

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for generic proceedings to establish expedited process for reviewing North American Numbering Plan Administration (NANPA) future denials of applications for use of additional NXX Codes by BellSouth Telecommunications, Inc.

DOCKET NO. 010782-TL
ORDER NO. PSC-01-1973-PCO-TL
ISSUED: October 4, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ESTABLISHING EXPEDITED PROCESS FOR
ADDRESSING CENTRAL OFFICE CODE DENIALS BY
THE NORTH AMERICAN NUMBERING PLAN ADMINISTRATION (NANPA)

BY THE COMMISSION:

On May 25, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a petition asking us to establish an expedited process for reviewing future North American Numbering Plan Administration's (NANPA) central office code denials. Since March 9, 2001, we have received several petitions from BellSouth seeking review of NANPA's denial of central office codes. The four petitions addressed prior to our consideration of this matter are summarized as follows:

1) On March 9, 2001, BellSouth filed a "Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration." By Order No. PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL, we overturned NANPA's decision to deny a growth code, and directed NANPA to provide BellSouth with a growth code for the ORLDFLMADS1 switch as soon as possible.

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2) On April 20, 2001, BellSouth filed a "Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration." By Order No. PSC-01-1312-PAA-TL, issued June 18, 2001, in Docket No. 010565-TL, we overturned NANPA's decision to deny a growth code for the ORLFLPCDSO switch, and directed NANPA to provide BellSouth with a growth code for the ORLFLPCDSO switch as soon as possible.

3) On May 25, 2001, BellSouth filed "BellSouth's Petition for review of Pooling Administrator's Denial of Request for Additional Numbering Resources." On July 3, 2001, BellSouth filed an amended petition to withdraw its request to overturn NANPA's denial of 1,000 numbers, for the Sawgrass (FTLDFLSGDS0) switch in the Ft. Lauderdale rate center because its customer obtained service from an ALEC solely because BellSouth was unable to fulfill the customer's numbering requests. By Order No. PSC-01-1663-PAA-TL, issued August 14, 2001, in Docket No. 010783-TL, we overturned NANPA's decision to deny the requested numbers, and directed NANPA to provide BellSouth with 2,000 numbers for the Cypress (FTLDFLCYDS0) switch in the Ft. Lauderdale rate center, and 1,200 numbers for the Clay Street (JCVLFLCLDS0) switch in the Jacksonville rate center as soon as possible.

4) On July 18, 2001, BellSouth filed a "Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration." Docket No. 010983-TL was opened to address this petition. By Order No. PSC-01-1955-PAA-TI, issued October 1, 2001, we overturned NANPA's denial of the growth code and directed NANPA to provide BellSouth with codes for the (MIAMIFLGRDS1), (MIAMIFLHLDS0), (MIAMIFLCADS0), and (MIAMIFLBA85E).

In this Petition, BellSouth explains that it will be forced to bring numerous petitions for review of NANPA code denials to us in the future, and has, therefore, requested an expedited process for reviewing NANPA's future denials of applications of central office codes.

We are vested with jurisdiction to address this matter pursuant to Sections 364.01 and 364.16(4), Florida Statutes, and 47 U.S.C. §151, and 47 C.F.R. §52.15(g) (3) (iv).

Pursuant to Order No. FCC 00-104¹, applicants must meet the MTE criteria by rate center, instead of by switch, and have no more than a six-month inventory of telephone numbers. Pursuant to 47 C.F.R. § 52.15(g) (3) (iii):

All service providers shall maintain no more than a six-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.

We note that we have some level of concern that the new MTE criteria may create a disadvantage for carriers with multiple switch rate centers. One switch in a multiple-switch rate center may be close to exhaust while the average MTE for the rate center could be more than six months, thus preventing a carrier from obtaining a growth code for the switch close to exhaust. Another carrier that may have just one switch in the rate center, would have an advantage and may be able to obtain a growth code to provide telecommunications services. BellSouth has a total of 101 rate centers in Florida, with 30 of these being multi-switch rate centers.

