

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of central office growth code denial in North Naples by Number Pooling Administrator by US LEC of Florida, Inc.

DOCKET NO. 030937-TX
ORDER NO. PSC-03-1133-PAA-TX
ISSUED: October 10, 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 US LEC OF 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 15, 2003, US LEC of Florida, Inc. (US LEC) submitted an application to the NeuStar for 10,000 sequential telephone numbers in the 239 area code, or an entire NPA-NXX, in the North Naples Central Office. The code request was made to fulfill the needs of US LEC's ne large customer.

On September 15, 2003, NeuStar denied the request for additional numbering resources on the grounds that the company had not met the utilization threshold required in the Central Office Code (NXX) Guidelines. On September 25, 2003, US LEC filed a

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petition for expedited review of NeuStar's denial of its application.

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

Prior to 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), applicants seeking a growth code had to certify that existing NXX codes would exhaust within six months.

Pursuant to Order No. FCC 00-104¹ 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 new 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 numbering resources for the switch near exhaust.

We conclude that the numbering resources denial also poses a possible barrier to competition. A customer desiring service from one company may have to turn to another carrier simply because Time Warner cannot meet the MTE rate center requirement. Another carrier who may have just one switch in the rate center, would have

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

an advantage and may be able to obtain numbering resources to provide the service. In Order No. DA 01-386², 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.

We find that another dilemma created with the new MTE rate center criteria is rate center consolidation. The FCC promotes rate center consolidation as a number conservation measure, and encourages states to consolidate rate centers wherever possible. The problem arises when you attempt to consolidate small rate centers which may have one switch and end up with one rate center with multiple switches. In Order No. FCC 00-429³, the FCC states:

Some ILECs suggest, however, that the utilization threshold should be calculated on a per-switch basis in rate centers that have multiple switches, particularly where they have not deployed LNP capability. According to BellSouth, in the absence of thousands-block number pooling, numbers cannot be shared easily among multiple switches in the same rate center. They assert that there are technical constraints on their ability to share numbering resources among multiple switches within the same rate center and that a low utilization rate in one or more switches could prevent it from meeting the rate center utilization threshold. SBC argues in its comments that the utilization threshold should be calculated at the "lowest code assignment point" - the rate center, where there is only one switch, or the switch, where there is more than one in a rate center.

²DA 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)

³Second Report and Order, Order on Reconsideration, CC Docket No. 99-200 and CC Docket No. 96-98, In the Matter of Numbering Resource Optimization, et. al., Order No. FCC 00-429 (December 29, 2000)

Order No. FCC 00-429 at ¶ 32.

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

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 has a customer in need of immediate numbering resources, or has a switch in a non-pooling 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 NeuStar's denial of the numbering resources, or it will be unable to provide services to customers from a switch in a multi-switch non-pooling rate center because its supply of numbers is less than six months; and

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 non-pooling rate center within six months.

CONCLUSION

Based on the foregoing, we find it appropriate to overturn NeuStar's decision to deny a growth code, and direct NeuStar to provide US LEC with additional numbering resources for the 239 area code in the North Naples Central Office, as soon as possible.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the NeuStar shall provide US LEC of Florida, Inc. with 10,000 sequential telephone numbers in the 239 area code, or an entire NPA-NXX, in the North Naples Central Office, as soon as possible. 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.

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By ORDER of the Florida Public Service Commission this 10th
Day of October, 2003.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

LHD

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,

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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 October 31, 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.