STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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January 9, 1998

96-98

Hon. Magalie Roman Galas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Petition for Waiver of 47 C.F.R. 5219(3)(C)(ii)

Dear Secretary Galas:

Enclosed for filing is an original and five (5) copies of the Petition for Expeditied Waiver of 47 C.F.R. 52.19(3)(C)(ii) of the Department of Public Service.

Sincerely,

Lawrence G. Malone

Lawrence G. Malone
General Counsel
New York State
Department of Public Service
Three Empire State Plaza
Albany, New York 12223

Enclosure

cc: A. Richard Metzger, Jr.
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Geraldine Matise, Chief
Network Services Division
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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

RECEIVED
JAN 12 1998
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In the Matters of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code and Ameritech-Illinois	)	IAD File No. 94-102

NEW YORK DEPARTMENT OF PUBLIC SERVICE PETITION FOR EXPEDITED WAIVER OF 47 C.F.R. 52.19(3)(C)(ii)

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: January 9, 1998
Albany, New York

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

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Proposed 708 Relief Plan and 630 Numbering Plan Area Code and Ameritech-Illinois	)	IAD File No. 94-102

NEW YORK DEPARTMENT OF PUBLIC SERVICE PETITION FOR EXPEDITED WAIVER OF 47 C.F.R. 42.19(3)(C)(ii)

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

In December 1996, the New York Public Service Commission (NYPSC) instituted a proceeding to investigate the options for making additional area codes available in the 212 and 917 area codes in New York City.[1] It is anticipated that all available central office codes will be exhausted in the 212 area code by June 1998, the 718 area code by early 1999, and the 917 area code by 1999. As the result of the NYPSC's investigation,

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[1] NYPSC Case 96-C-1158, Proceeding on Motion of the Commission to Investigate the Options for Making Additional Central Office Codes Available in the 212 and 917 Area Codes in New York City.

it appears that an area code overlay will provide the greatest number relief for New York City.[2]

Section 52.19(c)(3)(ii) of the Federal Communications Commission's (Commission) rules requires mandatory 10-digit dialing when an area code overlay is used to provide number relief. The purpose of the 10-digit dialing requirement, as articulated by the Commission, is to ensure that competitors do not suffer competitive disadvantages and competition is not deterred as a result of dialing disparity (Local Competition Second Report and Order at 47330, para. 286 - para. 287).[3] The Commission presumes that, absent the 10-digit dialing requirement, "dialing disparity" would exist and competition would be impeded (Local Competition Second Report and Order at 47330, para. 287). As discussed below, the proposed overlay plan for New York City will not impede competition. However, enforcement of mandatory 10-digit dialing will unduly inconvenience callers in the New York City area. Accordingly, the New York Department of Public Service (NYDPS) requests waiver of 47 C.F.R. § 52.19(3)(c)(ii).[4]

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[2] NYPSC Opinion No. 97-18, Opinion and Order Concerning New York City Area Codes (Issued and Effective December 10, 1997) (NYPSC Area Code Decision (attached).

[3] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Second Report and Order and Memorandum Opinion and Order, FCC 96-333, 61 Fed. Reg. 47284 (1996) (Local Competition Second Report and Order).

[4] The NYDPS does not waive its right to continue to challenge the Commission's jurisdiction to impose dialing parity requirements on intrastate calls.

Further, inasmuch as the NYDPS anticipates that all available central office codes in the 212 area code will be exhausted by June 1998, the NYPSC must implement a number relief plan sufficiently in advance of this date. Consequently, the NYDPS requests expedited action on its Petition for Waiver.

DISCUSSION

The stated purpose of the Commission's 10-digit dialing requirement is to prevent dialing disparity and to ameliorate anti-competitive effects of an overlay (Local Competition Second Report and Order, para. 281 - para. 293).[5] Based on a comparison of the advantages and disadvantages of a geographic split versus an overlay, the NYPSC investigation of options for making additional central office codes available in New York City indicated that area code overlays is the best option.[6] Area code overlays would provide longer numbering relief, significantly less customer inconvenience and lower overall cost. (Affidavit of Allan H. Bausback [Bausback Aff. ¶ 4).[7] However, imposition of mandatory 10-digit dialing would not serve the public interest.

