

FCC MAIL SECTION

Federal Communications Commission

DA 99-2634

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

In the Matter of)	
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New Hampshire Public Utilities)	CC Docket No. 96-98
Commission's Petition for Additional)	NSD File No. L-99-71
Delegated Authority to Implement Number)	
Optimization Measures in the 603 Area Code)	

ORDER

Adopted: November 30, 1999

Released: November 30, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This order responds to the New Hampshire Public Utilities Commission's (New Hampshire Commission) September 2, 1999, Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code (Petition) requesting additional authority from the Commission to implement various area code conservation measures in New Hampshire. We herein conditionally grant the New Hampshire Commission the authority to reclaim unused and reserved NXX codes; set numbering allocation standards, including the establishment of a requirement that carriers demonstrate facilities readiness and, the setting of fill rates; enforce and audit carrier compliance with number utilization reporting requirements; require the submission of utilization and forecast information to the New Hampshire Commission; and institute a thousands-block pooling trial. We decline to reach the New Hampshire Commission's request to revise NXX code rationing procedures at this time. We deny the New Hampshire Commission's request for authority to implement mandatory interim unassigned number porting (UNP).

2. Many of the measures proposed in the Petition are also examined in a Notice of Proposed Rulemaking that the Commission released earlier this year.¹ Although we grant the New Hampshire Commission interim authority to institute many of the optimization measures in the Petition, we do so subject to the caveat that this grant will be superseded by forthcoming decisions in the *Numbering Resource Optimization*² proceeding that will establish national guidelines, standards, and procedures for numbering optimization. This limited grant of

¹ See *Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999) (*Numbering Resource Optimization Notice*).

² See *Numbering Resource Optimization Notice*.

delegated authority should not be construed as a prejudgment of any of the measures on which the Commission has sought public comment in the *Numbering Resource Optimization Notice*.

II. BACKGROUND

3. Congress granted the Commission plenary jurisdiction over numbering issues.³ Section 251(e)(1) of the Act also allows the Commission to delegate to state commissions all or any portion of its jurisdiction over numbering administration.⁴ The Commission's regulations generally require that numbering administration: (1) facilitate entry into the telecommunications marketplace by making telecommunications resources available on an efficient and timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications technology over another.⁵ Further, our regulations specify that, if the Commission delegates any telecommunications numbering administration functions to any state, the states must perform the functions in a manner consistent with these general requirements.⁶

4. On September 28, 1998, the Commission released the *Pennsylvania Numbering Order* delegating additional authority to state commissions to order NXX code rationing in conjunction with area code relief decisions, in the absence of industry consensus.⁷ The order further approved a mandatory thousands-block number pooling trial in Illinois.⁸ The order provided that state utility commissions could order voluntary pooling trials,⁹ but in view of the Commission's efforts to develop national pooling standards, we declined to delegate to state commissions the general authority to order mandatory number pooling.¹⁰ The *Pennsylvania Numbering Order*, however, encouraged state commissions to seek further limited delegations of authority to implement other innovative number conservation methods prior to implementing number conservation plans.¹¹

5. In September 1999, the Commission addressed five similar petitions from state utility commissions.¹² The Commission, in those five orders, addressed all of the issues raised in

³ 47 U.S.C. § 251(e).

⁴ 47 U.S.C. § 251(e)(1).

⁵ 47 C.F.R. § 52.9(a).

⁶ 47 C.F.R. § 52.9(b).

⁷ *Pennsylvania Numbering Order* at 19025, ¶ 24.

⁸ *Id.* at 19029-30, ¶ 30.

⁹ *Id.* at 19027-28, ¶¶ 27-28.

¹⁰ *Id.* at 19027, ¶ 27. Subject to conditions, we permitted states to order the withholding of a certain number of NXX codes within a new area code from assignment and saved for pooling. *Id.*

¹¹ *Id.* at 19030, ¶ 31.

