

State of Florida



Public Service Commission
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COMMISSION CLERK

DATE: MAY 9, 2002
TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYO)
FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ILERI, CASEY) OFFICE OF THE GENERAL COUNSEL (L. FORDHAM)
RE: DOCKET NO. 010743-TL - PETITION FOR REVIEW OF PROPOSED NUMBERING PLAN RELIEF FOR THE 407/321 AREA CODES BY NEUSTAR, INC., AS NORTH AMERICAN NUMBERING PLAN ADMINISTRATOR (NANPA), ON BEHALF OF FLORIDA TELECOMMUNICATIONS INDUSTRY.
AGENDA: 5/21/02 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF
CRITICAL DATES: JULY 15, 2002 - THE NEW AREA CODE, 689, GOES INTO EFFECT
SPECIAL INSTRUCTIONS: THIS RECOMMENDATION SHOULD IMMEDIATELY PRECEDE THE PROCEDURAL RECOMMENDATION (010743B.RCM)
FILE NAME AND LOCATION: S:\PSC\CMP\WP\010743A.RCM

CASE BACKGROUND

On May 15, 2001, NeuStar, Inc, in its role as the North American Numbering Plan Administrator (NANPA), and acting on behalf of the Florida telecommunications industry (Industry), petitioned the Commission for approval of the Industry's consensus proposal to implement an all services distributed overlay relief plan for the 407/321 Numbering Plan Areas (NPAs).

On February 20, 2002, the Commission held public hearings in Orlando and Melbourne to receive input from customers in the affected areas. The witnesses who chose to address the Commission

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in the hearings favored the industry consensus recommendation, Alternative #3. On March 14, 2002, a technical hearing was conducted in Tallahassee. The Commission made a bench decision and approved staff's recommendation for the first three issues in this docket which addressed the area code alternatives, the dialing patterns, and the implementation date.

By Order No. PSC-02-0405-FOF-TL, issued March 25, 2002, the Commission ordered that an all services distributed overlay be implemented, a new NPA code¹ be assigned to the same geographic area as the existing 407/321 NPA, central office (CO) codes from the 321 NPA would no longer be assigned in the 407/321 overlay, and the remainder of the CO codes in the 321 NPA be reserved for use in the Brevard County area. The Commission also ordered the type of dialing patterns for Extended Area Service (EAS), Extended Calling Service (ECS) with and without Interexchange (IXC) competition, and toll calls. Furthermore, the Commission ordered that these changes be fully implemented on Monday, July 15, 2002. However, the Commission withheld making a decision on the remaining issues addressing the Osteen area of the Sanford rate center.

This recommendation addresses the remaining two issues in this docket.

JURISDICTION

This Commission has jurisdiction to address this matter pursuant to Section 364.01, Florida Statutes, and has been specifically authorized to address numbering issues pursuant to 47 U.S.C. §151 et. Seq., 47 C.F.R. §§ 52.3 and 52.19, FCC Order 99-249, FCC Order 00-104, and FCC Order 00-429. In accordance with 47 C.F.R. §§ 52.3:

The Commission (FCC) shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.

Furthermore, 47 C.F.R. § 52.19 provides, in part, that:

¹ On April 1, 2002, NeuStar, Inc., issued a news release stating that "689" will be the new NPA code.

(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 and notification efforts regarding area code changes.

(b) State commissions may perform any or all functions related to initiation and development of area code relief plans, so long as they act consistently with the guidelines enumerated in this part, and subject to paragraph (b)(2) of this section. For the purposes of this paragraph, initiation and development of area code relief planning encompasses all functions related to the implementation of new area codes that were performed by central office code administrators prior to February 8, 1996. Such functions may include: declaring that the area code relief planning process should begin; convening and conducting meetings to which the telecommunications industry and the public are invited on area code relief for a particular area code; and developing the details of a proposed area code relief plan or plans.

DISCUSSION OF ISSUES

ISSUE 4: What type of mechanisms, not previously considered, if any, should the Commission approve to address Volusia County's area code and local dialing issues, and if so, when?

RECOMMENDATION: Based on the evidence in the record, it appears that there are no viable mechanisms to address Volusia County's area code and local dialing issues. Hence, the Commission should take no action at this time. (ILERI, CASEY)

POSITION OF THE PARTIES

NEUSTAR: NANPA has no independent opinion regarding Volusia County's area code and local dialing issues.

BELLSOUTH: The Commission should not adopt Volusia County's proposal because it is ripe with procedural, administrative, and legal problems and offers little benefit for Osteen customers.

DELTONA: Adopts position of County of Volusia.