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[5] See also, Pennsylvania Public Utility Comm'n for Expedited Waiver of 47 C.F.R. Section 52.19 for area code 412 Relief, FCC Docket No. 96-98 Order (Released April 4, 1997) (Pennsylvania Order).

[6] New York City has gone through a series of area code changes. A geographic split was implemented in 1985, whereby the 718 area code was established and assigned to the boroughs of Brooklyn, Queens and Staten Island. In 1992, to further prolong the life of the 212 area code, the Bronx was moved from the 212 area code to the 718 area code. The 917 area code was introduced in 1992 as an overlay to provide further relief to the 212 and 718 area codes.

[7] By the conclusion of the case, only one competitive local exchange carrier (CLEC) opposed the overlay.

In April 1997, the Commission denied Pennsylvania's request for waiver of 47 C.F.R. § 52.19(c)(3)(ii) because it concluded that (1) interim number portability would not eliminate dialing disparities between customers in the old area code and customers in the new area code (Pennsylvania Order para. 17); (2) the incumbent LEC was likely to have more numbers than CLECs in the old area code; and (3) it was more likely that the incumbent LEC will have more central office codes in more rate centers than the CLECs (Pennsylvania Order para. 19). Thus, the Commission held that customers would find it less attractive to obtain service from a CLEC solely because the incumbent LEC will have access to a larger pool of central office codes in the old area code (Pennsylvania Order, para. 19).

Anti-competitive effects that may exist as a result of dialing "disparities" between customers in the "old" area code and customers in the "new" area code will not be present in New York. In fact, the NYPSC Area Code Decision provides for an area code overlay plan that is competitively neutral. Imposition of the Commission's 10-digit dialing requirement would require all callers in New York City to dial 10 digits within their area code without improving competition.[8]

In order to alleviate potential anti-competitive effects of any area code overlay, the NYPSC Area Code Decision imposes the following conditions:

1. Continued application of the anti-discrimination provisions of the

[8] Most of the consumers and community groups who commented in the NYPSC proceeding supported an area code overlay without mandatory 10-digit dialing (Bausback Aff. ¶ 5).

central office code assignment guidelines;

2. Permanent local number portability to ensure competitively neutral access to existing number resources;

3. Implementation of number pooling[9] as soon as it becomes technically feasible in order to ensure competitively neutral access to unassigned numbers;[10] and

4. A comprehensive outreach and education program to acquaint the public with the overlay and its operation.

(Bausback Aff. ¶ 10).[11] Each condition would be met before the overlay would be activated. These conditions make the overlay competitively neutral and ameliorate potential anti-competitive effects of dialing "disparities" of an area code overlay in New York City.

The NYPSC Area Code Decision addresses the Commission's concern with respect to adequate access to numbering resources by requiring permanent local number portability prior to activation of an area code overlay, as well as by enforcement of the anti-discrimination provisions of the central office code assignment guidelines. Thus, CLECs will have equal access to number resources and the development of competition will not be impeded

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[9] Number pooling as used here would allow the assignment of telephone numbers from the existing area code(s) on an as needed basis without regard to the company serving the customer.

[10] It is anticipated that number pooling will be introduced in Manhattan by April 1, 1998 and introduced throughout New York City by January 1, 1999 (coincident with the availability of local number portability).

[11] The NYPSC fully expects the number relief plan for Manhattan to be in place by early 1998.

by an overlay. Number pooling will also provide an additional pro-competitive safeguard.

The Commission expressed concern that CLECs will receive most number assignments from the new area code rather than the existing area code, making the new area code less attractive (Local Competition Second Report and Order at 47330, para. 287; Pennsylvania Order para. 19). The unique circumstances in New York do not support this premise. Although CLECs apparently were unable to obtain central office codes in many of the approximately 100 rate centers in the Pittsburgh area (Pennsylvania Order para. 21) the low number of rate centers in Manhattan allows all competitors to obtain central office codes in all rate centers (Bausback Aff. ¶ 8).[12] Moreover, number pooling will ensure that all carriers will have equal access to available numbers in the existing area code regardless of size and timing of market entry.[13]

In Manhattan, the CLECs have substantially lower number utilization rates than the incumbent LEC (15% compared with a number utilization rate of 80% for the incumbent LEC) and more available telephone numbers in proportion to their market shares (Bausback Aff. ¶ 14).[14] In any event, the availability of number pooling places the incumbent LEC and CLECs in the same

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[12] There are three rate centers in Manhattan (Bausback Aff. ¶ 8).

