

D.P.U. 97-90-A

Investigation by the Department of Public Utilities, on its own motion, into extension of the permissive-dialing period established in Area Code Relief, D.P.U. 96-61 (1997).

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I. INTRODUCTION

A. Background

On January 23, 1997, the Department of Public Utilities ("Department") issued its Order implementing a geographic split of the 617 and 508 area codes, creating two new area codes -- 781 and 978 -- in Eastern Massachusetts. Area Code Relief, D.P.U. 96-61 (1997); see also Area Code Relief, D.P.U. 96-61-A (Order on Reconsideration/Clarification) (1997) (collectively "Area Code Orders"). In the Area Code Orders, the Department also required the introduction of a new dialing method coincident with the new area codes, which required callers to dial 10 digits for inter-area code local calls, rather than 11 digits, which is the current practice.

The Area Code Orders directed New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic" or "Company") to implement the new area codes and the new dialing method by May 1, 1998, in accordance with the following schedule: (1) a three-month permissive-dialing period from September 1 to December 1, 1997, wherein callers would be connected to the called number regardless of whether the new or old area code is dialed; (2) a two-month conversion period to phase-in mandatory dialing in the Company's central offices; and (3) a three-month mandatory-dialing/announcement period from February 1 to May 1, 1998. During the mandatory-dialing/announcement period, calls would not be completed without dialing the correct area code, and callers would hear an announcement instructing them how to redial correctly.

B. Procedural History

On September 11, 1997, the Department, on its own motion, opened this docket to

investigate the merits of extending the permissive-dialing period. After notice duly issued, the Department conducted four public hearings at its Boston offices on September 22, October 29 and 30, and November 6, 1997.¹ The Attorney General of the Commonwealth ("Attorney General") intervened as a matter of right, pursuant to G.L. c. 12, § 11E. The Department granted intervenor status to AT&T Communications of New England, Inc. ("AT&T"); Bell Atlantic; MCI Telecommunications Corporation ("MCI"); New England Cable Television Association, Inc. ("NECTA"); Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One ("Cellular One"); Sprint Communications Company L.P. ("Sprint"); Wayne Alarm Systems, Inc., and American Alarm & Communications, Inc. ("Alarm Industry").

The Department received comments regarding extending the permissive-dialing period from the following parties: the Attorney General, Bell Atlantic, MCI, NECTA, and the Alarm Industry.

On October 2, 1997, the Department issued an Order extending the permissive-dialing period to January 1, 1998, and correspondingly reducing the mandatory-dialing/announcement period to two months, beginning March 1, 1998. Investigation re: Permissive Dialing, D.P.U. 97-90 (1997). The Department found that such a modification would ease the transition to new area codes for customers, with no appreciable harm to the implementation schedule. Id. at 6.

On October 10, 1997, the Department issued another notice, stating its intention to examine the merits of whether to allow callers the option of dialing either 10 or 11 digits to complete local calls between area codes ("10/11-digit dialing option"). In addition to those

¹ The transcripts from these hearings will be cited in this Order as follows: September 22 (Tr. 1); October 29 (Tr. 2); October 30 (Tr. 3); November 6 (Tr. 4).

parties already participating in this case, the Department granted Limited Participant status to S.A.S. Security Systems, Inc., InVision Telecom, Inc., and James Coates. On October 30, 1997, the Department held a hearing on this issue. Subsequently, the Department received comments from Bell Atlantic,² the Attorney General, MCI, NECTA, AT&T, and the Alarm Industry.

On October 29, 1997, the Alarm Industry made a motion to the Department to provide alarm companies with additional time to reprogram customer-monitoring equipment before the start of mandatory dialing. The Alarm Industry contends that the additional time to reprogram could be provided technically, with assistance from Bell Atlantic, or by further extending the permissive-dialing period until March 1, 1998 ("Motion")³ (Tr. 2, at 8). In response to the Motion, the Department received comments from Bell Atlantic, the Attorney General, NECTA, and MCI. On November 3, 1997, Bell Atlantic filed the testimony of Thomas J. DeSisto, executive director of state regulatory policy planning, concerning the technical solution discussed by the Alarm Industry in its Motion.

