



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: AUGUST 7, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (S.B. BROWN
PCB. CASEY, C. BULECZA-BANKS) CRBP
OFFICE OF THE GENERAL COUNSEL (C.L. FORDHAM) C.F.F. ML

RE: DOCKET NO. 030600-TP - 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.

AGENDA: 08/19/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION-
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030600.RCM

CASE 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.

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

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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, the Florida Public Service Commission (PSC or Commission) 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, the PSC 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." Since the Commission does not certify Commercial Mobile Radio Service (CMRS) providers, AT&T Wireless was not eligible for the expedited code denial process approved by the Commission.

This recommendation addresses AT&T Wireless' request that the Commission overturn the Pooling Administrator's decision to deny numbering resources for the Port St. Lucie rate center which is a number pooling area in Florida.

The Commission is 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).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission overturn NeuStar's decision to deny AT&T Wireless' thousands block code request for the Port St. Lucie rate center?

RECOMMENDATION: Yes, the Commission should overturn NeuStar's decision to deny the thousands block request and direct NeuStar to provide AT&T Wireless with the requested numbering resources for the switch (WPBHFLANCM2), in the Port St. Lucie rate center within three business days of notification of the Commission decision. (S. BROWN, CASEY, BULECZA-BANKS, FORDHAM)

STAFF 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:

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 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.

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 staff with copies of its MTE worksheets for the Port St. Lucie rate center and copies of

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.

NeuStar's denials. 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, staff has analyzed and concluded that:

- 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.

Staff does not believe that addressing CMRS code denial petitions equates 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.

Staff is not attempting to extend jurisdiction over CMRS providers. Staff is only recommending that code denials received

by CMRS providers can be addressed by the PSC 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.

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 the Commission. The block would then be activated eight days after issuance.

Based on the foregoing, staff recommends the Commission 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 notification of the Commission decision.

ISSUE 2: Should Commission Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, and Commission Order No PSC-02-0352-PAA-TL, issued March 15, 2002, which initiated the PSC's expedited code denial process for 10,000 number and 1,000 number blocks respectively, be expanded to include code denials by CMRS providers?

RECOMMENDATION: Yes. Staff recommends that Commission Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, and Commission Order No PSC-02-0352-PAA-TL, issued March 15, 2002 should be expanded to allow staff to address NANPA and PA code denials received by CMRS providers. (S. BROWN, CASEY, BULECZA-BANKS, FORDHAM)

STAFF ANALYSIS: As mentioned in the case background, 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"

Since AT&T Wireless is a CMRS provider not certificated by

this Commission, it was unable to take advantage of the expedited administrative process approved by the Commission to address code denials by NANPA or the PA.

The expedited process approved by the Commission through Order No. Order No PSC-02-0352-PAA-TL is as follows:

- A. Day 1: Upon NANPA's ten thousand-block code denial or the Pooling Administrator's one thousand-block code denial (Part 3), the carrier shall file a petition with the Commission requesting review of the 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 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 or the Pooling Administrator's denial of the numbering resources, or it will be unable to provide services to customers from a switch in a

multi-switch rate center because its supply of numbers is less than six months;

- 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 rate center within six months; and,

C. Day 10: The following conditions apply:

- 1) If these three criteria are met, the OPR will submit a memorandum to this Commission's Office of the General Counsel 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, this 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.

The Commission also directed staff to post the expedited process on the PSC's website, and make the appropriate changes to the Administrative Procedure Manual (APM) to reflect the new expedited process. The additions made to the PSC's website and the APM do not contain the sentence "...the expedited process identified herein for review of NANPA code denials for any telecommunications carrier certificated by this Commission is hereby approved." Therefore, no changes would be needed to the PSC website or the APM to include CMRS carriers in the expedited code denial process should the Commission approve the inclusion of CMRS carriers.

Staff believes that since CMRS providers are now participating in number pooling and receiving numbers in blocks of 1,000 instead of 10,000 in number pooling areas, it is likely additional CMRS code denial petitions will be received by the Commission. Based on the foregoing, Staff recommends that Commission Order No. PSC-01-1973-PCO-TL, issued October 4, 2001, and Commission Order No PSC-02-0352-PAA-TL, issued March 15, 2002 should be expanded to allow staff to address NANPA and PA code denials received by CMRS providers.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. **(FORDHAM)**

STAFF ANALYSIS: This docket should be closed upon the issuance of a consummating order if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order. In the event that a protest is filed, this docket should remain open pending the resolution of the protest.