[13] Also, NYPSC staff is working with the industry to examine whether consolidation of rate centers could conserve NXX code assignments and relieve pooled capacity.

[14] Although the incumbent LEC has more numbers available on an absolute basis than does its competitors, it actually has fewer numbers in proportion to its market share (Bausback Aff. ¶ 14).

competitive position with respect to new number assignments. Moreover, telephone numbers in the new area code are likely to be rapidly used in light of the growing demand for telephone numbers in New York City (Bausback Aff. ¶ 7).[15] Consequently, this demand should further mitigate any perceived anti-competitive effects of an overlay.

The overlay plan approved by the NYPSC furthers competition and addresses the anti-competitive issues raised by the Commission. Given the small number of rate centers in Manhattan and the availability of central office codes for all CLECs in the existing area code, the incumbent LEC does not have a competitive advantage with respect to number assignments. Thus, the numbering resources available to CLECs in Manhattan and the conditions envisioned by the overlay plan alleviates any potential anti-competitive effects of an overlay for this area. Mandatory 10-digit dialing, however, would only inconvenience the public. Accordingly, the Commission's 10-digit dialing requirement is unnecessary to promote competition, and the granting of a waiver will not undermine the competitive policies embodied in the Act.

CONCLUSION

For the forgoing reasons, the Commission should waive the requirements of 47 C.F.R. 52.19(c)(3)(ii) for the New York Metropolitan LATA. Further, in light of the impending exhaustion

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[15] There is no evidence that CLECs will receive a disproportionate amount of number assignments from the new area code. CLECs are more likely to experience customer growth by customers switching carriers. Number portability will allow these customers to retain their existing telephone numbers (Bausback Aff. ¶ 13).

of available central office codes in the 212 area code, the NYDPS requests expedited action on its Petition for Waiver.

Lawrence G. Malone
General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
Albany, New York 12223-1350
(518) 474-2510

Of Counsel

Cheryl L. Callahan
Assistant Counsel

Dated: January 9, 1998
Albany, New York

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

AFFIDAVIT IN SUPPORT OF THE NEW YORK DEPARTMENT OF PUBLIC SERVICE PETITION FOR EXPEDITED WAIVER OF 47 C.F.R. 52.19(3)(C)(ii)

FILED BY
THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

Dated: January 9, 1998
Albany, New York

Before the
FEDERAL COMMUNICATIONS COMMISSION
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FILED BY
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AFFIDAVIT IN SUPPORT OF THE NEW YORK DEPARTMENT OF PUBLIC SERVICE PETITION FOR EXPEDITED WAIVER OF 47 C.F.R. 52.19(3)(C)(ii)

ALLAN H. BAUSBACK, being duly sworn, deposes and states:

1. I am the Acting Director of the New York Department of Public Service (NYDPS) Communications Division. I have been employed by the NYDPS since 1965. I oversee telecommunications regulation for the NYDPS and advise the New York Public Service Commission (NYPSC) on telecommunications matters.

2. The NYPSC instituted a proceeding to consider the appropriate manner for ensuring an adequate supply of telephone

numbers in New York City (NYPSC Case 96-C-1158). This proceeding generated the information presented in this affidavit.

3. It is anticipated that all available central office codes will exhaust in the 212 area code (serving Manhattan) by June 1998, the 718 area code (serving Queens, Brooklyn, Bronx and Staten Island) by early 1999, and the 917 area code (serving primarily wireless customers in New York City) by late 1999. The growth for central office codes in the 212 area code continues unabated. Increased demand may accelerate these dates.

