

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of) DOCKET NO. 941272-TL
numbering plan area relief for) ORDER NO. PSC-95-1331-FOF-TL
305 Area Code by BellSouth) ISSUED: November 1, 1995
Telecommunication, Inc. d/b/a)
Southern Bell Telephone and)
Telegraph Company)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER DISPOSING OF MOTION FOR RECONSIDERATION
FILED BY PAGENET

BY THE COMMISSION:

I. BACKGROUND

On December 12, 1994, BellSouth Telecommunications, Inc. d/b/a Southern Bell (Southern Bell or Company) filed a petition seeking review and approval of a plan to provide relief from the impending exhaustion of numbers available for assignment in the 305 area code. The petition requested review of five possible plans for relieving the 305 area code and a determination of the plan that would best serve the public interest. The plans initially proposed by Southern Bell for review are as follows: 1) Geographic Split; 2) New Growth Overlay; 3) Phase-In Overlay; 4) New Growth Overlay with Voluntary Assignment and 5) Geographic Split with Delayed Overlay.

We conducted service hearings in Miami and Ft. Lauderdale on April 24, 1995 to solicit public input as to the appropriate relief plan for the 305 area code. A final prehearing conference was held on May 3, 1995. The technical portion of the hearing was held on May 17, 1995. Each of the hearings and the prehearing conference were properly noticed.

By Order No. PSC-95-1048-FOF-TL, issued August 23, 1995, we determined that a geographic split along the Dade Broward line is the most appropriate plan to provide relief from the impending

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exhaustion of telephone numbers available for assignment in the 305 Area Code. Pursuant to Order No. 95-1048, all numbers in the new geographic area were converted to the 954 Area Code effective September 11, 1995. In accordance with the implementation of the permissive dialing schedule, persons seeking to call customers in the 954 Area Code may continue to dial such customers' old "305" numbers until March 1, 1996 for paging companies, August 1, 1996 for wireline customers and January 1, 1997 for cellular carriers.

On September 7, Paging Network, Inc. and Paging Network of Miami, Inc. (Pagenet) filed a Motion for Reconsideration of Order No. 95-1048. Petitions for Reconsideration were also filed by the Pompano Beach Chamber of Commerce and the Broward Economic Development Council, Inc. Responses to the requests for reconsideration were filed by Southern Bell, MCI Telecommunications Corporation (MCI), Florida Telecommunications Association, Inc. (FCTA), Sprint Communications Company Limited Partnership (Sprint), and Teleport Communications Group, Inc. (Teleport). Teleport's response simply adopted Sprint's response.

In addition to the Petitions for Reconsideration that were filed, a letter was filed with the Commission by Dr. Chacko P. Zachariah addressed to the Commissioners objecting to the implementation of the geographic split and alleging numerous violations of Chapters 364 and 350, Florida Statutes, as well as the Florida and United States Constitution. Numerous letters from various individuals as well as resolutions from several civic and governmental bodies expressing concern or opposing the geographic split were received by the Commission or various Commissioners individually. All the letters received by the Commission regarding the geographic split were from nonparties to this proceeding.

Motions for Reconsideration are governed by Rule 25-22.060, Florida Administrative Code. The purpose of a Motion for Reconsideration is to bring to the attention of the Commission some point which it overlooked or failed to consider when it rendered its Order in the first instance. It is not intended as a procedure for rearguing the whole case merely because the losing party disagrees with the decision. Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). See also Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981).

II. PAGENET'S MOTION FOR RECONSIDERATION

Pagenet timely filed a Motion for Reconsideration of Order No. 95-1048 on September 7, 1995. Pagenet argues that the phased implementation of the geographic split will unlawfully discriminate

against paging carriers and their subscribers. In support of its motion, Pagenet argues:

- 1) Because of the phased implementation, Pagenet's customers will be required to suffer mandatory 10 digit dialing between its newly assigned 954 numbers while customers of either the wireline or the cellular carriers retain 7 digit dialing;
- 2) 10 digit local dialing will be required for all pagers between March 1, 1996 and December 31, 1996, at which time there will be a flash reversion to 7 digit dialing for all carriers. Cellular carriers will not be subjected to a similar cycle of 7 to 10 digit dialing;
- 3) The mandatory dialing for pagers before wireline and cellular carriers will effectively result in a "take back" of the favored wireline and cellular carriers.

Because of the alleged dialing disparities, Pagenet argues that the discrimination against pagers will place pagers at a competitive disadvantage, will confuse and inconvenience the public and is contrary to the FCC's requirements that NPA administration be even handed and as technology neutral as possible. Based on the above, Pagenet asks that the Commission either direct that permissive 10-digit dialing be continued after implementation of the split in order to reduce the harm from the flash reversion of pagers from 10 to 7 digit dialing or, in the alternative, order implementation of an all service overlay.

Southern Bell responded to Pagenet's motion arguing that the motion totally fails to meet the well established legal standard for a motion for reconsideration. In support, Southern Bell argues that Pagenet does not question the decision to implement the geographic split, but simply declares that the implementation plan is improper or unlawful. Southern Bell argues that Pagenet fails to set forth any legal basis upon which the Commission could sustain Pagenet's conclusions, other than the cursory allegation that the implementation plan is clearly contrary to the Federal Communications Commission's requirements that NPA administration be as even handed and technology neutral as possible.

