

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

September 25, 2003

Ms. Blanca Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

HAND DELIVERY

030937-TK

RECEIVED FPSC
03 SEP 25 PM 1:05
COMMISSION CLERK

Re: In re: Petition of US LEC of Florida Inc. for Expedited Review of Growth Code Denial by the Number Pooling Administrator

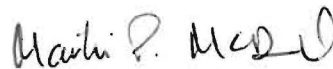
Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of US LEC of Florida Inc.'s ("US LEC") Petition for Expedited Review of Growth Code Denial by the Number Pooling Administrator.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



Martin P. McDonnell

MPM/rl
Enclosures
cc: All Parties of Record
USLEC\bayo.9259ltr

RECEIVED & FILED


PSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

09209 SEP 25 8

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of US LEC of Florida)
Inc. for Expedited Review of)
Growth Code Denial by the Number)
Pooling Administrator)
_____)

Docket No. 030937-TX
Filed: September 25, 2003

**PETITION OF US LEC OF FLORIDA INC. FOR
EXPEDITED REVIEW OF CENTRAL OFFICE CODE DENIAL**

US LEC of Florida Inc. ("US LEC"), pursuant to 47 C.F.R. §52.9(b) of the Federal Communication Commission's ("FCC") Rules, and Florida Public Service Commission ("PSC" or "Commission") Order No. PSC-01-1973-PCO-TL, petitions the Commission for an expedited review of the Number Pooling Administrator ("NeuStar") denial of US LEC's request for use of central office code numbering resources in the 239 area code. US LEC is submitting the safety valve request to the PSC because NeuStar has determined that US LEC had not met the utilization threshold required in a central office code (NXX), but it requires the grant of a 10,000 block so that it has adequate numbering resources to assign to a new large customer in Collier County. In support of this Petition, US LEC states:

1. US LEC is a competitive local exchange carrier ("CLEC") providing telecommunications services in Florida under the jurisdiction of the Commission.
2. NeuStar is an independent, non-governmental entity that is responsible for administering and managing numbering resources in pooling areas. *See* 47 C.F.R. § 52.13(a) and (b).
3. US LEC of Florida Inc. is affiliated with US LEC Inc. whose principal place of business is Morrocroft III, 6801 Morrison Boulevard, Charlotte, NC 28211. Pleadings, orders, notices and other papers filed in this matter should be served upon:

DOCUMENT NUMBER - DATE
09209 SEP 25 8
FPSC-COMMISSION CLERK

Greg Lunsford
Regulatory Manager, US LEC Corp.
Morrocroft III
6801 Morrison Blvd.
Charlotte, NC 28211
704-319-1946 (Telephone)
704-602-1946 (Telecopier)
Glunsford@uslec.com (e-mail)

Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O . Box 551
Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)
Ken@reuphlaw.com (e-mail)
Marty@reuphlaw.com (e-mail)

4. US LEC is submitting a detailed justification in Exhibits "A" through "D" that is the basis for the request. Pursuant to a separate claim of confidentiality, being filed contemporaneously herewith US LEC is submitting Exhibits "A," "C," and "D." Exhibits "A," "C," and "D" contain proprietary information that US LEC does not publicly disclose and customarily guards from its competitors. US LEC respectfully requests that the Commission consider the information in Exhibits "A," "C," and "D" to this Petition a part of this Petition, but in doing so treat Exhibits "A," "C," and "D" as confidential pursuant to Rule 25-22.006, Florida Administrative Code, and Section 364.183, Florida Statutes.

5. On March 31, 2000, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rule Making relating to numbering resource optimization ("FCC 00-104" or the "March Order"). On December 29, 2000, the FCC issued its Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200 ("FCC 00-249" or the "December Order"). These FCC orders addressed issues and strategies relating to the efficient use of numbering resources.

6. In FCC 00-104 and FCC 00-249, the FCC announced rules and sought comments in an effort to implement uniform standards governing requests for telephone numbering resources in

order to increase efficiency in the use of existing telephone numbers and to slow further exhaustion of existing numbers under the North American Numbering Plan.

7. Among other things, FCC 00-104 adopted a revised standard for assessing a carrier's need for numbering resources by requiring carriers to report rate center based utilization data to NeuStar. The FCC further required that to qualify for access to new numbering resources, applicants must establish that existing inventory within the applicant's rate center will be exhausted within six months of the application.

8. In addition to the months-to-exhaust ("MTE") requirement described above, the FCC's rules also require carriers to meet a rate center utilization threshold of 60 percent to receive additional numbering resources in a given rate center. FCC 00-249 at ¶22; FCC 01-362 ¶¶50-52. The utilization threshold increases by five percent per year until it reaches a maximum 75 percent. Based on the FCC's orders, carriers must meet both the six-month MTE requirement and the utilization threshold on a rate center basis to obtain additional number resources. Id. ¶29.