On November 5, 1997, Bell Atlantic and the Alarm Industry⁴ filed a Motion for Entry of

² On October 31, 1997, the Hearing Officer struck certain portions of Bell Atlantic's comments as unresponsive and beyond the scope of the inquiry. D.P.U. 97-90 (Hearing Officer Ruling Striking Certain Portions of the Comments Bell Atlantic Filed on October 30, 1997 (October 31, 1997)). On November 4, 1997, Bell Atlantic appealed this ruling to the Commission. On November 6, 1997, the Commission affirmed the Hearing Officer Ruling (Tr. 4, at 38).

³ For reasons discussed infra, this Motion is denied.

⁴ The Alarm Industry signatories to the Stipulation were Wayne Alarm Company, American Alarm & Communications, Inc., S.A.S. Security Systems, Inc., Sentry Protective Systems, Atlas Alarm Corporation, Boston Burglar Alarm Company, and Instant Signal & Alarm Company.

Order According to the Terms As Stipulated by the Parties ("Stipulation"), which requested that the Department extend the permissive-dialing period until February 1, 1998, and approve a "7/11" dialing plan⁵ (Stipulation at 2-3). No other parties signed the Stipulation.

In this Order, the Department addresses the Stipulation, a further extension of the permissive-dialing period, and the 10/11-digit dialing option.

II. STIPULATION

A. Description

The Stipulation proposes that the Department extend the permissive-dialing period for thirty days until February 1, 1998, and implement the 7/11 dialing plan.

B. Analysis and Findings

In assessing the reasonableness of an offer of settlement, the Department must review the entire record to ensure that the settlement is consistent with Department precedent and the public interest. See Massachusetts Electric Company, D.P.U. 96-25 (1997); Western Massachusetts Electric Company, D.P.U. 96-8-CC, at 6 (1996), citing Commonwealth Gas Company, D.P.U. 94-128 (1994); Barnstable Water Company, D.P.U. 91-189 (1992).

The Stipulation reached between Bell Atlantic and members of the Alarm Industry, while a constructive attempt to find a solution to the alarm companies' reprogramming predicament, is not consistent with Department precedent or the public interest. Specifically, the 7/11 dialing plan is outside the scope of this proceeding, as noticed. Moreover, it represents a change in the

⁵ The term 7/11 dialing describes a calling method where all calls within an area code can be completed on a 7-digit basis, and all calls between area codes can be completed on an 11 digit (1+10) basis, regardless of whether or not they are toll calls (Stipulation at 2).

Department's longstanding policy to assure that customers cannot inadvertently make toll calls.

See Interchangeable Numbering Plan Area ("INPA"), D.P.U. 93-45, at 11-14 (1993). Thus, the Stipulation is not consistent with Department precedent.

Furthermore, because consideration of a 7/11 dialing plan was not contemplated by the Department when we opened this investigation, it would be a violation of any interested persons' due process rights to adopt such a proposal without further proceedings. To avoid a violation of due process rights, the Department would need to conduct hearings on the 7/11 dialing plan and make a determination on its merits after a complete review of record evidence. Since full hearings were not conducted on the 7/11 dialing plan and there is insufficient record evidence on which to base a decision, we find that the Stipulation is contrary to the public interest. Therefore, because the Stipulation would create a dialing plan inconsistent with Department precedent and the public interest, the Stipulation is hereby denied.

III. STANDARD OF REVIEW IN CONSIDERING EXTENSION OF THE PERMISSIVE-DIALING PERIOD AND THE 10/11-DIGIT DIALING PLAN

The Department's authority to review the implementation methods for area code relief is provided by the Telecommunications Act of 1996 ("the Act"), 47 U.S.C. §§151 et seq. and the FCC's decision implementing the Act, Second Report and Order, CC Docket 96-98,

¶ 272. Specifically, § 251(e)(1) of the Act states that "the [FCC] shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States ... [and may] delegat[e] to State commissions or other entities all or any portion of such jurisdiction." The FCC has delegated its authority to implement new area codes to state commissions. Second Report and Order, CC Docket 96-98, ¶ 268 (August 8, 1996). The FCC

stated:

State commissions are uniquely positioned to understand local conditions and what effect area codes will have on those conditions. Each state's implementation method is, of course, subject to our guidelines for numbering administration

In that case, the FCC set forth specific guidelines that states must follow when implementing area code relief. Second Report and Order at ¶ 281. The guidelines provide that states should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another. Id.

