

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO THE ASSIGNMENT OF) ADMINISTRATIVE
ABBREVIATED N11 DIALING CODES) CASE NO. 343

O R D E R

INTRODUCTION

On September 8, 1992, Infodial, Inc. ("Infodial") filed a petition with the Commission seeking an order directing all Local Exchange Carriers ("LECs") to assign to Infodial an abbreviated N11 dialing code. On September 22 and 28, 1992, American Tele-Access, Inc. ("American") and Phoneformation, Inc. ("Phoneformation") filed similar petitions. All three companies are engaged in the business of providing information services. On October 14, 1992, the Commission consolidated the three petitions, initiated this proceeding to investigate issues surrounding the assignment of N11 dialing codes, and ordered Infodial to file certain information with the Commission. On November 16, 1992, Infodial responded to the Commission's October 14, 1992 Order and suggested that a hearing was necessary to enable the Commission to give full and accurate consideration to the issues involved in the assignment of N11 codes. Numerous parties requested and were granted intervention and a procedural schedule was adopted on January 12, 1993. A public hearing was held on July 8, 1993.

BACKGROUND

N11 service is a three-digit dialing arrangement and consists of the numbers 211 through 911, inclusive. The 411 and 911 numbers are traditionally used by LECs to provide services such as directory assistance and emergency service. In some cases 611 and 811 may also be used by LECs to provide services such as TDD and repair. As a result the quantity of N11 numbers available for assignment to other services including commercial ventures is severely limited.

On March 6, 1992, BellSouth Telecommunications, Inc. ("BellSouth"), in response to a request for assignment of a three-digit dialing arrangement, filed a petition asking the Federal Communications Commission ("FCC") for a declaration that the use of N11 codes to obtain access to local pay-per-call information services is consistent with the Communications Act and FCC policies. On May 6, 1992, a Notice of Proposed Rulemaking ("NPRM") was released by the FCC.¹ The NPRM tentatively concluded the FCC should adopt rules to govern the use of certain N11 codes and invited comments. At the same time the FCC's General Counsel informed BellSouth that no regulatory or legal impediment prohibited BellSouth from assigning N11 codes in a reasonable, nondiscriminatory manner. However, he cautioned that the assignment was subject to the FCC proceeding and that parties

¹ The Use of N11 Codes and Other 92-105 Abbreviated Dialing Arrangements, Notice of Proposed Rulemaking, CC Docket No. 92-105, 7FCCRCD10 (1992).

accepting number assignments would do so at their own risk. As a part of the NPRN, the FCC stated that 411 and 911 should continue to be reserved for directory assistance and emergency services; that 211, 311, 511, 711 should be available for commercial use; and that 611 and 811 should also be available where not otherwise assigned. Subsequently, BellSouth N11 tariff filings in Florida and Georgia were accepted on a trial basis to obtain information relating to practical experience with N11 service. Neither the FCC proceeding nor the trials have been completed at this time.

The petitions raise the following issues:

1. a. Does the Commission have jurisdiction over N11 dialing codes and therefore have authority to order LECs to allocate them?
 - b. If authority does exist, should the Commission proceed or hold the petitions in abeyance until the conclusion of the FCC's investigation?
2. If the Commission chooses to proceed, is allocation of N11 dialing codes in the public interest? The public interest issue is framed in the context of promoting competition in the telecommunications industry. Should scarce, public resources be available for private commercial ventures?
3. If found to be in the public interest, how should N11 dialing codes be allocated and should LECs be ordered or permitted to allocate N11 codes?

DISCUSSION

None of the parties to this proceeding dispute the opinion set forth by FCC counsel or the Commission's authority to order allocation of N11 dialing arrangements.²

The Commission finds that it has jurisdiction over the assignment of N11 dialing codes and based upon this finding will proceed to consider issues relating to allocation.

FCC Investigation

Infodial's witness testified that the Commission should not delay action until the FCC decides the issues in its rulemaking.

[t]he N11 Rulemaking is unlikely to render this proceeding moot. If the FCC adopts its rules as proposed and mandates the availability of N11 codes, then this proceeding still will be necessary in order to determine the terms and conditions under which they are offered for intrastate service. If the FCC adopts no rules, then this proceeding will be necessary in order to determine whether the Commission on its own authority should require LECs to offer N11 service.³

BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company ("South Central Bell") concurs but AT&T Communications of the South Central States, Inc. ("AT&T") recommends holding the petition in abeyance in order to avoid duplication of efforts by the parties.

Some overlapping of decisions made in this proceeding and those reached at the federal level may occur. However, it is clear that this proceeding and some of the issues presented here will

² NPRM, Supra.

³ Pre-filed Testimony of Richard S. Bell, at page 9.

have to be addressed regardless of the outcome of the FCC proceeding. Therefore, the Commission will proceed to consider other issues raised in this proceeding.

Public Interest Issues

There is a general consensus among the parties that N11 numbers are a scarce public resource, that alternative dialing arrangements currently allow information providers to make their services available to Kentucky consumers, that approval of Infodial's petition will result in demand exceeding supply, and that N11 dialing arrangements are easy to use and remember. However, this consensus is used to support the arguments of the parties in different ways.