9. On September 15, 2003, US LEC submitted a Central Office Code (NXX) Assignment Request for the assignment of NXX resources necessary to meet the telephone number needs of US LEC's new large customer. This application is attached hereto as Exhibit "A."

10. The assignment request, made on behalf of the new large customer, was for 10,000 sequential telephone numbers in the 239 area code, or an entire NPA-NXX. US LEC does not presently have a block of 10,000 sequential numbers as requested by the customer. The new large customer requires the NPA-NXX resources to support a network upgrade to their telecommunications system.

11. Based on the North Naples Rate Center data that was used to calculate US LEC's MTE, US LEC's numbering resources would exhaust in approximately two to three months.

12. While US LEC's MTE is two (2) to three (3) months, US LEC is currently operating at a 23.04% utilization rate. Despite this current level of utilization, US LEC is unable to provide the requested 10,000 sequential numbers through the switch that serves the new large customer within the North Naples Rate Center.

13. On September 15, 2003, US LEC's request was denied on the grounds that the US LEC had not met the utilization threshold required in the Central Office Code (NXX) Guidelines. This decision is attached hereto as Exhibit "B."

14. The FCC delegated authority to state commissions to address safety valve claims when NeuStar denies a specific request for numbering resources. In Order No. PSC-01-19973-PCO-TL issued October 4, 2001 (the "PSC Order"), this Commission established an expedited process for addressing central office code denials. US LEC is filing this Petition in accordance with the PSC Order.

15. As a result of the denial of US LEC's request for additional numbering resources, US LEC is unable to provide the telecommunications services requested by its new large customer in Florida.

16. Under previous procedures used by the North American Numbering Plan Administration ("NANPA"), waivers or exceptions were typically granted in any case where customer hardships could be demonstrated or where the service provider's inventory did not have a block of sequential numbers large enough to meet the customer's specific request. Under existing procedures, however, NeuStar looks at the MTE criteria and utilization threshold for the rate center

and allows no exceptions. By refusing to consider the circumstances of each case, NeuStar's procedure may result in decisions contrary to the public interest and decisions that do not necessarily preserve the efficient use of telephone numbers or postpone dates of exhaust.

17. US LEC's inability to provide this large business customer with the requested numbers within the same NXX prevents US LEC from providing the quality of service this customer desires and expects. (Relevant correspondence from the new large customer is attached as Exhibit "C").

18. Both the FCC Order and NeuStar's Central Office Code (NXX) Guidelines provide that state regulatory authorities have the power and authority to review NeuStar's decision to deny a request for numbering resources. *See* FCC 01-362, Appendix A, Final Rules, § 15.15 (g)(4).

19. This Commission has previously received similar requests from BellSouth Telecommunications, Inc. in which BellSouth asked the PSC to overrule a decision of NANPA and NeuStar. *See* Docket Nos. 030563-TP and 030590-TP. In both dockets, the Commission granted BellSouth's request. State commissions in Tennessee, and Louisiana have also granted such requests from BellSouth and from US LEC.

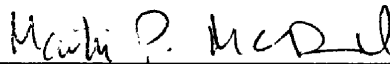
20. In reviewing previous petitions of this type, PSC staff has requested that Petitioners provide additional information concerning the Petitioners' number utilization for the specific central office involved in the request. This information for the North Naples Central Office is attached hereto as Exhibit "D."

21. US LEC seeks the Commission's review of NeuStar's decision to withhold numbering resources from it on the grounds that the CO Code Administration decision (1) violates the rules and orders of the FCC which grant carriers access to numbering resources to meet specific

customer demands upon a sufficient showing of need and (2) interferes with US LEC's ability to serve its customers within Florida. As the FCC has 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 00-429 at ¶ 61. By refusing to grant numbering resources sufficient to meet the new large customer's needs, the decision is preventing the customer from obtaining the service of its choice from its carrier of choice, US LEC.

For these reasons, US LEC requests that the Commission review the decision of NeuStar to deny US LEC's request for additional numbering resources and direct NeuStar to provide numbers to meet the specific requirements of its new large customer in North Naples, Florida.

