

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Declaratory Ruling and)	
Request for Expedited Action on)	NSD File No. L-97-42
July 15, 1997 Order of the Pennsylvania)	
Public Utility Commission Regarding))	
Area Codes 412, 610, 215 and 717)	
)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications)	CC Docket No. 96-98
Act of 1996)	
)	

THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION’S
PETITION FOR ADDITIONAL DELEGATED AUTHORITY TO IMPLEMENT NUMBER
OPTIMIZATION MEASURES IN THE 603 AREA CODE

New Hampshire enjoys a vibrant competitive market in telecommunications services, including competitive local access for Internet services in all areas of the state. Residential and business consumers enjoy the flexibility of second lines and high speed data transmission. The demand for numbering resources has been great. Along with about half the states, New Hampshire's area code is facing extraordinary jeopardy as a result of the antiquated numbering system. To address the imminent crisis, the New Hampshire Public Utilities Commission (“NHPUC”) respectfully requests that the Federal Communications Commission (“Commission” or “FCC”) waive the provisions of 47 C.F.R. Section 52.19(c)(3) and grant the NHPUC additional authority to implement certain area code conservation measures in the 603 area code in the State of New Hampshire.

The NHPUC intends to use any authority granted pursuant to this requested waiver to defer for a significant period, or possibly even eliminate, the consumer confusion and expense associated with introducing a new area code in New Hampshire, consistent with the guidance of the Commission and its staff on supporting the evolving uniform national numbering system.

As set forth in more detail below, the NHPUC seeks authority to:

- (1) implement interim unassigned number porting (IUNP);
- (2) implement mandatory thousand number block pooling (TNP) trials using existing TNP software until the later editions are available;
- (3) adopt interim number assignment standards;
- (4) enforce number assignment standards, including auditing the use of numbering resources, and reclaiming unused and reserved exchange codes; and,
- (5) revise rationing procedures if necessary.

I. Background

On October 5, 1998, Lockheed Martin IMS - Communications Industry Services was notified that based on Central Office Code Utilization Survey (COCUS) forecasts, the supply of Central Office codes in the 603 Numbering Plan Area (NPA) would exhaust during the fourth quarter of 2000. Following the filing of an Initial Planning Document with the Industry, on November 6, 1998, a letter was mailed to the Industry indicating that the Lockheed Martin North American Numbering Plan Administrator (NANPA) Code Administrator had declared an Extraordinary Jeopardy Situation for the 603 NPA in New Hampshire.

On November 19, 1998, an Industry Meeting was convened to discuss Interim Jeopardy Procedures, Extraordinary Code Conservation Measures and Relief for the 603 NPA. (Because

some of the Code Holders were inadvertently omitted from the initial distribution list that was circulated by NANPA, the discussion was re-opened at a January 7, 1999 Industry Meeting hosted by NANPA in Manchester, NH.)

As part of its attempt to implement number conservation measures as rapidly as possible, the NHPUC on December 3, 1999 requested that Bell Atlantic-New Hampshire accelerate the implementation of permanent Local Number Portability (LNP). On December 22, 1999, the NHPUC held a meeting with industry participants in an attempt to reach a consensual solution to the numbering resource problem, initiating a discussion of ways in which to forestall the addition of another area code, in the belief that the advent of LNP and LNP-dependent technologies such as number pooling would help to solve the problem of area code exhaustion. At this meeting, and in response to an NHPUC request, Bell Atlantic announced its intention to advance its earlier commitment of year-end 1999 for permanent LNP to a June 30, 1999 implementation date for New Hampshire. Bell Atlantic-New Hampshire formalized this agreement in a letter to the Commission dated January 8, 1999 and now has LNP in place throughout its New Hampshire service territory.

A follow-up meeting on number conservation measures was held by the Commission on January 29, 1999. At that time, the ability of local exchange carriers to port spare numbers (i.e., unassigned number portability or UNP) was discussed, among other options, as a possible interim solution to the numbering problem.

On February 18, 1999, NANPA filed a petition on behalf of the New Hampshire telecommunications industry requesting approval of a relief plan for the 603 NPA by June 1, 1999. On March 19, 1999, the NHPUC opened Docket No. DT 99-603, initiating an

investigation into the appropriate area code relief plan to pursue for the State of New Hampshire. As part of this docket, the Commission has held a series of public hearings around the state to seek input from citizens and businesses about the best NPA relief option, and to inform the general public concerning the impending exhaust of area code 603.

Most of the carriers favored an overlay approach, although the New Hampshire Office of Consumer Advocate preferred a split to avoid concerns with anti-competitive effects, and MCI asked that if a split were not chosen, a form of UNP (referred to for convenience as "modified UNP") be implemented to protect entrants from the anti-competitive impacts of an overlay.