Finally, the Department must review the issues under consideration in this Order in light of the standard set forth in G.L. c. 159, § 16. Under Section 16, the Department may order a common carrier to make changes in service when the Department finds such service to be "unjust, unreasonable, unsafe, improper, or inadequate." Before ordering changes, however, the Department must consider "the relative importance and necessity of the changes ... the financial ability of the carrier to comply with the requirements of the order and the effect of such other changes, if any, as may be deemed by the Department to be of equal or greater importance and necessity in the performance of the service which the carrier has professed to render to the public." G.L. c. 159, § 16.

IV. PERMISSIVE-DIALING PERIOD

A. Description

To prepare for the new area codes, alarm companies must reprogram automatic dialers in

customer-monitoring equipment with the new area codes by the end of the permissive-dialing period; otherwise, alarm signals will not be received by the alarm companies' central monitoring stations (Tr. 1, at 13, 18). The Alarm Industry testified that this could lead to a significant public safety risk (id. at 13-18, 29-30).

There are two proposed methods to accommodate the needs of the alarm companies. The first is a technical solution, referred to by the parties as a "carve-out," where a call from an alarm customer's automatic dialer to the alarm company's central monitoring station would be dialed using the old area code. The call would be re-routed around Bell Atlantic's mandatory-dialing/announcement function, and the call would be completed to the alarm company's central station (Exh. DPU-11, at 4-5).⁶

The other alternative is to extend the permissive-dialing period for all consumers to provide alarm companies with additional time to complete the reprogramming of customers' equipment.

B. Positions of the Parties

1. Alarm Industry

The Alarm Industry states that it needs an extension of the permissive-dialing period to reprogram its systems. The Alarm Industry states that it could complete the reprogramming work if the permissive-dialing period is extended until February 1, 1998 (Tr. 4, at 8).

2. Bell Atlantic

⁶ Bell Atlantic demonstrated that this solution could be technically unfeasible and cause harm to Bell Atlantic's network (Exh. DPU-11, at 5-6). The Alarm Industry agreed that this may not be a viable option (Tr. 2, at 14, 16, 19).

Bell Atlantic opposes any extension of the permissive-dialing period except in connection with adoption of the Stipulation (Tr. 4, at 15-17).

3. MCI

MCI does not oppose an extension of the permissive-dialing period as long as the May 1, 1998, date for availability of additional numbering resources remains intact (MCI Supplemental Comments at 5). MCI states that if the permissive-dialing period is extended, resulting in a corresponding reduction of time for the announcement period, the Department should require Bell Atlantic to provide additional consumer notification and education (id. at 6).

4. Attorney General

The Attorney General states that Bell Atlantic should be required to provide a list of the exchange codes and the total number of customers that would be affected by the proposed one-month reduction in the announcement period (Attorney General Reply Comments at 1). In addition, the Attorney General states that the Department should require additional notification procedures to mitigate customer confusion resulting from the proposed reduction in the announcement period (id.) Finally, the Attorney General recommends that the Department conduct further hearings to form record evidence regarding the issues raised by the Stipulation (id.).

5. NECTA

NECTA insists that any extension of the permissive-dialing period should be linked with a corresponding reduction of time to the announcement period, and that the Department must maintain the May 1, 1998 date for full implementation of the new area codes (NECTA Reply

Comments at 2).

C. Analysis and Findings

The Department agrees with the Alarm Industry that to minimize safety risks to the citizens of the Commonwealth, alarm companies must be allowed to complete the reprogramming of alarm customers' equipment by the start of mandatory dialing. Therefore, we find that in the interests of ensuring public safety, the Department should adopt additional measures to provide the Alarm Industry with sufficient time to complete the reprogramming effort.

