

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of thousands block denial by Number Pooling Administrator and request for grant of safety valve request in 772 NPA for Port St. Lucie rate center, by AT&T Wireless Services of Florida, Inc.

DOCKET NO. 030600-TP
ORDER NO. PSC-03-0953-PAA-TP
ISSUED: August 22, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER DIRECTING NEUSTAR TO PROVIDE AT&T WIRELESS SERVICES OF FLORIDA, INC. WITH NUMBERING RESOURCES AND PROVIDING FOR EXPEDITED REVIEW OF NUMBERING RESOURCE DENIALS FOR CMRS PROVIDERS IN FLORIDA

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

By Federal Communications Commission (FCC) order FCC 01-362, released December 28, 2001, the FCC delegated authority to state commissions to hear claims that a safety valve process should be applied when the North American Numbering Plan Administrator (NANPA) or Pooling Administrator (PA) denies a carrier a specific request for numbering resources.

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If a carrier is in need of a 10,000 block of numbers, and the rate center where the numbering resources are needed is not in a number pooling area, it would make the request to the NANPA. If a carrier is located in a number pooling area, it must obtain numbering resources from the PA in blocks of 1,000 numbers. The FCC created the state administered safety valve process to address numbering resource requirements of carriers experiencing rapid growth in a given area, or who receive a specific customer request for numbering resources that exceeds their available inventory.

By Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, we established an expedited administrative process to address NANPA code denials for blocks of 10,000 numbers. By Order No. PSC-02-0352-PAA-TL, issued March 15, 2002, we found that "the same expedited process shall also be applicable to one thousand-block denials to allow carriers to meet their customers' needs or obtain a growth one thousand-block code for its switches." Both of the above orders stated that the expedited process would be available to "any telecommunications carrier certificated by this Commission."

On July 10, 2003, AT&T Wireless Services of Florida, Inc. (AT&T Wireless) filed a "Petition for expedited review of thousands block denial by number pooling administrator and request for grant of safety valve request in the 772 NPA for the Port St. Lucie rate center." Because we do not certify Commercial Mobile Radio Service (CMRS) providers, AT&T Wireless was not eligible for the expedited code denial process approved by our earlier orders.

We are vested with jurisdiction 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).

ANALYSIS:

On October 31, 2002, AT&T Wireless was originally assigned three (3) initial thousands blocks (3,000 numbers) in the Port St. Lucie rate center, 772-812 blocks 0 through 2. On June 3, 2003, AT&T Wireless returned the thousands block, 772-812-2, to the PA because the company perceived there would be no need for the block at the time. Due to rapid growth in the rate center, on July 3, 2003, AT&T Wireless submitted a request to the PA for an additional

one(1) thousands block (1,000 numbers) in the Port St. Lucie rate center. The PA denied the request because AT&T Wireless had a utilization calculation of 59.8% which fails to meet the present utilization threshold of 70% set by the FCC for additional growth numbering resources in the rate center.

AT&T Wireless may be in danger of being unable to serve customers in this rate center if it does not receive additional numbers. The code denial may also create a possible barrier to competition. A customer desiring service from AT&T Wireless may have to turn to another carrier simply because AT&T wireless cannot meet the utilization threshold rate center requirement. At the time of AT&T Wireless' code denial, the Port St. Lucie rate center months to exhaust (MTE) was 1.9 months. In Order No. DA 01-386¹, the FCC stated:

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

FCC No. DA 01-386 at ¶11.

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

¹DA 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)

The Industry Numbering Committee² (INC) guidelines also provide for a state Commission Safety Valve Process. Section 11.2 of the INC Number Pooling Guidelines states that:

SPs disputing the NANPA/PA's decision to withhold initial numbering resources upon a finding of noncompliance may appeal the NANPA/PA's decision to the appropriate state commission for resolution.

The state commission may affirm, or may overturn, the NANPA/PA's decision to withhold numbering resources from the SP based on its determination that the SP has complied with the reporting and numbering resource application requirements.

The state commission also may overturn the NANPA/PA's decision to withhold numbering resources from the SP based on its determination that the SP has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.