Code denials also impair a customer's ability to obtain service from his preferred carrier. A customer desiring service from one carrier may have to turn to another carrier simply because his preferred carrier cannot meet the MTE rate center requirement. As noted herein, BellSouth recently lost a customer to an ALEC solely because BellSouth was unable to fulfill the customer's numbering requests for the Sawgrass (FTLDFLSGDS0) switch in the Ft. Lauderdale rate center.

In its application, BellSouth states:

under earlier MTE procedures, waivers or exceptions were granted when customer hardship could be demonstrated or

¹Report and Order, CC Docket No. 99-200, In the Matter of Number Resource Optimization, Order No. FCC 00-104 (March 31, 2000)

when the service provider's inventory did not have a block of sequential numbers large enough to meet the customer's specific request. Under the existing FCC rules, NANPA looks at the number of MTE for the entire rate center without any exception.

BellSouth asserts that its requests were denied by NANPA even though the company did not have the numbering resources necessary to satisfy its customers' demand in the switch.

We emphasize that the denial of these codes appears to be contrary to FCC Order No. DA 01-386² at ¶11, which states:

Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources.

Another dilemma created with the new MTE rate center criteria is rate center consolidation. The FCC promotes rate center consolidation as a number conservation measure, and encourages states to consolidate rate centers wherever possible. The problem arises when you attempt to consolidate small rate centers, each with one switch, and end up with one rate center with multiple switches. In Order No. FCC 00-429³, the FCC notes:

Some ILECs suggest, however, that the utilization threshold should be calculated on a per-switch basis in rate centers that have multiple switches, particularly where they have not deployed LNP capability. According to BellSouth, in the absence of thousands-block number pooling, numbers cannot be shared easily among multiple switches in the same rate center. They assert that there are technical constraints on their ability to share

²DA 01-386, CC Docket No. 99-200, CC Docket No. 96-98, In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (February 14, 2001)

³Second Report and Order, Order on Reconsideration, CC Docket No. 99-200 and CC Docket No. 96-98, In the Matter of Numbering Resource Optimization, et. al., Order No. FCC 00-429 (December 29, 2000)

numbering resources among multiple switches within the same rate center and that a low utilization rate in one or more switches could prevent it from meeting the rate center utilization threshold. SBC argues in its comments that the utilization threshold should be calculated at the "lowest code assignment point" - the rate center, where there is only one switch, or the switch, where there is more than one in a rate center.

The procedure available to carriers who are denied growth codes because of the rate center MTE requirement is addressed in 47 C.F.R. § 52.15(g)(3)(iv), which states, in part:

The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state regulatory commission may affirm or overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination of compliance with the reporting and numbering resource application requirements herein.

In evaluating BellSouth's previous petitions, we have analyzed them and concluded that:

- 1) BellSouth has demonstrated that it has customers in need of numbering resources;
- 2) BellSouth has shown that it is unable to provide services to the potential customers because of NANPA's denial of the numbering resources;
- 3) There are possible competitive and customer choice concerns because potential customers cannot obtain service from the provider of their choice because BellSouth does not have the numbers available.

This analysis is necessary to ensure compliance with the INC Guidelines and FCC Rules, as well as to ensure customers' needs are met. However, we agree with BellSouth that our current procedure for addressing these petitions is not conducive to ensuring that carriers in need of these numbering resources obtain them as soon as possible. Therefore, in the interest of administrative

efficiency, we shall establish an expedited process for reviewing NANPA's denial of applications for additional NXX codes for all telecommunications carriers.

In its petition, BellSouth recommends that to be consistent with the Act, the FCC's statements in FCC 00-104, and to minimize the potential adverse effects of code denials, we should adopt the following four-step review process:

- A. Day 1: A carrier that submits a code request to NANPA that does not meet the six (6) MTE requirement may file a Petition for Review with the Commission at the same time it files its code request based on the carrier's expectation that NANPA will deny the code request for failure to meet the MTE standard.
- B. Day 15: NANPA or any other interested party files a response and Code Applicant files NANPA's denial (Part 3) with the Commission.
- C. Day 25: Commission agenda conference on the Petition for Review.
- D. Day 30: Commission issues final order on Petition for Review.