SPRINT: The NPA relief docket is not the appropriate place to consider Volusia County's area code and local dialing issues. If new alternatives are to be considered, they should be considered in a separate docket.

VERIZON: No position stated.

VOLUSIA: The 386 NPA should be overlaid on the 407 NPA in Southwest Volusia consistent with standard overlay number assignment practices as soon as practicable. No changes in local dialing requirements are requested.

STAFF ANALYSIS: By Order No. PSC-98-1761-FOF-TL, issued December 29, 1998, the Commission approved a relief plan for the 407 NPA in Docket No. 980671-TL. In part, the relief plan specified a division, or split, of the current 407 NPA, with a new NPA of 321 replacing the 407 NPA in Brevard County. The plan also called for an overlay whereby the new NPA would be extended over the remaining geographic area of the present 407 NPA.

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Telephone subscribers in the Deltona/Southwest Volusia County area are served by BellSouth and Sprint. The Deltona/South Volusia County region is also unique in that a NPA boundary line divides the area. The subscribers in the Sprint exchange of Orange City are in the 386 NPA. The BellSouth exchanges of DeBary and Sanford are in the 386 NPA, and 407/321 overlay NPAs, respectively. The city of Deltona reaches into all three of these exchanges. Additionally, the Local Access and Transport Area (LATA) line dividing the Daytona and Orlando LATAs crosses through this section of Volusia County. In most, but not all instances, the NPA and LATA lines follow the same boundaries. This is not the case in the Deltona/South Volusia County area.

Pursuant to a request from Volusia County leaders for assistance with the unique boundary issues in the city of Deltona and the southwest Volusia County area, Docket No. 981795-TL was opened. In this docket, a Memorandum of Understanding (MOU) which included BellSouth, Sprint, the City of Deltona, and the Volusia County government was filed. The MOU plan would have divided the Sanford exchange along the county boundaries of Seminole and Volusia Counties. The MOU also proposed balloting the Volusia subscribers to determine if they would be willing to form a new exchange called Osteen. By Order No. PSC-99-2372-FOF-TL, issued December 6, 1999, the Commission approved the settlement offer, and ordered that customers be balloted to determine if customers would be in favor of creating a new exchange so that they would be united with the rest of Volusia County's area code under the settlement offer. This ballot failed because this proposal required that some customers would have to change their full 7-digit telephone number, and the Osteen subscribers' rates would be increased by moving into BellSouth's Rate Group #9. (TR 37-38)

By Order No. PSC-00-1937-PAA-TL, issued November 3, 2000, in Docket No. 990517-TL, the Commission approved area code relief for the 904 area code, which consisted of a geographic split which provided all of Volusia County with the new 386 area code except for a small portion of the County known as the Osteen area in the Sanford rate center. The reason this area did not receive the new 386 area code is that the customers in that area had the 407 area code and would have had to undergo a full 10-digit telephone number change. The Commission did order that customers in this area be balloted to determine if they would be willing to change their 10-digit telephone number to receive the new 386 area code. The

ballot overwhelmingly failed and the Commission did not order the 386 area code be implemented in that area.

Volusia County government officials have continued to try to find a means to get the 386 area code in the Osteen portion of Volusia County so they can have the 386 area code in all of the County. The industry, local government officials, and the Commission staff have worked diligently to try to come up with a solution for the Osteen area.

The issue before the Commission is to address any mechanism that was not previously considered for the Osteen area of Volusia County. Staff reviewed four possible mechanisms to address Volusia County's concerns: (1) placing a 386 NXX code in the Sanford rate center; (2) extending the 386 area code over the Sanford rate center as an overlay; (3) subpooling in the Sanford rate center; and (4) splitting the Sanford rate center to create a new rate center. The following is a summary of each of these mechanisms:

(1) Placing a 386 NXX Code in the Sanford rate center:

There have been numerous discussions regarding Volusia County's initial proposal. (TR 32-37, 41-42, 59, 71-72) The Volusia County proposal was to place a 386 NXX code in the Sanford rate center. However, several objections were brought up by BellSouth and Sprint. (TR 32-37, 59) BellSouth is concerned because this proposal:

1. does not allow customers in the Osteen area to receive additional 407 telephone numbers even if a customer wants a 407 telephone number;
2. will create a dangerous precedent because there are other regions in similar situations;
3. can create a competitive concern among other carriers who are trying to get 386 telephone numbers to serve the Osteen area;
4. should address specifics about number pooling;
5. will not provide any significant advantage for the Osteen customers;

