

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	
)	Docket No. UT-991535
Area Code Relief for the 206, 253, 425)	
Number Plan Area Filed by Neustar, for)	JOINT CLEC COMMENTS ON
the Washington State Telecommunications)	ALLOCATING COSTS OF
Industry in the Form of an Overlay; and)	CONSUMER EDUCATION PLAN
Creation of the 564 Plan Area for All of)	
Western Washington)	
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Pursuant to the Notice of Opportunity to File Comments (February 16, 2001) dated January 31, 2001, in the above-referenced docket, Electric Lightwave, Inc., Focal Communications Corporation of Washington, Global Crossing Local Services, Inc., Pac-West Telecomm, Inc., and XO Washington, Inc. (collectively "Joint CLECs") provide the following Comments on the most appropriate method of allocating to service providers the costs of public education relating to the introduction of 10-digit dialing and the 564 overlay area code in western Washington.

DISCUSSION

The Commission should allocate the advertising costs of the Consumer Education Plan on a per-access line or access line equivalent basis. Consumer demand for telecommunications services that require number resources is the primary factor driving the need for NPA relief in western Washington, as well as the related education plan. Such demand is translated into the need for more NXX codes because of call rating and routing requirements that the industry established long ago. Consumers will be the primary beneficiaries of efforts to explain the changes necessary to make more codes

available, and spreading the costs of those efforts per access line more accurately reflects the underlying demand than assigning costs per NXX code.

In addition, the incumbent local exchange company (“ILEC”) requirements that competing local exchange companies (“CLECs”) obtain codes in each ILEC rate center in which they provide service both accelerates the drain of number resources and accounts for low utilization rates in many codes assigned to CLECs. Assessing costs on a per NXX code basis thus would require CLECs to bear financial responsibility for the costs of NPA relief that is disproportionate both to CLECs’ impact on NPA exhaust and relative market share. The ILECs, moreover, disproportionately benefit from a media advertising campaign because they serve the vast majority of consumers in western Washington. Accordingly, cost assessment per access line or equivalent would most accurately reflect the primary driver of the need for NPA relief, would be competitively neutral, would properly allocate the relative benefits of a media advertising campaign, and would be fully consistent with the other objectives the Commission has identified.

1. What method do you recommend for allocating to service providers the \$1.2 million cost of the advertising component of the Consumer Education Plan?

The Joint CLECs recommend that the Commission allocate the advertising costs of the Consumer Education Plan on an access line or access line equivalent basis.

a. Relationship to the factors causing the need for area code relief

The primary factor causing the need for area code relief is the increase in consumer demand for telecommunications services and the corresponding telephone numbers needed to provide those services. Telecommunications companies do not exist in a vacuum or use significant telephone number resources for their internal benefit.

Rather the industry's need for telephone number resources is driven by consumers, and the costs of educating consumers about changes resulting from NPA relief should be based, to the maximum extent possible, on the number of consumers each carrier serves. Allocating these costs on a per-access line or access line equivalent basis would bear the closest relationship to the consumer demand fueling the need for area code relief, as well as the consumer benefits.

Staff disagrees, contending that there are “more than enough telephone numbers available with the existing area codes,” and that NPA relief is driven by the need for NXX codes, which Staff believes should be the basis for the education cost allocation. To the extent Staff's factual assertions are accurate, any “blame” falls squarely on the industry – particularly the ILECs, which historically have dominated the industry and established the telephone numbering requirements giving rise to accelerated use of numbering resources. Carriers would not use codes but for the need to provide numbers within those codes to customers. Any discrepancy between the availability of codes and telephone numbers is the result of the way in which the ILECs established call rating and routing many years ago, not any desire on the part of individual carriers to obtain and underutilize NXX codes. The industry as a whole is responsible for the additional NXX codes that are required to meet customers' growing needs for telecommunications services. The underlying consumer demand, therefore, not inefficiencies in well-established industry standards, generates demand for number resources and should be the factor that determines each carrier's advertising cost allocation.