With regard to Point A, we note that the procedure in 47 C.F.R. § 52.15(g)(3)(iv), states, in part "The carrier may challenge the NANPA's decision to the appropriate state regulatory commission." Thus, we believe that we should not act on an appeal of a NANPA decision denying codes prior to the actual NANPA decision.

We find that a more appropriate and efficient process can, however, be implemented. To that end, the following process shall be implemented:

- A. Day 1: Upon NANPA's code denial (Part 3), the carrier shall file a petition with this Commission requesting review of NANPA's code denial.

Subsequent to the filing of its petition, the carrier must, within three business days, file with this Commission:

- 1) The customer's name, address, and telephone number.
- 2) The utilization thresholds for every switch in that particular rate center where additional numbering resources are sought.
- 3) The MTEs for every switch in that particular rate center where additional numbering resources are sought.

To the extent necessary, companies may seek confidential treatment of the information provided, pursuant to Rule 25-22.006, Florida Administrative Code and Section 364.183, Florida Statutes.

B. Day 7: Upon review and evaluation, the Commission staff assigned as the office of primary responsibility (OPR) shall ensure that the following three criteria have been met:

- 1) The carrier has demonstrated that it has customers in need of immediate numbering resources, or has a switch in a non-pooling multi-switch rate center which has a MTE of less than six months;
- 2) The carrier has shown that it is unable to provide services to a potential customer because of NANPA's denial of the numbering resources, or it will be unable to provide services to customers from a switch in a multi-switch non-pooling rate center because its supply of numbers in less than six months; and
- 3) A potential customer cannot obtain service from the provider of his/her choice because the carrier does not have the numbers available, or customers will not be able to have a choice of providers because a provider will run out of numbers for that switch in a multi-switch non-pooling rate center within six months.

C. Day 10: The following conditions apply:

- 1) If these three criteria are met, the OPR will submit a memorandum to this Commission's Division of Legal Services for the Docket file, stating that the identified criteria have been met; thereafter, an administrative Proposed Agency Action (PAA) Order will be issued within seven business days of receipt of the memorandum. If a protest is filed, the docket will remain open to address the protest.
- 2) If these three criteria are not met, or Commission staff believes that the complexity of the case warrants a more thorough analysis in a recommendation to be considered on the regular agenda schedule, Commission staff will contact the company to discuss the matter. If discussions with the company do not resolve the concerns, Commission staff will prepare a recommendation to address the matter before the full Commission.

We find that this expedited process to address NANPA code denials is administratively efficient, and less time consuming than BellSouth's proposal. Therefore, the expedited process identified herein for review of NANPA code denials for any telecommunications carrier certificated by this Commission is hereby approved. The expedited process shall be posted on our website, and Commission staff is hereby directed to administratively dispose of these petitions as set forth herein. Furthermore, the appropriate changes to our Administrative Procedure Manual shall be made to reflect this process.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Petition to Establish Expedited Process for Reviewing North American Numbering Plan Administration (NANPA) Future Denials of Applications for Use of Additional NXX Codes filed by BellSouth Telecommunications, Inc. is granted, in part, and denied, in part, to the extent set forth herein. It is further

ORDERED that the expedited process identified in the body of this Order for reviewing NANPA code denials for any

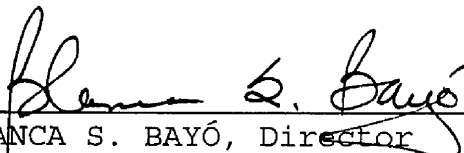
ORDER NO. PSC-01-1973-PCO-TL
DOCKET NO. 010782-TL
PAGE 9

telecommunications carrier certificated by this Commission is hereby approved. It is further

ORDERED that Commission staff is directed to administratively dispose of future petitions regarding NANPA code denials in the manner set forth herein. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 4th Day of October, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.