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6. will negatively affect the ability of BellSouth to receive additional numbering resources for the Sanford exchange; and
7. is questionable because the Commission may not have the authority to require a telecommunications carrier to implement such a plan. (TR 32-37)

NeuStar witness Foley states if the Commission were to order BellSouth to drop a 386 NXX code in the Sanford exchange, it would not have any effect in extending the life of the 407 or 386 area codes. (TR 22)

BellSouth witness Stan Greer states that the proposal sponsored by Volusia County does not allow customers in the Osteen area to receive additional 407 telephone numbers even if the customer wants a 407 number. (TR 44-45) However, Volusia County witness Robert Weiss indicates that if a 386 area code block of numbers is made available for residents in the Osteen area, the customers could still choose between the 407 and 386 area codes. (Viera Hearing TR 23) Based on witness Weiss' testimony, customers in the Sanford rate center would still be able to receive numbers of their choice (i.e., 407 or 321 if any assigned to Sanford customers).

BellSouth witness Greer believes that if the Commission approves Volusia County's proposal, more areas adjoining area code boundaries, such as Barefoot Bay, will petition the Commission for similar relief. (TR 45) Staff disagrees with the witness' statements because Volusia's area code problem is a unique case. (Viera Hearing TR 17-18)

BellSouth witness Greer further points out that a carrier has to meet a six months-to-exhaust criterion and have a certain utilization percentage in a given rate center before receiving a new block of numbers. (TR 46) BellSouth witness Greer is concerned that BellSouth may not be able to meet the two criteria to get additional codes for this area. Staff notes that the Commission established an expedited process to address such matters in Docket No. 010782-TL and 010783-TL.

BellSouth witness Greer states that Volusia County's proposal would prohibit other carriers from obtaining numbering resources to provide telecommunications services in the Sanford rate center.

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However, staff believes that number pooling may alleviate the competitive concern.

This option would provide 386 NXXs for the Osteen area of the Sanford rate center. However, it would also make 386 NXXs available in the Seminole County portion of the Sanford rate center. Staff believes that if the Commission were to order that any 386 NXXs issued in the Sanford rate center be limited to the Volusia County portion of the Sanford rate center, there would be no means to verify that the NXX code is only being used in Volusia County since an NXX code is issued by rate center. Limiting the 386 NXX codes to only the Volusia County portion of the Sanford rate center would also split the rate center which violates the Industry Numbering Committee (INC) guidelines. (TR 23, 50) Staff also notes that this option would force a fourth area code over Seminole County (407/321/689/386). As this proposal was not addressed as an alternative within this proceeding, Seminole County has not had an opportunity to address the impact.

(2) Extending the 386 Area Code over the Sanford Rate Center as an Overlay:

Volusia County witness Ann McFall states that 386 area code should be overlaid on the 407 portion of the Volusia County consistent with standard overlay number assignment practices as soon as practicable. (TR 65) Volusia County witness Robert Weiss also states that most of the issues raised by BellSouth are not proven correct since BellSouth has not provided enough evidence to support its arguments. (TR 70-72)

On February 20, 2002, the Commission held service hearings in Orlando, and Viera. During the Orlando service hearing, witness Ann McFall, Chairman of the Volusia County Council, stated that there are 430,000 people in Volusia County, and of that amount, only 3,200 people live in the affected area. These customers currently have 407 area code telephone numbers, and all local calls are based on 10-digits. Witness McFall further states that the school system spent millions of dollars to provide telephone services in the county. Witness McFall concludes that instead of using the 321 area code overlay in southern Volusia County, the 386 area code overlay should be used. (Orlando Hearing TR 16-20)

City of Deltona witness Katrina Powell also believes that only the 386 area code should be overlaid over the 407 area code section

of Volusia County. (Orlando Hearing TR 23) Volusia County witness Frank Gummey repeats the same arguments as witnesses Powell and McFall made. (Orlando Hearing TR 24-25) Witness Robert Weiss' summary includes comments similar to these witnesses. (Orlando Hearing TR 27-30)

During the Viera service hearing, customer witness Weiss testified that Volusia County is in a unique position where the southern portion of the county, which includes the City of Deltona, may be subjected to four area codes. (Viera Hearing TR 17-18) Staff notes that if the Commission were to order the extension of the 386 area code over the Sanford rate center, which currently has the new 689, 407, and 321 area codes, the Commission would be imposing a fourth area code over that area. Staff also notes that staff is unsure whether some of the 321 NXXs assigned to the Sanford rate center are in the Osteen area. This information was not available in the record.