Even if the need for codes could be considered the driving force behind the need for NPA relief, CLECs with codes that have low utilization are not the parties responsible

for the need for such codes. Qwest Corporation (“Qwest”) and Verizon Northwest Incorporated (“Verizon”) both have required competitors to obtain NXX codes in each ILEC rate center to enable the ILECs more easily to determine what is a local call for intercarrier compensation and customer billing purposes. A CLEC thus may need only a few numbers within many of these NXX codes, but it must obtain entire codes if it is to offer service to customers within each local calling area, which may include multiple ILEC rate centers.

CLECs entering the market or expanding the geographic scope of their service offerings have no alternative to requesting an entire NXX code for a rate center in which the CLEC will have only a few customers. Qwest and Verizon refuse to port unassigned numbers or otherwise relieve CLECs of this requirement. Thus, while the CLEC is the carrier requesting multiple codes, the ILECs and the call rating and routing system they have established are the “cost causers” of the need for more rapid NPA relief by requiring that the CLECs obtain these codes. Again, cost assessment on a market share, rather than NXX code, basis more accurately reflects each carrier’s responsibility for the consumer demand driving the need for more telephone number resources.

b. Inclusion of all service providers in the allocation method

Cost allocation per access line or equivalent would include all service providers. Commission staff contends that such allocation would exclude companies that use telephone number resources that do not involve access lines, such as “paging services and possibly fax-to-Internet applications.” Such applications, however, represent a tiny percentage of the number resources used and could be accommodated, like wireless “access lines,” by using telephone numbers as an access line equivalent.

c. Competitive and technological neutrality

Cost allocation per access line or equivalent would be competitively and technologically neutral. Each carrier would pay for Consumer Education Plan advertising costs in proportion to the customers it serves. Allocation per NXX code, however, is not competitively neutral.¹ Carriers must recover their costs through the rates they charge their customers, and the advertising assessment for the Consumer Education Plan represents one more such cost. As previously discussed, CLECs must obtain NXX codes in each ILEC rate center in which they provide service, regardless of the extent to which those codes are likely to be used. Assessing costs per NXX code means that CLECs will pay higher costs per customer and per access line than the ILECs that imposed the requirement to obtain and maintain NXX codes with low levels of utilization. As a result, cost allocation by NXX code amounts to a competition tax paid by CLECs seeking to offer local service in as broad a geographic area as possible, rather than a competitively neutral sharing of costs.

d. Reliance on verified (as opposed to self-reported) data source

Assessment of consumer education plan advertising costs on an access line or equivalent basis would rely predominantly on verified (as opposed to self-reported) data sources, as Commission staff has observed. For those few carriers that use number resources without access lines or equivalents, the use of telephone numbers may involve some self-reporting, but the impact on the overall data and cost allocation should be negligible.

¹ Similarly, the FCC established competitively neutral contributions to the costs of number administration based on each carrier's end-user telecommunications revenues, not on the number of NXX codes each carrier is assigned. 47 C.F.R. § 52.17(a).

e. Reliance on data that is publicly available

The Joint CLECs agree that access line count data is considered proprietary and confidential, but the Commission generally makes cost and price determinations on the basis of proprietary data, including when establishing rates for services and facilities provided to consumers and to other carriers. Each carrier would know only its own assessment, which would not be sufficient information, standing alone, to determine other carriers' assessments or line counts. If necessary, the Commission could issue its standard protective order (if such an order has not already been issued), to permit qualified persons to ensure that the data and assessments are fair, accurate, and reasonable. The availability of these well-established safeguards should remove any concern with the use of the limited proprietary data necessary to make a cost assessment on a per access line or equivalent basis.

f. Other objectives – who benefits

The Commission in determining how to allocate the costs of the media advertising campaign should consider not just the factors giving rise to the need for NPA relief, but also the relative benefits that carriers and their customers will receive from that advertising. The purpose of such a campaign is to reach as many consumers as possible through television, radio, and print advertising that will accurately and efficiently provide them with the information they need to understand and adjust to the new overlay NPA and attendant 10 digit dialing. The beneficiaries are not just *consumers* who may disregard the bill inserts that the Commission also requires carriers to provide to their own customers, but include those *carriers* who serve the greatest number of consumers. Indeed, mass media, as the name implies, may be the only effective means of

communication available to carriers whose customers number in the tens and hundreds of thousands.