During the evidentiary hearings, the NHPUC asked carriers, incumbents as well as competitors, whether they had made any effort to quantify the costs to customers from either an overlay or a split. None of them had made such an effort, and none of them could give the NHPUC any clear sense of the cost impact on consumers from the imposition of a new area code. All agreed, however, that in neighboring states the imposition of new area codes has been a source of tremendous public outcry, and that significant costs would be borne by consumers as a result of the need for a new area code.

The NHPUC conducted its public deliberations in this docket on August 9, 1999 and the written order will be issued shortly. In its deliberations, the NHPUC determined that, consistent with New Hampshire legislation guiding the NHPUC on area code relief, an overlay should be used as the method for introducing a new area code, should one be required. Based on the updated NANPA forecast of the remaining life of the 603 code, at current levels of code assignment, the NHPUC determined that the new overlay code should be implemented at the end of the first quarter, 2001, or 90 days after the last 603 NXX is issued by NANPA, whichever

comes later. To address the anti-competitive effects of using an overlay as opposed to a split, the NHPUC also conditioned the approval of the overlay method, sought by the incumbent local exchange carriers, on the requirement that Bell Atlantic and all other necessary providers work together with the NHPUC's Staff to develop unassigned number porting which is at least as extensive as the modified unassigned number porting inter-carrier process recommended by MCI WorldCom in the docket, so that it is available within six months of the date of the NHPUC's order. No carrier has expressed opposition to this requirement.

II. Federal Requirements Regarding Number Conservation

On September 28, 1998, the Commission issued its Pennsylvania Opinion¹ which concluded that "state commissions have the authority to order NXX code rationing only in conjunction with area code relief decisions where the industry has not reached a consensus on a rationing plan" and that "the Common Carrier Bureau ('CCB') of the FCC may delegate additional delegated authority to state commissions to implement experimental number conservation efforts." (Pennsylvania Opinion at Para. 54.) This ruling also preempted the states on various numbering issues, and thereby restricted the NHPUC's ability to promote rational use of the limited numbering resource, conserve NXXs, or extend the life of area code 603.

¹ See Memorandum Opinion and Order on Reconsideration, dated September 28, 1998, *In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717* (NSD File No. L-97-42), *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98).

In late 1998 and early 1999, a number of states petitioned this Commission or the CCB for delegated authority under the Pennsylvania Opinion.²

On June 2, 1999, the Commission issued its Notice of Proposed Rulemaking ("NOPR") in the Matter of Numbering Resource Optimization (CC Docket No. 99-200). In this NOPR, the Commission addresses the problem of imminent exhaust in many states, and the long-range problem of exhaust of the 10-digit North American system of NPP/NXX-XXXX numbering. The Commission sought comment on a long list of potential rule changes, from small items to sweeping changing in the way numbers are allocated, including the possibility of developing a market for this scarce public resource (Paras. 225-240). Among other things, the Commission raised the possibility of permitting states to use a service- or technology-specific overlay when a new area code is imposed, and, more importantly, of delegating further code usage authority to the states (Paras. 241-260 and Para. 100, respectively).

The NOPR contains a number of potentially very helpful new approaches to the question of access to the nation's precious and limited numbering resource. Unfortunately, it cannot be implemented in time to prevent the wasteful imposition of new area codes in New Hampshire and

² See, e.g. Petition of California Public Utilities Commission for an Additional Delegation of Authority to Conduct NXX Code Rationing, November 3, 1998; Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Measures in the 508, 617, 781 and 978 Area Codes, February 17, 1999; New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, February 19, 1999; Maine Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures, March 17, 1999; Public Service Commission of Wisconsin's Petition for Additional Delegated Authority To Implement Number Conservation Measures, August 5, 1999.

the other states that have sought waivers. Worse, the issuance of the NOPR, with its proposals for eventual increases in the thresholds for obtaining numbers, can have the perverse and unintended effect of *encouraging* the wasteful grab by carriers for as many numbers as possible, regardless of the actual business need for such numbers. A resource that is virtually free for the asking today but will tomorrow have a cost is a resource that the rational business person will ask for today, not tomorrow.

At the summer committee meetings of the National Association of Regulatory Utility Commissioners, the Chairman of the Commission expressed the Commission's recognition that states should be given authority to implement number conservation measures. The Commission is moving carefully towards such an end. The New Hampshire Public Utilities Commission in this filing is seeking the same authority as that sought by other states, including the largest states in the union. If we are granted such authority, we can avert a wasteful new area code. If authority is only given to the largest states, or limited in applicability to the most densely populated areas, it will not avail New Hampshire.