¹² See California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area

the instant Petition. The instant Petition raises no new issues, and therefore, pursuant to the authority delegated to the Common Carrier Bureau (Bureau) in the *Pennsylvania Numbering Order*, we address the Petition herein.

6. In its Petition, the New Hampshire Commission requests that it be granted the authority to: (1) implement interim unassigned number porting; (2) implement thousands-block number pooling; (3) establish needs-based criteria for the acquisition of NXX codes; (4) establish fill rates for growth codes; (5) reclaim NXX codes assigned in violation of the CO Code Assignment Guidelines, state law, or which have not been activated within the appropriate time frame; (6) establish mandatory number utilization and forecasting requirements; (7) establish auditing procedures; and (8) revise rationing procedures.¹³ The New Hampshire Commission states that although the *Numbering Resource Optimization Notice* contains a number of potentially helpful approaches to optimizing the use of numbering resources, it believes that these measures cannot be implemented in time to prevent the addition of a new area code to New Hampshire.¹⁴ Furthermore, the New Hampshire Commission contends that the existence of the *Numbering Resource Optimization Notice* could have the perverse effect of encouraging carriers to request numbering resources unnecessarily, because of proposals contained therein to increase the threshold showings required to obtain numbering resources in the future.¹⁵ On September 15, 1999, the Petition was placed on Public Notice for public comment.¹⁶

III. DISCUSSION

7. We recognize the New Hampshire Commission's concern that exhaust of the 603 area code is occurring despite the existence of a large amount of unused numbers in this area code.¹⁷ To empower the New Hampshire Commission to take steps to make number utilization

Code Relief and NXX Code Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-248, NSD File No. L-98-136 (rel. Sept. 15, 1999) (*California Delegation Order*); Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-249, NSD File No. L-99-33 (rel. Sept. 15, 1999); Massachusetts Department of Telecommunications and Energy's Petition for Waiver of Section 52.19 to Implement Various Area Code Conservation Methods in the 508, 617, 781, and 978 Area Codes, *Order*, CC Docket No. 96-98, FCC 99-246, NSD File No. L-99-19 (rel. Sept. 15, 1999); New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-247, NSD File No. L-99-21 (rel. Sept. 15, 1999); Maine Public Utilities Commission Petition for Additional Delegated Authority to Implement Number Conservation Measures, *Order*, CC Docket No. 96-98, FCC 99-260 (rel. Sept. 28, 1999) (*Maine Delegation Order*).

¹³ Petition at 12.

¹⁴ Petition at 6.

¹⁵ Petition at 7.

¹⁶ Common Carrier Bureau Seeks Comment on the New Hampshire Public Utilities Commission's Petition for Delegation of Additional Authority to Implement Number Optimization Measures in the 603 Area Code, *Public Notice*, DA 99-1894 (rel. Sept. 15, 1999).

¹⁷ See Petition at 14.

more efficient, we herein grant significant additional authority to the New Hampshire Commission. In some instances, we are granting the New Hampshire Commission authority that goes beyond the parameters outlined in the *Pennsylvania Numbering Order*, because we find such grant to be appropriate in light of the specific circumstances in New Hampshire.

8. Congress granted the Commission exclusive jurisdiction over those portions of the North American Numbering Plan (NANP) that relate to the United States, and directed that the Commission administer the NANP in a manner which assures that numbering resources are available on an equitable basis.¹⁸ The Commission was also granted the authority to delegate this jurisdiction to state utility commissions. Thus, while we grant authority below to the New Hampshire Commission to engage in various matters related to administration of the NANP in New Hampshire, we require the New Hampshire Commission to abide by the same general requirements that the Commission has imposed on the numbering administrator. Thus, the New Hampshire Commission, to the extent it acts under the authority delegated herein, must ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; that whatever policies the New Hampshire Commission institutes with regard to numbering administration not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and that the New Hampshire Commission not unduly favor one telecommunications technology over another.¹⁹

9. The grants of authority herein are not intended to allow the New Hampshire Commission to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief.²⁰ While we are giving the New Hampshire Commission tools that may prolong the lives of existing area codes, the New Hampshire Commission continues to bear the obligation of implementing area code relief when necessary, and we expect the New Hampshire Commission to fulfill this obligation in a timely manner. Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.