The record demonstrates that the only viable solution to this public safety threat is for the Department to further extend the permissive-dialing period. Although the Alarm Industry requested a two-month extension, the record indicates that the alarm companies should be able to complete their reprogramming by February 1, 1998. In addition, the Department finds that the area code implementation schedule cannot support a two-month extension because of the risk of exhausting exchange codes and telephone numbers in Eastern Massachusetts by May 1, 1998. Also, the Department believes consumers need a sufficient announcement period to avoid confusion about the new area codes. Thus, in balancing the interest in ensuring public safety with the public's need for a reasonable mandatory-dialing/announcement period, the Department finds that extending the permissive-dialing period another month, until February 1, 1998, is appropriate. We correspondingly reduce the mandatory-dialing/announcement period to one month, to begin April 1, 1998.

Finally, to reduce the impact on consumers of a shortened announcement period, we direct Bell Atlantic to provide an expanded customer education program between January 1 and May 1,

1998. The customer education program shall be developed in conjunction with the Department's Consumer Division and the Attorney General, and shall be submitted to the Department for approval by December 15, 1997.

V. 10/11-DIGIT DIALING OPTION

A. Description

Since 1993, the method for dialing local calls to another area code required dialing 1+10 digits (Exh. DPU-1). In the Area Code Orders, Bell Atlantic was directed to implement, coincident with the new area codes, a change in the current dialing method. Area Code, D.P.U. 96-61, at 16-17, n.10 (1997). Specifically, instead of dialing 11 digits for inter-area code local calls, the Department required that callers begin dialing 10 digits. Id., citing INPA.⁷

To address customer confusion created by changing the area codes and the dialing method simultaneously, the Department in this proceeding proposed implementing a 10/11-digit dialing option wherein an inter-area code local call could be completed regardless of whether the customer dialed 10 or 11 digits.

B. Positions of the Parties

1. Attorney General

The Attorney General states that based on the fact that 134 of 261 Massachusetts exchanges will have local calling areas that cross the area code boundaries, mandatory 10-digit dialing would require consumers to change the way they currently dial local calls between area

⁷ The Department previously approved Bell Atlantic's request to delay implementation of 10-digit inter-area code local calling until a determination on the new area codes was made (see Exh. DPU-9, Att.).

codes (Tr. 3, at 8). The Attorney General adds, however, that the Department should conduct evidentiary hearings, and gather data and information concerning dialing preferences before determining which dialing plan is in the best interests of consumers (Tr. 3, at 9).

2. Alarm Industry

The Alarm Industry favors elimination of mandatory ten-digit local dialing, stating that elimination of that requirement reduces the possibility of misprogramming their equipment (Wayne Alarm Comments, November 6, 1997; Tr. 3, at 14). Specifically, the Alarm Industry cites the limitations on their central station computers for outgoing calls which automatically add the prefix "1" for calls made to another area code (Tr. 3, at 19-22, 26, 33). Moreover, it argues that the 10/11 digit dialing option would reduce customer confusion (id. at 21, 26, 33).

3. AT&T

AT&T argues that consumers are accustomed to the "1+" prefix when making toll calls, and that the Department's precedent constitutes appropriate public policy, and should not be abandoned (AT&T Comments at 6). AT&T also argues that changing to 10/11-digit dialing would lead to unnecessary confusion about what constitutes a toll call and that such confusion would have an anti-competitive effect (id. at 6-7). AT&T maintains that in the absence of intraLATA presubscription, the "1+" toll indicator serves the purpose of reminding the customer of the availability of toll providers other than Bell Atlantic (id.). Finally, AT&T recommends that the Department issue an explicit order barring Bell Atlantic from submitting any further requests for the elimination of the "1+" toll indicator for intra-area code calls unless and until permanent intraLATA presubscription has been fully implemented in Massachusetts (id. at 8).

4. NECTA

NECTA opposes the 10/11 dialing option, stating that it is inconsistent with previous Department Orders (NECTA Reply Comments at 3). NECTA contends that the record does not provide strong evidence of customer confusion arising from implementation of a new dialing method coincident with the introduction of new area codes (Id.). NECTA states however, that if the Department determines that the public safety issues or avoidance of consumer confusion require a limited change to the dialing method to provide the option of 10 or 11 digit dialing for local calls between area codes, the Department should reaffirm its policy of mandatory use of "1" as a toll indicator for all other calls (NECTA Reply Comments at 4). NECTA stresses that the Department reiterate that it is creating only a limited exception to the dialing method for inter-area code local calling to address compelling public safety issues or consumer confusion (id.).