Witness Weiss indicates that he has been working on correcting the area code problem for the last 12 years. (Viera Hearing TR 18) Witness Weiss states that the City of Deltona has a little over 3,000 customers in the Sanford rate center. (Viera Hearing TR 18) The witness further states that the problem is associated with having multiple area codes serving this city. Furthermore, witness Weiss states that this portion of the County, known as Osteen, has the 407 and 321 area codes presently. (Viera Hearing TR 18) Witness Weiss claims that no 321 telephone numbers have been assigned in this area. (Viera Hearing TR 18) The witness strongly believes that no new area codes should be implemented in the Osteen area; rather, there should be one united area code, if technically possible. (Viera Hearing TR 18-19, 24) Witness Weiss believes that it is possible to retain only the 407 and 386 area codes. (Viera Hearing TR 19)

Witness Frank Gummey states that he adopts witness Robert Weiss' statement that the 386 area code should be overlaid over the existing 407 telephone numbers in the Sanford rate center. (Viera Hearing TR 26)

This option would provide 386 NXX codes to the 3,200 Volusia County customers of the Sanford rate center. However, it would also impose a fourth area code on the 66,785 customers in the Sanford rate center portion of Seminole County. Neither Seminole

County nor the 66,785 customers were advised that this might be considered in this docket.

(3) Subpooling in the Sanford Rate Center:

A subpool is a form of number pooling, whereby the pool supplies telephone numbers to an area that is less than a full rate center or exchange. (TR 21) In this case, the subpool area would be the Osteen area. (TR 22) NeuStar witness Foley testified that pooling is essentially the pooling of telephone numbers on an exchange level basis, and that Volusia County's proposal is not an exchange level basis. (TR 20-21) When asked if NeuStar would be willing to implement subpooling, witness Foley stated that he did not think that he could answer that question. (TR 21) However, witness Foley stated that he believes NeuStar would implement a subpool if the Commission ordered it. (TR 21) Witness Foley also stated that he is not aware of any subpooling being done presently. (TR 22)

BellSouth witness Stan Greer states that BellSouth would still have problems in obtaining numbering resources even if a subpool were implemented. (TR 47) BellSouth believes that it has to meet the months-to-exhaust criterion; however, the witness believes that the Commission's expedited process would help remedy this concern. On the other hand, the witness is concerned that there is a delay in getting the code because under the Commission's expedited process, it takes 30 to 45 days to obtain a code. (TR 47)

There is no evidence in the record to indicate that subpooling is viable in the Sanford rate center. Further, it is unclear whether NeuStar would be able to oversee a subpool, or who would pay the costs associated with a subpool. In addition, a subpool would split the Sanford rate center and violate the INC guidelines. (TR 50)

(4) Splitting the Sanford Rate Center to Create a New Rate Center:

Under this option, the Sanford rate center would be split to create the Sanford rate center in Seminole County, and the Osteen rate center in Volusia County. Staff notes that the INC guidelines require that geographic area code boundaries must follow the rate center boundaries. (TR 50)

In the Sanford rate center, if a split were to occur, approximately fifteen 321 NXX codes and/or forty-three 407 NXX codes would have to be duplicated in order for customers to maintain their 7-digit telephone numbers.² This adds up to a total of 58 NXX codes. From a numbering resource optimization perspective, staff is concerned about the inefficient use of duplicating 58 NXX codes (580,000 telephone numbers) to benefit 3,200 customers.

This option would not only violate the INC guidelines, but would force some customers in the Osteen area of the Sanford rate center to change their 7-digit telephone numbers and force every subscriber to change their area code which they have voted down twice previously. Staff also notes that in her testimony, Volusia County witness McFall states that the majority of customers wished to keep their present telephone numbers. (TR 65)

Conclusion:

Staff reviewed four possible alternative mechanisms to address Volusia County's concerns. Staff believes that these options either violate the INC guidelines, create four area codes for the Osteen area of the Sanford rate center, or impose a fourth area code over 66,785 customers in the Sanford rate center for the sake of approximately 3,200 Osteen area residents of Volusia County. Staff believes that none of these options are viable solutions and the record does not provide any other options to solve the area code and dialing issues for the Sanford rate center.

Therefore, based on the evidence in the record, it appears that there are no viable mechanisms to address Volusia County's area code and local dialing issues. Hence, the Commission should take no action at this time.

² The counts were calculated by using the list provided in NANPA's web site, <http://www.nanpa.com>.

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ISSUE 5: Pursuant to the Florida Statutes, FCC delegated authority, or both, does the Commission have the authority to require telecommunications carriers to place 386 numbers in their Sanford exchange to allow customers in the Osteen area to get new lines and migrate their existing services to the 386 numbers?