10. Several commenting parties argue that the Petition should be granted in its entirety on the basis that state utility commissions require greater authority to implement number conservation measures in order to rectify the causes of area code exhaust.²¹ Other parties suggest

¹⁸ 47 U.S.C. § 251(e)(1).

¹⁹ See 47 C.F.R. § 52.9(a). See also 47 U.S.C. § 251(e)(1).

²⁰ *Pennsylvania Numbering Order* at 19027, ¶ 26.

²¹ See Business and Industry Association of New Hampshire comments; California Commission comments; Connecticut Commission comments; Pennsylvania Office of Consumer Advocate and New Hampshire Office of Consumer Advocate comments; Texas Commission comments; Wisconsin Commission comments. See also letter from Mike Vlacich, Special Assistant for Policy to Governor Jeanne Shaheen, to Magalie R. Salas, Secretary, FCC, dated October 4, 1999 (attaching New Hampshire Governor Jeanne Shaheen's testimony regarding the Petition);

that the Petition be denied on the basis that number conservation measures must be developed at the national level, and that the Petition does not provide an adequate basis on which to grant the requested delegations of authority.²²

11. *Setting number assignment standards.* The New Hampshire Commission seeks additional authority to establish certain needs-based criteria for carriers' acquisition of NXX codes. Specifically, New Hampshire seeks authority to require that a carrier demonstrate it has, or will have, within six months, the necessary facilities to serve a particular rate center before it is assigned an NXX code for use within that rate center.²³ In addition, the New Hampshire Commission seeks to establish fill rates that must be met before a carrier may acquire an additional code in a rate center where it already has a code (a "growth code").²⁴

12. In a prior order, the Commission delegated authority to the Maine Commission to require a carrier to demonstrate that it will have the necessary facilities to serve a specific rate center within six months of assignment of an NXX code for use in that rate center.²⁵ The Commission recognized that such a requirement would be consistent with the provision in the CO Code Assignment Guidelines requiring carriers to place NXX codes in service within six months of assignment of their effective dates, and is an appropriate method of ensuring that carriers not obtain numbering resources well in advance of when they will actually be able to provide service.²⁶ The Commission also found that the additional authority would help the state commission to ensure that carriers that do not need numbering resources (such as non-facilities based resellers) are not obtaining unnecessary NXX codes.²⁷ Based on Commission precedent, we therefore delegate authority to the New Hampshire Commission to require a carrier to demonstrate that it will have the necessary facilities to serve a specific rate center within six months of assignment of an NXX code for use in that rate center.

letter from Jeb E. Bradley, New Hampshire House of Representatives, to Blaise A. Scinto, Deputy Chief, Network Services Division, Common Carrier Bureau, dated October 5, 1999; letter from Betty Falton, President, New Hampshire Lodging & Restaurant Association, to Blaise A. Scinto, Deputy Chief, Network Services Division, Common Carrier Bureau, dated October 5, 1999.

²² See CTIA comments; Omnipoint Communications comments; PCIA comments; SBC comments.

²³ See Letter from Paul S. Keller, New Hampshire Commission, to Magalie R. Salas, Secretary, FCC, dated November 17, 1999.

²⁴ Petition at 10-11. A "growth" code is an additional NXX code requested for an established switching entity, point of interconnection, or rate center when the telephone numbers available for assignment in previously assigned NXX codes will not meet expected demand. CO Code Assignment Guidelines at § 13.0. An "initial" code is the first NXX code assigned to the carrier at a new switching entity, point of interconnection or unique rate center, and the administrator is to assign initial codes to the extent required to originate or terminate traffic. *Id.*

²⁵ See e.g., *Maine Delegation Order* at ¶ 11.

