

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 010743-TL
ORDER NO. PSC-02-0743-FOF-TL
ISSUED: May 31, 2002

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

APPEARANCES:

KIMBERLY WHEELER MILLER, ESQUIRE, 1120 Vermont Avenue, N.W., Suite 400, Washington, D.C. 2005
On behalf of NeuStar, Inc.

JAMES MEZA III, Esquire and NANCY B. WHITE, Esquire, 150 West Flagler Street, Suite 1910, Miami, Florida 33130
On behalf of BellSouth Telecommunications, Inc.

SUSAN S. MASTERTON, Esquire, Post Office Box 2214, Tallahassee, Florida 32316-2214
On behalf of Sprint-Florida, Incorporated, Sprint Communications Company Limited Partnership, and Sprint PCS.

FRANK GUMMEY, III, Esquire, 123 West Indiana Avenue, DeLand, Florida 32720-4613
On behalf of County of Volusia.

C. LEE FORDHAM, Esquire, and ADAM TEITZMAN, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission.

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FINAL ORDER ON NUMBERING PLAN RELIEF
FOR THE 407/321 AREA CODE

BY THE COMMISSION:

I. 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 us for approval of the Industry's consensus decision to implement an all services distributed overlay relief plan for the 407/321 Numbering Plan Areas (NPA). The Industry submitted its recommendation based upon NANPA's projections that, absent NPA relief, the supply of central office codes (NXX codes) for the 407/321 NPAs would exhaust during the second quarter of 2004. In January 2001, NANPA reviewed the forecast and subsequently revised the exhaust date to the fourth quarter of 2003. Based upon the projected exhaust date and pursuant to Industry guidelines, NANPA notified us and the Industry on January 31, 2001 that NPA relief needed to be addressed. In order to allow sufficient time for completion of the consensus plan prior to exhaust and to have sufficient 321 NXX codes to increase the Brevard County allotment, the Industry requests that we approve its recommended nine-month relief implementation schedule.

On February 20, 2002, we held public hearings in Orlando and Melbourne to receive input from end-users in the affected areas. The witnesses who addressed us in those hearings favored the consensus recommendation, alternative number three. On March 14, 2002, a technical hearing was conducted in Tallahassee, where, once again, alternative three was the consensus recommendation, and we approved that alternative in Order No. PSC-02-0405-FOF-TL, issued March 15, 2002. The "Osteen exception," however, was reserved to be addressed at a later date, and is a subject of this Order.

Subsequent to the issuance of Order No. PSC-02-0405-FOF-TL, on April 1, 2002, NeuStar, Inc., issued a news release stating that "689" will be the new NPA code. Additionally, based on new information recently obtained from NANPA, the estimated exhaust date of the 407/321 area code has significantly changed. This

Order also addresses the new estimated exhaust date and the implementation date for the new 689 area code overlay.

II. 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:

(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.

III. DISCUSSION OF RELIEF MECHANISMS

The first of the remaining issues in this Docket is: What type of mechanisms, not previously considered, if any, should we approve to address Volusia County's area code and local dialing issues, and, if any, when?

By Order No. PSC-98-1761-FOF-TL, issued December 29, 1998, we 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.

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, we 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. The 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.

By Order No. PSC-00-1937-PAA-TL, issued November 3, 2000, in Docket No. 990517-TL, we 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. We 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 we did not order the 386 area code be implemented in that area.

Volusia County government officials have continued their efforts 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 our staff have worked diligently to come up with a solution for the Osteen area.

The challenge now before us is to address any mechanism that was not previously considered for the Osteen area of Volusia County. We 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. That proposal was to place a 386 NXX code in the Sanford rate center. However, several objections were brought up by BellSouth and Sprint. 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;
6. will negatively affect the ability of BellSouth to receive additional numbering resources for the Sanford exchange; and
7. is questionable because this Commission may not have the authority to require a telecommunications carrier to implement such a plan.

NeuStar witness Foley states if we 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.

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. However, Volusia County witness Robert Weiss indicates that if a 386 area code block of numbers were made available for residents in the Osteen area, the customers

could still choose between the 407 and 386 area codes. 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. We, however, disagree with the witness' statements because Volusia's area code problem is a unique case.

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. BellSouth witness Greer is concerned that BellSouth may not be able to meet the two criteria to get additional codes for this area. We note, however, that in Docket No. 010782-TL and 010783-TL, we established an expedited process to address such matters.

BellSouth witness Greer further states that Volusia County's proposal would prohibit other carriers from obtaining numbering resources to provide telecommunications services in the Sanford rate center. However, we believe 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. We believe that if we 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. We also note 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 the 386 area code should be overlaid on the 407 portion of Volusia County consistent with standard overlay number assignment practices as soon as practicable. 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.

On February 20, 2002, we 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.