III. Discussion

The Commission has expressed interest in working cooperatively with state commissions and invited state commissions to develop creative, innovative solutions to numbering issues (see, e.g., Pennsylvania Order, at paras. 30 and 31). Accordingly, we offer several solutions to conserve and more efficiently use numbering resources in the State of New Hampshire. Specifically, the NHPUC respectfully requests that, with regard to the 603 area code, the Commission grant it the authority to:

- (1) implement interim unassigned number porting (IUNP);

- (2) implement mandatory thousand number block pooling (TNP) trials using existing TNP software until the later editions are available;
- (3) adopt interim number assignment standards;
- (4) enforce number assignment standards, including auditing the use of numbering resources, and reclaiming unused and reserved exchange codes; and,
- (5) revise rationing procedures if necessary.

These measures are intended to create competitive use of NXXs by CLECs but also to forestall the premature exhaust of the 603 area code, and thereby delay the introduction of a new area code for the state for a significant period of time. They will also extend the life of any new area code once it is implemented. The exercise of such delegated authority, once granted, will be performed in compliance with any guidelines or national rules established by the Commission and in collaboration with industry participants.

The following paragraphs describe in some detail the measures for which we seek additional delegated authority along with the benefits we believe could result therefrom:

A. Interim Unassigned Number Porting (IUNP)

The NHPUC requests authority to order all LNP-compliant carriers³ to implement interim unassigned number porting (IUNP), or a functional equivalent to UNP, until such time as thousands block pooling (and, eventually, individual telephone number pooling) are implemented.

³ As noted above, the major LEC, Bell-Atlantic, introduced LNP earlier than required, on the request of the NHPUC. On May 10, 1999, the NHPUC issued its Order No. 23,210, on a *nisi* basis requiring implementation of LNP by all other local exchange carriers by fall 1999. The independent LECs filed a timely request to be relieved of this requirement, citing the Telecommunications Act of 1996 and the FCC rules. On August 23, 1999, the NHPUC granted the relief, in Order No. 23,290.

This measure may not be necessary or sufficient for all CLEC numbering needs, but it will be useful in addressing those situations where a CLEC has a limited need for numbers in a particular rate center.

The NHPUC views the use of interim unassigned number porting as a pro-competitive measure in that it will allow CLECs to avoid the confusion associated with introducing a new NXX into a local area, especially in areas that have been served by a single NXX code for many years. The objective here goes beyond the directive of the NHPUC in its area code relief deliberations described above, in that it would not be limited to a modified UNP to address anti-competitive concerns of an overlay, but would be designed with the goal of efficient number utilization, as well.

B. Mandatory Thousand Number Block Pooling (TNP) Trials

New Hampshire requests that it be granted the authority to establish the first rural area mandatory Thousand Number Block Pooling (TNP) trial. Given the successful implementation of a number pooling trial in the State of Illinois, where approximately 1,370,000 numbers have been conserved as of June 1999 in the 312 area code, the NHPUC believes that number pooling could potentially bring similar benefits to the citizens of New Hampshire.

Our initial trial might be limited to the Manchester/Nashua metropolitan area, where we are experiencing the heaviest concentration of competitive activity and demand for new numbers, given the booming local economy and expanding population. It could be expanded, if successful, to a statewide implementation of pooling at some point in the future.

We have informally obtained data on the number of thousands blocks that would be available for donation to a thousands block numbering pool in order to determine how best to

implement a pooling trial in New Hampshire and we intend to formalize this process in order to fill in the remaining data that is outstanding. In addition, industry participants in New Hampshire have reached a voluntary agreement to avoid polluting thousands blocks, in anticipation of the eventual implementation of TNP.⁴

The NHPUC believes that it should be allowed to implement its trial based on the Illinois pooling experience and utilizing the latest software release associated with that trial (currently version 1.4), with the understanding that it would be upgraded to the new nationally-adopted standard (anticipated to be release 3.0 of the same software) once the FCC has made a decision on a national platform for pooling. We believe that there is no practical reason why TNP should not be implemented, using the current industry standard, in any area code in the country where a state is willing to choose to bear the costs of TNP roll-out. If the FCC determines that such a course is too aggressive, a trial of such technology in a small state such as New Hampshire would prove useful in determining whether the roll-out of TNP can safely be accelerated to be available to consumers nationwide.

C. Adopt Interim Number Assignment Standards

The current numbering administration standards are clearly not working and there is a need for more stringent central office code assignment guidelines. The lack of enforcement authority accruing to the current North American Numbering Administrator (NANPA) is, by now, well-documented and requires no further elucidation here. These policies allow carriers to: (a) obtain numbers without a demonstration of actual need, (b) obtain numbers even in instances

⁴ Thousand Block Administration Protocols, adopted into the NH Code Jeopardy Procedures at NANPA meeting, Jan. 7, 1999, Manchester, NH.

where they may already have sufficient numbers within codes already assigned to them, and, (c) retain numbers even though they do not put them into use within the time frame required by the Central Office Code Assignment Guidelines. There may be other potential abuses beyond those mentioned here that also contribute to inefficient number distribution practices.