4. The implementation of overlay relief plans will provide the longest possible period of area code relief while causing the least possible inconvenience to consumers. In Manhattan, the Overlay Relief Plan (Overlay Plan) is expected to provide 6.5 years of relief compared to about 5.0 years provided by the most efficient geographic split plan. Similarly, the Overlay Plan would provide 13.0 years of relief for the 718 NPA versus 10.5 years under the most efficient geographic split. Overlay relief plans are less inconvenient than geographic split plans because forced telephone number or area code changes are not necessary. Avoiding forced telephone number changes will save New York City businesses millions of dollars as they will not have to change advertising, stationery, and vehicle lettering. Residential customers will avoid the inconvenience of notifying friends and relatives of their new telephone numbers and/or area codes.

5. The overwhelming majority of the consumers and community groups that either wrote or called the Department of Public Service concerning this issue favored the overlay relief

plans. Similarly, almost all of the speakers that appeared at the seven public hearings held in all five Boroughs of New York City favored the overlay relief plans. Many expressed a strong desire to maintain their current area codes, telephone numbers, and dialing procedures.

6. Most of the CLECs indicated that, while their first preference might be to implement geographic splits, they could accept an overlay relief plan if certain conditions designed to foster competition were included. Those conditions are similar to those provided in paragraph 10 below.

7. Any new area codes assigned to New York City will become rapidly acceptable to the public and will soon be identified as "New York City" area codes by the general public because the new codes will fill quickly. Indeed, the 646 relief code for Manhattan will probably run out of numbers in only 6.5 years and the 347 relief code for the four outer Boroughs will probably exhaust in 13.0 years.

8. There are only three rate centers in Manhattan. The CLECs are overwhelmingly interested in only the rate centers that serve Lower and Midtown Manhattan. The CLECs are currently able to obtain central office codes in all three Manhattan rate centers.

9. The NYPSC concluded that area code overlays, subject to appropriate pro-competitive conditions, would provide the longest possible area code relief for New York City on a timely basis while causing the least amount of customer disruption (PSC Opinion No. 97-18).

10. In order to provide number relief in a competitively equitable manner, the following conditions were imposed by the NYPSC:

a. continued enforcement of the anti-discrimination provisions of the central office code assignment guidelines;

b. permanent number portability to ensure competitively neutral access to existing number resources;

c. implementation of number pooling as soon as technically feasible in order to ensure competitively neutral access to unassigned numbers; and

d. a comprehensive outreach and education program.

11. Permanent number portability was deployed in several central offices in New York City in November, 1997. Number portability is expected to be deployed in all other New York City central offices by March 31, 1998 (See attached deployment schedule).

12. Pooling of geographic telephone numbers in a local environment is a number administration and assignment process which allocates numbering resources to a shared reservoir associated with a designated geographic area (Industry Numbering Committee [INC]: Report on Number Pooling - Draft No. 5, Issued September 29, 1997). Number pooling helps create a level playing field. Barring technical constraints, number pooling is expected to be available coincident with permanent number portability.

13. There is no evidence that CLECs will disproportionately have to meet number demand by receiving number assignments in the new area code. CLECs are more likely to

experience customer growth by customers changing carriers; and number portability will allow these customers to retain their current telephone numbers. Also, number pooling will ensure that all carriers will have equal access to available numbers in the existing area code regardless of size and timing of market entry.

14. The level of telephone number utilization in Manhattan by New York Telephone Company, the incumbent local exchange company, is approximately 80% -- among the highest in the United States. In contrast, the utilization rate for competitive local exchange companies (CLECs) in Manhattan is broadly estimated at 15%.

15. As of the third quarter of 1997, reports indicate that approximately 750 NXXs were available in the 212 area code of which 705 are currently in use. These reports also indicated that the incumbent LEC had 617 NXX codes assigned to it and the CLECs had 88 NXX codes assigned to them.

WHEREFORE, the Supplemental Petition for Reconsideration of the New York State Department of Public Service should be granted.