Respectfully submitted,



MARTIN P. MCDONNELL, ESQ.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

USLEC\codepetition

Pooling Administration System

 bmckoy@uslec.com (SP)

[Sign Out](#)

Request Resources

State	<input type="text" value="FLORIDA"/>
NPA	<input type="text" value="239"/>
Rate Center	<input type="text" value="NO NAPLES"/>
OCN	<input type="text" value="8692-US LEC OF FL"/>
Type of Application	<input type="text" value="Application for a full NXX for a Dedicated Customer"/>

<input type="button" value="Continue"/>	<input type="button" value="Cancel"/>
---	---------------------------------------

NOTE:

If you are selecting a Rate Center that is moving to a new NPA due to a split, PAS will automatically migrate the request to the new NPA once the mandatory dialing date occurs.



Pooling Administration System

 [bmckoy@uslec.com](#) (SP)

[Sign Out](#)

Request Full NXX (Dedicated Customer)

Do you already have a block/code in this rate center? Yes No

Will all blocks be activated on the same switch? Yes No

[Back](#)

[Continue](#)

[Cancel](#)

Pooling Administration System

bmckoy@uslec.com (SP)

Sign Out

Months to Exhaust and Utilization Certification Worksheet - TN Level

Date **Monday, September 15, 2003**

OCN **8692**

Company Name **US LEC CORP.**

Rate Center **NORTH NAPLES**

List all Codes NPA(s)-NXXs and Blocks NPA(s)-NXX-X(s)

239-449-1
239-449-2
239-449-3
239-449-4
239-449-5

Name of Block Applicant **Ms Bea McKoy**

Title **user**

Telephone Number **(704) 319-1351**

Fax Number **(704) 602-1351**

E-Mail **bmckoy@uslec.com**

A. Available Numbers *

B. Assigned Numbers *

C. Total Numbering Resources *

D. Quantity of numbers activated in the past 90 days and excluded from the Utilization calculation *

List excluded Code(s) or Block(s)

E. Growth History - Previous 6 months² *

Month 1	<input type="text"/>	Month 2	<input type="text"/>
Month 3	<input type="text"/>	Month 4	<input type="text"/>
Month 5	<input type="text"/>	Month 6	<input type="text"/>

F. Forecast - Next 12 months^{3*}

Month 1		Month 2	
Month 3		Month 4	
Month 5		Month 6	
Month 7		Month 8	
Month 9		Month 10	
Month 11		Month 12	

G. Average Monthly Forecast (Sum of months # 1-6 (Part F above) divided by 6)

H. Months to Exhaust⁴ (Numbers Available for Assignment to customers (A) / Average Monthly Forecast (G))

Block Requested	A. Available Numbers	H. Months to Exhaust
1		2.309

I. Utilization ⁵ (Assigned Numbers (B)) / (Total Numbering Resources (C) - Excluded Numbers (D)) * 100	23.040
---	--------

Explanation

end user requires an entire 10,000 block of numbers

1. A copy of this worksheet is required to be submitted to the Pooling Administrator when requesting additional numbering resources in a rate center. For auditing purposes, the applicant must retain a copy of this document.
2. Net change in TNs no longer available for assignment in each previous month, starting with the most distant month as Month #1, and Month #6 as the current month.
3. Forecast of TNs needed in each following month, starting with the most recent month as Month #1.
4. To be assigned an additional thousands-block (NXX-X) for growth, "Months to Exhaust" must be less than or equal to 6 months. (FCC 00-104, § 52.15 (g)(3)(iii)).
5. Newly acquired numbers may be excluded from the Utilization calculation (FCC 00104, section 52.15 (g)(3)(ii))

Show Calculations

Continue

Cancel

Pooling Administration System

 [bmckoy@uslec.com](#) (SP)

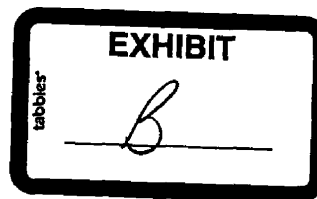
[Sign Out](#)

Months to Exhaust and Utilization Certification Worksheet - TN Level (Continued)

Your utilization calculates to **23.040** percent, while your State requires a utilization of **70.000** percent.

Select One Option and Submit

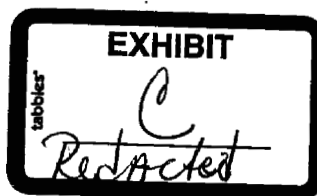
- Return to the Months To Exhaust Form
- Discard all the information provided for the request and start with a fresh Part 1A
- State Waiver Option



September 22, 2003

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

To Whom It May Concern:



US LEC of Florida Inc.

North Naples, FL

NXX Block	Available Numbers	Assigned Numbers	Total Resources	Number Utilization
239-449-1			1,000	
239-449-2			1,000	
239-449-3			1,000	
239-449-4			1,000	
239-449-5			1,000	
			5,000	23.040%