5. Bell Atlantic

Bell Atlantic supports simplified dialing for inter-area code calls using the 10/11-digit dialing option (Exh. DPU-10, at 2).

6. MCI

MCI states that the option of dialing 10 or 11 digits for inter-area code calls blurs the distinction between local and toll calls and that such an option would result in customer confusion with respect to the rates customers must pay (MCI Comments at 1-3; MCI Reply Comments at 1; Exh. DPU-13). MCI also states that its ability to compete with Bell Atlantic would be adversely affected by the 10/11-digit dialing option as this option diminishes the value of the toll indicator

(id.). MCI notes that the 10/11-digit dialing option is contrary to the Department's precedent and argues that there is no basis for this change (MCI Comments at 1-2; MCI Reply Comments at 1; Exh. DPU-12). Finally, MCI contends that a change in Department policy cannot be made on an ad hoc basis without a full evidentiary record (MCI Comments at 2-3).

C. Analysis and Findings

In 1993, the Department adopted a policy that required dialing 10 digits for inter-area code local calls and "1+10" digits for toll calls. INPA, at 11-13. Specifically, we found that adopting "1" as a toll indicator would prove helpful to consumers in distinguishing between local and toll calls, and would alleviate the concerns of Bell Atlantic's competitors that the lack of a toll indicator would have an anti-competitive effect on the long distance market. Id. Bell Atlantic was given until 1996 to implement this policy. In December, 1995, Bell Atlantic requested an extension of time to implement 10-digit dialing because it anticipated the need for area code changes.⁸ This extension was granted. Thus, customers were able to continue dialing using 11 digits for inter-area code local calls.

The evidence shows that adding the new area codes, together with the switch to mandatory 10-digit dialing, could be very confusing to consumers. To minimize that confusion, the Department therefore finds that it is necessary and desirable to alter its previous directive regarding the implementation of 10-digit local dialing. The Department is now ordering the

⁸ In requesting this extension, Bell Atlantic stated: "Currently, '1+10' digit dialing for all (local and toll) inter-area code calls is the standard practice in the 413 and 508/617 area codes in Massachusetts. Customers are familiar with that dialing arrangement, which has been in full effect throughout the 508/617 area codes since the June/July 1993 timeframe and in other areas of the state for even longer." (Exh. DPU-9, Att. at 2 (Bell Atlantic Letter to DPU Requesting Extension, dated December 7, 1995)).

optional use of a 10 or 11-digit dialing method for inter-area code local calling. This optional method will permit continued use of the 11-digit dialing method for local calls between area codes. The 10/11 dialing will also allow the option of completing an inter-area code local call by dialing 10-digits.

We believe that this optional method will help alleviate consumer confusion caused by implementation of 10-digit dialing while consumers are also adjusting to the new area codes. The 10/11 dialing method is consistent with Department precedent of maintaining "1" as a toll indicator since "1" will continue to be required for all toll calls. Consumers also will retain the ability, if they so choose, to determine whether the call is a toll call by first dialing 10 digits to see if the call goes through.

Therefore, we direct Bell Atlantic to implement the optional 10/11-digit dialing for inter-area code local calls beginning February 1, 1998. In addition, to minimize customer confusion over this dialing method, the Department directs Bell Atlantic to include a proposal for expanded customer education and notification efforts on dialing methods in its December 15, 1997 filing to the Department.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts extend the permissive-dialing period to February 1, 1998, and revise the mandatory-dialing/announcement period to begin on April 1, 1998 and end on May 1, 1998; and it is

FURTHER ORDERED: That the October 29, 1997 Motion of American Alarm & Communications, Inc. and Wayne Alarm Systems, Inc. to extend the permissive-dialing period by 60 days, be and hereby is DENIED; and it is

FURTHER ORDERED: That the Motion for Approval of a Stipulation between the Alarm Industry and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, filed with the Department on November 5, 1997, be and hereby is DENIED; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall comply with all other directives herein.

By Order of the Department,

Janet Gail Besser, Acting Chair

John D. Patrone, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).