

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of NXX-X  
code denial by North American Numbering  
Plan Administration for Fort Myers exchange,  
by Embarq Florida, Inc.

DOCKET NO. 090464-TL  
ORDER NO. PSC-09-0693-PAA-TL  
ISSUED: October 20, 2009

NOTICE OF PROPOSED AGENCY ACTION ORDER  
DIRECTING NEUSTAR TO PROVIDE EMBARQ FLORIDA, INC.  
WITH ADDITIONAL NUMBERING RESOURCES

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

On September 3, 2009, Embarq Florida, Inc., (Embarq) filed a request for additional numbering resources from the Number Pooling Administrator (NeuStar) for the Ft. Myers exchange, (FTMYFLXAPS0) switch. Embarq requested a full NXX to this new switch for Location Routing Number (LRN) purposes, specifically, Embarq is installing a new packet switch in Ft. Myers from which new services will be offered to both new and existing customers. Embarq will retain only the 0xxx block and will return the other nine blocks to the number pool. On September 3, 2009, NeuStar denied the request for additional numbering resources in the (FTMYFLXAPS0) switch because the company had not met the months-to-exhaust (MTE) and utilization criteria required to obtain such additional numbering resources.

On October 1, 2009, Embarq filed a petition requesting that the Commission overturn NeuStar's decision.

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

Before March 31, 2000, carriers submitting an application for additional numbering resources had to certify that existing codes associated with that switch, Point of Interface (POI), or rate center would exhaust within 12 months. In jeopardy Numbering Plan Areas (NPAs),

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applicants seeking additional numbering resources had to certify that existing NXX codes would exhaust within six months.

Pursuant to Order No. FCC 00-104<sup>1</sup> applicants must now show 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 believe that the MTE criteria creates a disadvantage for carriers with multiple switch rate centers because it is now based on rate centers, rather than switches. One switch in a multiple-switch rate center may be near exhaust while the average MTE for the rate center is above six months, thus preventing a carrier from obtaining additional numbering resources for the switch near exhaust.

We conclude that the denial of additional numbering resources also poses a possible barrier to competition. A customer desiring service from one company may have to turn to another carrier simply because Embarq cannot meet the MTE rate center requirement. Another carrier who may have just one switch in the rate center, would have an advantage and may be able to obtain the additional numbering resources to provide the service. In Order No. DA 01-386<sup>2</sup>, 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.

A procedure is available to carriers who are denied additional numbering resources because of the rate center MTE requirement. Addressing additional numbering resources denials, 47 C.F.R. § 52.15(g)(3)(iv), states, in part:

The carrier may challenge NeuStar's decision to the appropriate state regulatory commission. The state regulatory commission may affirm or overturn the NeuStar decision to withhold numbering resources from the carrier based on its

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

<sup>2</sup> DA 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)

determination of compliance with the reporting and numbering resource application requirements herein.

In processing the company's petition as contemplated by 47 C.F.R. § 52.15(g)(3)(iv), we have required the company to provide this Commission with the following:

- 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.

Upon consideration of the information provided, it has been determined that the company has met the following criteria:

1. The carrier has demonstrated that it needs an LRN to install a new packet switch in Ft. Myers;
2. The carrier has shown that it is unable to provide services to a potential customer because of NeuStar's denial of the numbering resources; and
3. A potential customer cannot obtain service from the provider of his/her Choice because the carrier does not have the numbers available.

#### CONCLUSION

Based on the foregoing, we find it appropriate to overturn NeuStar's decision to deny additional numbering resources, and direct NeuStar to provide Embarq with additional numbering resources consisting of a full NXX for the Ft. Myers exchange, (FTMYFLXAPS0) switch as soon as possible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that that NeuStar shall provide Embarq Florida, Inc. with additional numbering resources for the Ft. Myers exchange, (FTMYFLXAPS0) switch as soon as possible, as reflected in the body of this Order. 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 Office of Commission Clerk, 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 20th day of October, 2009.



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ANN COLE  
Commission Clerk

( S E A L )

JLM

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 Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 10, 2009.

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.