In addition, Southern Bell states that Pagenet's factual allegations regarding dialing disparities are simply incorrect. First, according to Southern Bell, all new NXX codes assigned in Broward County will be assigned as 954. Second, there will be no 10-digit dialing for local calls. All existing local calls will continue to be dialed on a 7-digit basis. 10-digit dialing will

only be necessary for interNPA ECS calls and this applies equally to all carriers. With respect to Pagenet's allegation that the implementation plan has a "take back" provision, Southern Bell states that this allegation is true only to the extent the 305 codes are withdrawn from the 954 area code and gradually made available for assignment in 305; but these codes would be equally available to all carriers seeking codes in the 305 area. Finally, Southern Bell argues that, while Pagenet's arguments are styled as a motion for reconsideration, the matters that Pagenet argues are premised on "factual allegations" that are not part of the Commission's Order and would need to be subject to an evidentiary proceeding before they could be considered.

Sprint/Teleport responded to Pagenet's motion arguing that Pagenet fails to set forth any specific fact allegedly overlooked by the Commission or to identify any mistake of law which would support Pagenet's alternative request for implementation of an all service overlay.

FCTA responded generally to all three requests for reconsideration arguing that the "Commission's Order [No. 95-1048] appropriately recognizes that the Commission's chief and primary function under Chapter 364 and its recent amendments is to promote competition in the local exchange market" and that the evidence in the record does not support a finding that an overlay plan would promote competition for local exchange telecommunications services. FCTA further argues that, while Pompano's and Broward Economic Development's concerns are understandable, the problems associated with reprogramming PBXs and completing international calls exist regardless of the area code relief plan that is chosen. FCTA did not specifically address Pagenet's arguments.

The bulk of Pagenet's request for reconsideration does not question or even address this Commission's decision to implement a geographic split. The motion is principally devoted to criticism of the staggered implementation of mandatory dialing on the basis that such disparate treatment between carriers is unreasonably discriminatory under federal law. We agree generally with Southern Bell's arguments in response to Pagenet. Pagenet's factual allegation of 7-digit versus 10-digit dialing disparities is incorrect. All existing local calls that are subject to 7-digit dialing will remain so after the implementation of the 954 area code. The only 10-digit dialing will be for ECS routes that are interNPA; this is true for all carriers. The only disparity between carriers is the staggered implementation of mandatory dialing. Pagers will be subject to mandatory dialing on March 1, 1996; wireline carriers will be next with mandatory dialing on

August 1, 1996; and cellular carriers will be subject to mandatory dialing on January 1, 1997.

The staggered implementation of mandatory dialing is necessitated by the shortage of codes available for assignment and the need to give as many persons as possible the longest permissive dialing period. The longer the permissive dialing period, the easier it will be for persons to effectuate any needed changes to accommodate the 954 area code. Because cellular carriers must convert each cellular phone to accommodate the change to a 954 area code, the longest permissive dialing period practicable is appropriate. Unlike cellular carriers, pagers do not need to change each individual "beeper." The vast bulk of affected persons are wireline customers. The staggered implementation of mandatory dialing strikes the most reasonable balance between the need to preserve even handed treatment for all carriers and the need for longer permissive dialing periods to accommodate needed changes. More importantly, the disparity that does exist will be temporary until mandatory dialing is in place for all customers on January 1, 1997. After that date, all carriers will be treated exactly the same again.

Pagenet's allegation that the staggered implementation of mandatory dialing somehow violates the principals of the FCC's order rejecting a service specific overlay for the Chicago area also appears incorrect. At issue in the FCC's decision was whether a permanent wireless-only overlay was permitted under the FCC's requirements that services not be unreasonably discriminatory. The issue of temporary disparate treatment in the implementation of NPA relief was not precluded by the FCC as unreasonable. Moreover, in examining Ameritech's proposed wireless overlay, the FCC contrasted Ameritech's proposal with a Pacific Bell proposal for an all service overlay for Los Angeles expressly noting that "wireless users will be the exclusive users of a new area code, but only on a transitional basis." In re Proposed 708 Relief Plan Order and 630 Numbering Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order IAD File No. 94-102 at ¶ 24, fn. 42 (Released January 23, 1995). (emphasis added). From the FCC's Order it appears that temporary disparate treatment during the implementation of area code relief plans is acceptable to the FCC. Since Pagenet has failed to identify any mistakes of law or fact or matter which the Commission overlooked or failed to consider in reaching its decision, we find it appropriate to deny Pagenet's Motion for Reconsideration.

Pagenet's alternative request to implement an overlay is not supported by any statement or even a bald allegation that the Commission overlooked or failed to consider any matter in reaching

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its decision. Accordingly, we find it appropriate to deny Pagenet's alternative request for reconsideration.

We note that although we have denied Pagenet's motion for reconsideration, we also deferred ruling on the requests for reconsideration filed by the Pompano Chamber of Commerce and the Broward Economic Development Council. Pursuant to Rule 25-22.060(c), Florida Administrative Code:

A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross motion for reconsideration of that order, . . .

Accordingly, the time for filing an appeal of our decision herein is tolled until we have disposed of the remaining pending motions for reconsideration. We will notify Pagenet by subsequent order of the disposition of the remaining motions.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. PSC-95-1048-FOF-TL filed by Paging Network, Inc. and Paging Network of Miami, Inc. is denied as set forth in the body of this Order. It is further

ORDERED that Pagenet's alternative request for reconsideration is denied as set forth in the body of this Order. It is further

ORDERED that, pursuant to Rule 25-22.060(c), Florida Administrative Code, Pagenet's time for filing an appeal is tolled pending disposition of the remaining motions for reconsideration. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 1st day of November, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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