²⁶ See Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008 (rev. Apr. 26, 1999) at § 6.3.3 (CO Code Guidelines). This document is available at <<http://www.atis.org/atis/clc/incdocs.htm>>.

²⁷ See *Maine Delegation Order* at ¶ 11.

13. Subject to the conditions set forth below, we also delegate authority to the New Hampshire Commission to require NXX code applicants to demonstrate that they have met certain fill rates in previously assigned NXX codes prior to obtaining additional numbering resources for use in a rate center, even if the NPA is not in jeopardy.²⁸ In prior orders, the Commission stated that the establishment of fill rates would encourage more efficient use of NXX codes.²⁹ In these orders, the Commission addressed the competitive concerns associated with a fill-rate regime,³⁰ and parties commenting in the instant proceeding have not raised any new concerns. Based on Commission precedent, we delegate authority to the New Hampshire Commission to establish fill rates, subject to the same conditions the Commission imposed in prior orders.

14. Although we do not wish to dictate the parameters of the fill-rate regime, we urge the New Hampshire Commission to allow for some flexibility in establishing fill rates and applying them to carriers. Our primary concern is that fill rates not be applied in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.

15. We are also concerned about the impact of multiple, disparate number conservation regimes on the availability of telecommunications services and the industry's ability to forecast and plan properly for exhaust of the NANP.³¹ Therefore, during its implementation of this authority, we ask that the New Hampshire Commission consult and coordinate with other state commissions that may obtain authority to impose fill rates.³² We encourage the New Hampshire Commission to establish fill rates that are not inconsistent with those imposed by other states.

16. The New Hampshire Commission may only consider a carrier's fill rate in relation to growth codes. In its prior orders, the Commission determined that a carrier's ability to establish a service "footprint" should not be restricted.³³ That is, a carrier ought to be able to obtain initial numbering resources in rate centers where the carrier is authorized to offer service

²⁸ The *Pennsylvania Numbering Order* authorized states to consider imposing usage thresholds on carriers before obtaining NXX codes within the same rate center in jeopardy situations subject to state-ordered NXX code rationing plans. *Pennsylvania Numbering Order* at 19025-26, ¶ 24.

²⁹ See, e.g., *Massachusetts Delegation Order* at ¶ 31.

³⁰ See, e.g., *Massachusetts Delegation Order* at ¶¶ 32-36.

³¹ See *Pennsylvania Numbering Order* at 19019-20, ¶ 15.

³² See *Common Carrier Bureau Seeks Comment on State Utility Commission Requests for Additional Authority To Implement Telecommunications Numbering Conservation Measures*, *Public Notice*, NSD File Nos. L-98-136, L-99-19, L-99-21, L-99-27, L-99-33, DA 99-1198 (rel. June 22, 1999) (California, Florida, Maine, Massachusetts, New York); *Common Carrier Bureau Seeks Comment on the Texas Public Utility Commission Petition for Delegation of Additional Authority to Implement Number Conservation Measures*, *Public Notice*, NSD File No. L-99-55, DA 99-1380, (rel. July 14, 1999); *Common Carrier Bureau Seeks Comment on the Connecticut Department of Public Utility Control's Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures*, *Public Notice*, NSD File No. L-99-62, DA 99-1555 (rel Aug. 5, 1999).

³³ See, e.g., *Massachusetts Delegation Order* at ¶ 35.

and plans to do so within the NXX activation timeframe established by the CO Code Assignment Guidelines (six months).

