9th day of December, 1998, I caused copies of the foregoing "Petition for Reconsideration" to be delivered by hand to the following:

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Yog Varma
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W.
Washington, D.C. 20554

Jared Carlson
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 210-C
Washington, D.C. 20554

Jeanine Poltronieri
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

International Transcription Service
Federal Communications Commission
1231 20th Street, N.W.
Washington, D.C. 20037

LeShawn M. Riley

2yzy01!.doc