Allan H. Bausback
ALLAN H. BAUSBACK

Sworn to before me this
9th day of January 1998
Beryl S. Callahan

Notary Public, State of New York
Commission Expires 8/13/98

Attachment

Schedule for Implementation of Number Portability in New York City

Office	LNP Ready Date	Market Area
West 50th St.	Nov. 30, 1997	Manhattan
East 13th St. (2nd Ave.)	Nov. 30, 1997	Manhattan
East 79th St.	Nov. 30, 1997	Greater Metro
Newtown	Nov. 30, 1997	Greater Metro
West Staten Island	Nov. 30, 1997	Greater Metro
Broad Street	Dec. 31, 1997	Manhattan
West 36th St.	Dec. 31, 1997	Manhattan
West 18th St.	Dec. 31, 1997	Manhattan
JFK	Dec. 31, 1997	Greater Metro
Long Island City	Dec. 31, 1997	Greater Metro
West 176th St.	Dec. 31, 1997	Greater Metro
East 97th St.	Dec. 31, 1997	Greater Metro
Forest Hills	Dec. 31, 1997	Greater Metro
Corona	Dec. 31, 1997	Greater Metro
Flushing	Dec. 31, 1997	Greater Metro
Fairview Ave	Dec. 31, 1997	Greater Metro
Cruger Ave.	Dec. 31, 1997	Greater Metro
West 42nd St.	Jan. 30, 1998	Manhattan
West St. (140)	Jan. 30, 1998	Manhattan
East 30th St.	Jan. 30, 1998	Manhattan
West 73rd St.	Jan. 30, 1998	Greater Metro
Williamsburg	Jan. 30, 1998	Greater Metro
Laurelton	Jan. 30, 1998	Greater Metro
Grand Concourse	Jan. 30, 1998	Greater Metro
71st St.	Jan. 30, 1998	Greater Metro

Astoria	Jan. 30, 1998	Greater Metro
Tiebout Ave.	Jan. 30, 1998	Greater Metro
111th Ave. (Ozone Park)	Jan. 30, 1998	Greater Metro
Tratman Ave.	Jan. 30, 1998	Greater Metro
Staten Island New Dorp	Jan. 30, 1998	Greater Metro
140 West St. T	Feb. 28, 1998	Manhattan
World Trade Center	Feb. 28, 1998	Manhattan
Pearl St.	Feb. 28, 1998	Manhattan
E. 13th St. (2nd Ave.)	Feb. 28, 1998	Manhattan
Bridge St.	Feb. 28, 1998	Greater Metro
Varick St.	Feb. 28, 1998	Manhattan
East 38th St.	Feb. 28, 1998	Manhattan
Manhattan Ave.	Feb. 28, 1998	Greater Metro
Convent Ave.	Feb. 28, 1998	Greater Metro
Avenue Y	Feb. 28, 1998	Greater Metro
77th St.	Feb. 28, 1998	Greater Metro
Jamaica	Feb. 28, 1998	Greater Metro
East 167th St.	Feb. 28, 1998	Greater Metro
Thayer St.	Feb. 28, 1998	Manhattan
Rockaway Ave.	Feb. 28, 1998	Greater Metro
Troy Ave.	Feb. 28, 1998	Greater Metro
14th St.	Feb. 28, 1998	Greater Metro
Richmond Hill	Feb. 28, 1998	Greater Metro
West 50th St.	Mar. 31, 1998	Manhattan
East 56th St.	Mar. 31, 1998	Manhattan
East 37th St.	Mar. 31, 1998	Manhattan
E. 37th St. (E. 38th St)	Mar. 31, 1998	Manhattan
Albemarle Road	Mar. 31, 1998	Greater Metro
North Staten Island	Mar. 31, 1998	Greater Metro
E. 150th St.	Mar. 31, 1998	Greater Metro
North Jamaica	Mar. 31, 1998	Greater Metro

Avenue R	Mar. 31, 1998	Greater Metro
Clinton Ave.	Mar. 31, 1998	Greater Metro
Avenue U	Mar. 31, 1998	Greater Metro
Kenmore Place	Mar. 31, 1998	Greater Metro
11th Ave.	Mar. 31, 1998	Greater Metro
Liberty Ave.	Mar. 31, 1998	Greater Metro
Bayside	Mar. 31, 1998	Greater Metro
Avenue I	Mar. 31, 1998	Greater Metro
Bushwick Ave.	Mar. 31, 1998	Greater Metro
Hollis	Mar. 31, 1998	Greater Metro
South Staten Island	Mar. 31, 1998	Greater Metro