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. Volusia County witness Frank Gummey repeated the same arguments made by witnesses Powell and McFall. Witness Robert Weiss' summary included comments similar to these witnesses.

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. We note that if we 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, it would be imposing a fourth area code over that area. We also note uncertainty 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. Witness Weiss states

that the City of Deltona has a little over 3,000 customers in the Sanford rate center. 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. Witness Weiss claims that no 321 telephone numbers have been assigned in this area. 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. Witness Weiss believes that it is possible to retain only the 407 and 386 area codes.

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.

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. In this case, the subpool area would be the Osteen area. 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. When asked if NeuStar would be willing to implement subpooling, witness Foley stated that he did not think that he could answer that question. However, witness Foley stated that he believes NeuStar would implement a subpool if ordered by this Commission. Witness Foley also stated that he is not aware of any subpooling being done presently.

BellSouth witness Stan Greer states that BellSouth would still have problems in obtaining numbering resources even if a subpool were implemented. Witness Greer believes that BellSouth 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.

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.

(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. We note that the INC guidelines require that geographic area code boundaries must follow the rate center boundaries.

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. This adds up to a total of 58 NXX codes. From a numbering resource optimization perspective, it would be inefficient to duplicate 58 NXX codes (580,000 telephone numbers) in order 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. The customers have rejected this option twice in earlier balloting on the issue. Also, in her testimony, Volusia County witness McFall states that the majority of customers wished to keep their present telephone numbers.

Conclusion:

Having reviewed the four possible alternative mechanisms to address Volusia County's concerns, we find that each of these options either violates the INC guidelines, creates four area codes for the Osteen area of the Sanford rate center, or imposes 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. We believe that none of these options is viable and the record does not provide any other option 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. Accordingly, we will take no action on the matter at this time.

IV. COMMISSION JURISDICTION REGARDING PLACEMENT OF 386 NUMBERS

Next, we have been asked to consider whether we have the authority, pursuant to the Florida Statutes, FCC delegated authority, or both, 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.

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:

- (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 this Commission, as set forth in Section 364.01, Florida Statutes, is broad. Specifically, Section 364.01(2), Florida Statutes, gives ". . . 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 this 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 this 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 this 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, 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.

We note, however, that while we have the authority to address the Volusia County proposal, we are not required to do so. Our decision not to do so is based on our consideration of the evidence, the precedent set, and other arguments presented in the various phases of these proceedings.

V. DISCUSSION OF IMPLEMENTATION DATE

Though the information regarding revised exhaust dates became available subsequent to the evidentiary hearing in this Docket, we find it appropriate to address this procedural matter in this Order. By Order No. PSC-02-0405-FOF-TL, issued March 25, 2002, we had ordered the implementation of an all services distributed overlay over the same geographic area as the existing 407/321 NPA. We, also, ordered that no new 321 NXX codes be assigned in this area, and all unassigned 321 NXX codes would be re-assigned to the Brevard County area.

The issue now before us is to reassess the implementation of the 689 area code over the existing 407/321 area codes. Based on the new information obtained from NANPA, there are approximately two-hundred 407 NXXs remaining in the 407 area code. In addition, the average usage of NXX codes from April 2000 to April 2002 was 1.9 NXX codes per month. The usage which initiated this area code relief was based on an actual usage of 6.4 codes per month.

Since there are 200 NXX codes remaining in the 407 area code, and the average usage is only 1.9 NXX codes per month, it is now estimated that the remaining life of the 407 area code is approximately 8.77 years. Therefore, there is no need to overlay the existing 407/321 area code with the 689 area code at this time. However, our mandate to freeze all unassigned 321 NXXs in the 407/321 overlay area should begin as ordered effective July 15, 2002.

Number pooling in the 407/321 area codes, which is being implemented effective May 9, 2002, will likely further extend the estimated exhaust date of the 407/321 area codes. We find that NANPA should inform this Commission formally when the exhaust of

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available 407 NXX codes is within one year to allow enough time to plan the implementation of the 689 area code. According to NANPA's web site, currently, there are 20 area codes in seven states which are presently in suspension status.

Conclusion:

We find that the implementation of the third overlay area code, 689, over the existing 407/321 area codes shall be indefinitely suspended. We also direct that NANPA officially inform this Commission when the exhaust of available 407 NXXs is within one year.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this 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. It is further

ORDERED that the record in this Docket does not provide evidence of an acceptable mechanism to address Volusia County's area code and local dialing issues. Accordingly, we do not, at this time, order or approve any of the relief mechanisms addressed in this Docket. It is further

ORDERED that implementation of the third overlay area code, 689, over the existing 407/321 area codes be indefinitely suspended, and that NANPA officially inform this Commission when the exhaust of available 407 NXXs is within one year. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission this 31st
Day of May, 2002.



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

(S E A L)

CLF

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.