RECOMMENDATION: Yes. Pursuant to the Florida Statutes, FCC delegated authority, or both, the Commission does have the authority to require telecommunications carriers to place 386 numbers in their Sanford exchange to allow customers in the Osteen area to get new lines and migrate their existing services to the 386 numbers. (L. FORDHAM)

POSITION OF THE PARTIES:

NEUSTAR: The FCC has delegated authority to review and approve NPA relief plans to the states. 47 C.F.R. § 52.19. FCC decisions or pending decisions that may preempt or otherwise impact the Commission's ability to resolve any of the issues presented or relief requested in this docket include the following: (1) *Numbering Resource Optimization, Petition for Declaratory Ruling, (CC Docket No. 99-200) 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 (CC Docket No. 96-98), Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 00-429 (rel. Dec. 29, 2000);* (2) *Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 7574 (2000);* (3) *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, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd. 19009 (1998);* and (4) *Florida Public Service Commission Petition To Federal Communications Commission For Expedited Decision For Grant Of Authority To Implement Number Conservation Measures, Order, 14 FCC Rcd. 17,506 (1999).*

BELLSOUTH: It does not appear that the Commission has the authority to require telecommunications companies to place 386 numbers in the Sanford exchange.

DELTONA: Adopts position of County of Volusia.

SPRINT: Sprint adopts the positions, discussions and arguments on Issue 5 set forth in BellSouth's post hearing brief.

VERIZON: No position stated.

VOLUSIA: The Commission has the power to overlay the 386 NPA in the 407 NPA in Southwest Volusia.

STAFF ANALYSIS: The FCC has delegated responsibility to address numbering issues to the state commissions pursuant to 47 U.S.C. §151 et. Seq., 47 C.F.R. §§ 52.3 and 52.19, FCC Order 99-249, FCC Order 00-104, and FCC Order 00-429. In accordance with 47 C.F.R. §§ 52.3:

The Commission (FCC) shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.

Furthermore, 47 C.F.R. §§ 52.19 provides, in part, that:

(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.

The FCC issued Order 99-249 on September 15, 1999, granting this Commission's Petition for Delegation of Additional Authority to Implement Number Conservation Measures. Therein, the FCC granted interim authority to:

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- (1) Institute thousand-block number pooling by all LNP-capable carriers in Florida;
- (2) Reclaim unused and reserved NXX codes;
- (3) Maintain rationing procedures for six months following area code relief;
- (4) Set numbering allocation standards;
- (5) Request number utilization data from all carriers;
- (6) Implement NXX code sharing; and
- (7) Implement rate center consolidations.

In addition, the jurisdiction of the Commission, as set forth in Section 364.01, Florida Statutes, is broad. Specifically, Section 364.01(2), Florida Statutes, gives the Commission ". . . exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies" Subsection (4)(a) provides that the Commission shall "Protect the public health, safety, and welfare by ensuring that basic telecommunications services are available to all consumers in the state at reasonable and affordable prices." Subsection (4)(i) states that the Commission shall also "Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies." Furthermore, Section 364.15, Florida Statutes, authorizes the Commission to compel repairs, improvements, changes, additions, or extensions to any telecommunications facility in order to promote the security or convenience of the public, or secure adequate service or facilities for telecommunications services.

Therefore, staff believes that this Commission has jurisdiction to address the matter. 47 C.F.R. §§ 52.19 is very specific in providing that "State commissions may resolve matters "[D]irecting whether area code relief will take the form of a . . . boundary realignment; establishing new area code boundaries" It is not significant that Osteen itself is not in a state of numbering jeopardy. Within any area code there are faster growing areas and slower growing areas. Yet, when area code relief is ordered, it is ordered for the entire area code and not just for fast growing pockets. Osteen is a contiguous part of the area for which relief was ordered.

Staff notes, however, that while the Commission has the authority to grant the Volusia County proposal, it is not required to do so. Though staff believes the Commission clearly has the

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authority to order that the Volusia County plan be implemented, the decision whether or not to do so should be based on the consideration of the evidence, the precedent set, and other arguments presented in issue #4 above.

ISSUE 6: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 4 is approved, there would be no remaining issues and the docket should be closed.
(L. FORDHAM)

POSITION OF THE PARTIES:

NEUSTAR: NANPA has no independent opinion regarding the closing of the docket.

BELLSOUTH: Yes.

DELTONA: Adopts position of County of Volusia.

SPRINT: No position at this time.

VERIZON: No position stated.

VOLUSIA: No position.

STAFF ANALYSIS: If staff's recommendation in Issue 4 is approved, there would be no remaining issues and the docket should be closed.