Infodial asserts that N11 numbers will give consumers quick, easily remembered access and make it convenient for consumers to reach and use information services. Infodial submits that knowing how to obtain access to information is almost as important as the information itself. Consumers will easily remember that N11 means information.

However, Infodial does not concede that allocating N11 dialing codes to a few information providers will confer any competitive advantage on those entities receiving the numbers. The company urges the Commission to allocate the codes on a "first-come, first-serve" basis. While acknowledging that all allocation methods including "first-come, first-serve," lottery or auction, are subject to shortcomings, Infodial argues that its method would reward entities with the foresight to file petitions. Further,

Infodial finds alternative dialing arrangements for the provision of information services unsavory and expensive.

South Central Bell generally supports Infodial's petition but requests that the Commission authorize rather than mandate allocation of N11 codes. It also notes that N11 numbering will be expanded in approximately 2 to 3 years resulting in a significant increase in abbreviated dialing arrangements.

All companies opposing the petition agree that entities which do not receive abbreviated dialing codes will be competitively disadvantaged. Also, because N11 dialing codes are scarce, assigning the codes may deny the public potentially more useful applications of this resource. For instance, US Sprint Communications Company ("Sprint") comments that "the Commission is faced with the prospect of conferring a competitive advantage upon a few select companies thereby impeding rather than stimulating the development of a competitive information services market in Kentucky."⁴ AT&T opines that "the resulting unavailability of equally competitive dialing arrangements would present significant disincentives for entry by new competitors into the enhanced services market."⁵ MCI Telecommunications Corporation ("MCI") comments that "it would be an injudicious and unnecessary step to award scarce N11 codes while other marketable alternatives are

⁴ Sprint, written comments filed February 12, 1993, at page 3.

⁵ AT&T, Post-Hearing Brief, at page 3.

available."⁶ Finally, Cincinnati Bell Telephone Company ("CBT") states that "although Infodial casts its request in terms of satisfying the public interest, in reality the request is merely to permit Infodial to realize private gain, while at the same time allowing the dissipation of a scarce public resource."⁷

The Lexington Herald-Leader frames its position in the context of its own situation vis-a-vis the Louisville Courier-Journal. Some circulation areas of the two newspapers overlap and there is keen competition for subscribers. With regard to LECs, the Courier-Journal is headquartered in South Central Bell's territory and the Herald-Leader in GTE South Incorporated and Contel of Kentucky, Inc. d/b/a GTE Kentucky's ("GTE") territory. The Herald-Leader is concerned that the Courier-Journal might have an N11 number and it would not, thereby putting it at a competitive disadvantage in those overlapping circulation areas.

The National Center for Law and Deafness ("NCLD") and Telecommunications for the Deaf, Inc. ("TDI") also filed comments in opposition to the assignment of N11 dialing codes to commercial information service providers pending the outcome of the FCC ruling.⁸

N11 dialing arrangements are obviously easier to remember and easier to use than existing alternative dialing arrangements. Any

⁶ MCI, written comments filed February 11, 1993, at page 5.

⁷ CBT, written comments filed February 11, 1993, at page 3.

⁸ NCLD and TDI, written comments filed October 7, 1993.

customer wishing to obtain access to any service would choose to dial 3 digits in lieu of 7 or more. This clearly presents an opportunity for those few entities which receive an N11 dialing code to gain a significant competitive advantage. The Commission encourages information services such as those provided by information service providers. However, they are currently available to the citizens of Kentucky through alternative dialing arrangements. The Commission also supports the development of viable, sustainable competition in the information service market in Kentucky. In this case that means ensuring a level playing field so that the only impediment to the success of information service providers is their own ingenuity, not regulatory barriers to entry. Allocating N11 dialing codes will not provide the citizens of Kentucky with improved quality or quantity of service and in the long run will have a negative effect on the development of the information services market. Therefore, the Commission finds that allocation of N11 dialing codes is not in the best interests of Kentucky telephone users or information service providers.

N11 is a scarce public resource. It is used by LECs to provide valuable and in some instances, critical services to the public. It is not unreasonable to believe that public needs for N11 dialing codes will increase. Therefore it would not be prudent for the Commission to allow private enterprises to exhaust this scarce public asset for private interest.

Alternative dialing arrangements are currently available through which information service providers can offer their services. In the near future, new dialing plans will result in the availability of a plethora of new abbreviated dialing arrangements. Ordering the allocation of N11 dialing codes or allowing LECs to file tariffs offering the service are not in the public interest at this time.

IT IS HEREBY ORDERED that:

1. The petitions of Infodial, American, and Phoneformation requesting the Commission to order LECs to assign abbreviated N11 dialing codes are denied.
2. The provisions of this Order shall not be construed as authorization for LECs to offer N11 dialing codes as a tariffed service.

Done at Frankfort, Kentucky, this 5th day of November, 1993.

PUBLIC SERVICE COMMISSION

G. L. I. Duncanson
Chairman

Robert M. Davis
Vice Chairman

Judie K. Breathitt
Commissioner

ATTEST:

Susan Hutchison
Admin. Section Supervisor