ILECs serve the vast majority of telecommunications consumers in western Washington. CLECs, on the other hand, serve only a small fraction of those consumers, and because the economics in this state dictate that CLECs predominantly serve business customers, most (if not all) consumers who use CLEC service also obtain residential or other service from an ILEC. CLECs continue to believe that they can sufficiently educate their customers without the need for media advertising, and that such advertising will have little, if any, additional benefit for their customers.² The Commission nevertheless has previously determined that media advertising is necessary and that all industry participants must share the costs of that advertising. To the extent that the Commission's position is that all consumers benefit equally from such advertising, the Commission should spread the costs among carriers in proportion to the number of consumers they serve. Similarly, to the extent carriers serving the largest number of consumers receive the greatest benefit from media advertising as a means of educating their customers, those carriers should bear the greatest proportion of its cost. Indeed, Qwest obviously believes it will benefit from this media campaign based on its willingness to pay the entire production costs of the advertising.³

² To the extent that the proposed media campaign addresses the Commission's specific concern with education of children and the elderly for whom bill inserts are insufficient, *See* Order Implementing Area Code Relief Plan at 5, Ordering Paragraph 2, CLECs' customers include few, if any, such consumers.

³ The Commission thus should ensure that all advertising is competitively neutral – or, at a minimum, should authorize all carriers to participate in the production process and review advertising prior to its publication to prevent Qwest from using this industry advertising campaign as a means of promoting Qwest's brand name or service offerings.

The number of access lines or access line equivalents a carrier serves is a more accurate approximation of the consumers the carrier serves than the number of NXX codes the carrier has been assigned. The Commission, therefore, should assign the costs of the media advertising campaign on a per access line or access line equivalent basis.

2. What method do you recommend for the collection and disbursement of the assessments ordered by the Commission?

The Joint CLECs would not object if the Commission partly accepts the offer of the Washington Independent Telephone Association (“WITA”). WITA would be an appropriate entity to be responsible for using collected funds to pay for the advertising costs detailed in the Consumer Education Plan as long as WITA maintains and provides for inspection of records of all transactions involving these funds. The Joint CLECs, however would have serious concerns if WITA were the entity to calculate each carrier’s share of the \$1.2 million in advertising costs the Commission has approved if those funds are to be collected on a per access line or access line equivalent basis. As discussed above, access line data is proprietary, and WITA members are carriers that are not entitled to unfettered access to other carriers’ confidential data. Even with the execution of a protective agreement, conflict of interest issues would arise if WITA were in the position of receiving such data from all other carriers and calculating its own members’ contributions, as well as other carriers’ assessments.

The Joint CLECs, therefore, propose that Commission staff receive the access line and access line equivalent data from all carriers that use number resources in western Washington. Staff would also calculate cost contribution per access line or access line equivalent and would notify each carrier of its individual assessment. Carriers would then provide a check to Staff, which Staff would deposit into an account from which

WITA alone would have the authority to withdraw funds. Thus only Staff would possess the proprietary data, would calculate each carrier's assessment, and would ensure that each carrier contributes its assessed share. Staff would also be able to facilitate resolution of any issues with respect to the accuracy and sufficiency of the data provided.

The Commission used Staff in a similar capacity in the most recent Qwest competitive classification proceedings, Docket No. UT-000883, where Staff collected competitively sensitive data from individual carriers and aggregated that data for use by the parties and the Commission. Staff also is responsible for ensuring that regulated telecommunications companies properly calculate and pay their annual fee each year. Accordingly, Staff is uniquely qualified and positioned to calculate and collect the advertising cost assessments using a per access line or equivalent allocation, while WITA would be responsible only for proper disbursement of the collected funds.

CONCLUSION

The Commission, therefore, should assess each carrier's contribution to the advertising costs of the Consumer Education Plan on a per access line or access line equivalent basis. Commission Staff should be responsible for calculating and collecting each carrier's assessment. WITA should then be responsible for proper disbursement (and accounting of the disbursement) of those funds for the purposes authorized by the Commission.

RESPECTFULLY SUBMITTED this 16th day of February, 2001.

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