If a state does not reach a decision on a safety valve request within a reasonable timeframe, SPs may submit such requests to the FCC for resolution. In addition, SPs may appeal to the FCC safety valve decisions made by states.

AT&T Wireless has provided us with copies of its MTE worksheets for the Port St. Lucie rate center and copies of NeuStar's denials. Our staff also reviewed AT&T Wireless' utilization data for the switch (WPBHFLANCM2) in the Port St. Lucie rate center to verify AT&T Wireless' numbering inventory.

In evaluating AT&T Wireless' petition, our staff has analyzed and concluded that:

² ALLTEL, AT&T, AT&T Wireless Services, BellSouth Telecommunications, Cable & Wireless, California Cable Television Association, Cingular Wireless, Entricom, Evolving Systems, FCC, Integra Telecom, John Staurulakis, Inc., Level 3 Communications, Lucent Technologies, NeuStar, Nortel Networks, PCIA, Qwest, SAIC Canada, SBC, Sprint - LDD, Telcordia Technologies, Time Warner Telecommunications, T-Mobile, USTA, Verizon, Verizon Wireless, Vonage.

- 1) AT&T Wireless has demonstrated that it has customers in need of numbering resources;
- 2) AT&T Wireless has shown that it is unable to provide services to the potential customers because of NeuStar's denial of the numbering resources;
- 3) There are potential competitive concerns because of the NeuStar denial since these potential customers cannot choose the provider of their choice because AT&T Wireless does not have the numbers available.

We find that addressing CMRS code denial petitions does not equate to regulating CMRS providers. This conclusion is supported by federal law, 47 U.S.C. § 332(c)(3)(A), that preempts states from regulating the entry of or the rates charged by any commercial mobile service providers, but elsewhere authorizes states to address code denials:

Notwithstanding sections 2(b) and 221(b) [47 U.S.C. § 152(b) and § 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates.

We are not attempting to extend jurisdiction over CMRS providers. Rather, we find that code denials received by CMRS providers can be addressed by us through the authority delegated by the FCC, the INC Number Pooling Guidelines, and numbering jurisdiction authorized by Sections 364.01 and 364.16(4), Florida Statutes.

Our staff has been in contact with the NeuStar Senior Number Pooling Administrator for Florida regarding the timeframe required for issuance of a 1,000 number block. He stated that a 1,000 number block could be expedited and issued within three business days if directed to by this Commission. The block would then be activated eight days after issuance.

As mentioned above, Order No. PSC-01-1973-PCO-TL, and Order No. PSC-02-0352-PAA-TL established an expedited administrative process to address NANPA code denials for blocks of 10,000 numbers, and PA code denials for blocks of 1,000 numbers. Both of the above orders stated that the expedited process would be available to "any telecommunications carrier certificated by this Commission".

We note that CMRS providers are now participating in number pooling and receiving numbers in blocks of 1,000 instead of 10,000 in number pooling areas. Therefore, it is likely additional CMRS code denial petitions will be received by this Commission.

CONCLUSION

Based on the foregoing, we hereby overturn NeuStar's decision to deny the requested numbering resources, and direct NeuStar to provide AT&T Wireless with a thousands block for the switch (WPBHFLANCM2) in the Port St. Lucie rate center within three business days of this Proposed Agency Action Order becoming final.

Additionally, we find that the expedited procedures established in Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, and Order No PSC-02-0352-PAA-TL, issued March 15, 2002, will be available to address NANPA and PA code denials received by CMRS providers in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that NeuStar shall provide AT&T Wireless Services of Florida, Inc. with the requested 1,000 Number Block for the switch (WPBHFLANCM2) in the Port St. Lucie rate center. It is further

ORDER NO. PSC-03-0953-PAA-TP
DOCKET NO. 030600-TP
PAGE 7

ORDERED that the expedited procedures established in Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, and Order No PSC-02-0352-PAA-TL, issued March 15, 2002, will be available to address NANPA and PA code denials received by CMRS providers in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 22nd Day of August, 2003.

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

By: Marcia Sharma
Marcia Sharma, Assistant 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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 12, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.