Therefore, until such time as the Commission tightens the definitions of numbering categories and reforms NANPA to strengthen enforcement authority and enforcement practice, the NHPUC believes that it should be granted interim authority to establish competitively-neutral criteria for the acquisition and utilization of numbering resources. The NHPUC therefore requests that the Common Carrier Bureau delegate authority to the NHPUC to:

- (2) establish needs-based criteria for acquisition of codes,
- (3) establish fill rates for growth codes,

It should be understood that, in making this request, we would be seeking to work closely with the CCB on the specific COCUS and other guideline changes we propose. In addition, these changes would be viewed as interim in nature and the NHPUC will work diligently to ensure that carriers do not face the prospect of being put into a squeeze by adopting short-run standards that are inconsistent with those that are ultimately adopted by the FCC when it issues its final order in the NOPR.

D. Enforce Number Assignment Standards, Audit Numbering Resources, and Reclaim Unused and Reserved Exchange Codes

As an entity familiar with the specific circumstances in New Hampshire, our rate center patterns, our competitive profile, and typical uses for numbers in our state, the NHPUC is in the best position to enforce number assignment standards. While the FCC is investigating numbering

issues and the many questions that need to be answered in its recent NOPR⁵, some form of interim enforcement authority should be granted to the states that will allow them to more closely track NXX code assignments and to ensure that numbers are being assigned to carriers with legitimate business plans to begin providing service in a timely fashion in the areas for which they have sought, and subsequently been granted, NXX code(s).

The NHPUC therefore requests that the Common Carrier Bureau delegate authority to the NHPUC to:

- (2) reclaim codes obtained in violation of Central Office Code Assignment Guidelines (Guidelines) and any other applicable rules,
- (3) reclaim codes which are being used to provide service in violation of state law,
- (4) reclaim codes that were acquired by carriers certifying that they would be facilities-based, but who have failed to establish facilities within the appropriate time frame,
- (5) establish interim mandatory number utilization data reporting and forecasting requirements, and,
- (6) establish auditing procedures and implement random audits (in addition to any auditing efforts of the FCC and NANPA).

As part of its enforcement authority, the NHPUC seeks the ability to conduct random audits of the use of numbering resources in order to identify inefficiencies within New Hampshire

⁵ FCC 99-122, In the Matter of Numbering Resource Optimization (CC Docket No. 99-200), et al, *Notice of Proposed Rulemaking (NOPR)* adopted May 27, 1999, released June 2, 1999. See also, Comments of the New Hampshire Public Utilities Commission (July 30, 1999) and Reply Comments of the New Hampshire Public Utilities Commission (August 30, 1999) filed in response to this *NOPR*.

and address them proactively. Random audits will serve the additional function of increasing the likelihood that carriers will self-police their numbering resources, particularly if the FCC codifies penalties sufficient to create such incentives pursuant to the NOPR. The NHPUC also requests the authority to govern the reclamation of unused and reserved codes and to reclaim test codes which have not been put into service within the time frame provided by the Guidelines.

E. Revision of Rationing Procedures

If necessary, and only as a last resort, the NHPUC requests temporary authority to revise rationing procedures during the jeopardy period without industry consensus so that, in the event that other number conservation measures are projected to be successful, but merely require a few additional months to be fully implemented, NXX code rationing can be tailored to match the implementation cycle.

IV. Conclusion

There is no shortage of numbers in New Hampshire. The chief source of the problem is the inefficient way in which numbering resources are administered, the allocation of numbers in full NXX code blocks of 10,000 numbers to requesting carriers.

The state of New Hampshire has had a single area code in place since the inception of the North American Numbering Plan, devised by the former Bell System in 1947. This area code is closely linked in the public mind with the state. The tourist and recreation industries, key in the state, rely on the identification between 603 and New Hampshire in their marketing and advertising. A new area code, even an overlay, would cause disruption and impose costs on New Hampshire businesses and residents. An overlay, the least disruptive new area code option, could create further burdens on new competitive entrants. New Hampshire's area code can support 7.7

million numbers, and today there are only 1.1 million lines in use in the state. If these numbers could be used more efficiently, all carriers could satisfy their needs for numbering resources, without putting consumers through the dislocation and expense of imposing a new area code.

In conclusion, the New Hampshire Public Utilities Commission respectfully requests that the Commission grant the instant petition for waiver for additional delegated authority to implement the aforementioned numbering efficiency measures.

Respectfully submitted,

New Hampshire Public Utilities Commission

By:

Douglas L. Patch, Chair

Susan S. Geiger, Commissioner

Nancy Brockway, Commissioner