17. As stated in the *Pennsylvania Numbering Order*, we are concerned that granting this request and other, similar requests will overburden the NANPA, which based its bid for providing number administration services on industry guidelines that are applicable nationwide.³⁴ Therefore, to avoid imposing an additional burden on the NANPA, to the extent that the New Hampshire Commission chooses to implement a fill-rate requirement, we delegate authority to the New Hampshire Commission to ascertain carrier compliance with the fill-rate requirement. To avoid delay in NXX code application processing, we direct the New Hampshire Commission to conduct its review of carrier compliance with any required fill rate within the ten-day timeframe established by the CO Code Assignment Guidelines as the time in which the NANPA must respond to an applicant's NXX code request. Of course, a carrier's failure to provide the New Hampshire Commission with adequate evidence of compliance with the fill-rate requirement upon request will toll the running of this 10-day timeframe. Further, while we delegate to the New Hampshire Commission the authority to request and evaluate information provided by carriers to demonstrate compliance with the fill rate, we request that it not release such information to any entity other than the NANPA, the Commission, or the Common Carrier Bureau.

18. *Reclamation of NXX codes.* The New Hampshire Commission seeks authority to reclaim codes acquired in violation of the CO Code Assignment Guidelines, other applicable rules, and state law. Furthermore, the New Hampshire Commission seeks to extend reclamation authority to codes assigned to carriers that have failed to establish facilities within the time frame they certified they would become facilities-based carriers. Subject to the conditions set forth in this section, we grant the New Hampshire Commission's request for additional authority to reclaim NXX codes under specified circumstances.

19. The CO Code Assignment Guidelines provide that carriers shall activate NXX codes within six months of the "initially published effective date."³⁵ In prior orders, the Commission has granted state commissions the authority to reclaim unused NXX codes, and has recognized the value in reclaiming those codes.³⁶

20. Parties commenting in the instant proceeding have not raised any new concerns.³⁷ Based on Commission precedent, we grant authority to the New Hampshire Commission to

³⁴ See *Pennsylvania Numbering Order* at 19031-32, ¶ 33 (finding that if every state commission implemented its own NXX code administration measures, the NANPA would have the potentially impossible task of performing its code administration and NPA relief planning functions in a manner consistent with industry guidelines and fifty-one different state regimes).

³⁵ See Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008 (rev. Apr. 26, 1999) at § 6.3.3 (CO Code Guidelines). This document is available at <<http://www.atis.org/atis/clc/incdocs.htm>>.

³⁶ See, e.g., *Massachusetts Delegation Order* at ¶ 23.

³⁷ See, e.g., *Massachusetts Delegation Order* at ¶ 23.

investigate whether codeholders have activated NXXs assigned to them within the time frames specified in the CO Code Assignment Guidelines, and to direct the NANPA to reclaim NXXs that the New Hampshire Commission determines have not been activated in a timely manner. In light of the New Hampshire Commission's particular request, we construe this reclamation authority to extend to instances where, contrary to the CO Code Assignment Guidelines and New Hampshire's laws and regulations, a carrier obtaining NXX codes either has not been certified as a provider of local exchange service or has not established facilities within the certified time frame. This authority necessarily implies that the New Hampshire Commission may request proof from all carriers that NXX codes have been "placed in service" according to the CO Code Assignment Guidelines as well as proof of certification in the specified service area and proof that facilities have been established within the specified time frame. We further direct the NANPA to abide by the New Hampshire Commission's determination to reclaim an NXX code if the New Hampshire Commission is satisfied that the codeholder has not activated the code within the time specified by the CO Code Assignment Guidelines or has obtained numbering resources without being certified to provide local exchange service.

21. We note that the CO Code Assignment Guidelines dictate substantial procedural hurdles prior to reclamation of an unused NXX, in part to afford the code holder an opportunity to explain the circumstances that have led to a delay in code activation.³⁸ The Commission earlier recognized that new entrants, in particular, may suffer unexpected delays or scheduling setbacks beyond their control, which may lead to code activation delays.³⁹ We clarify that the New Hampshire Commission need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines relating to referring the issue to the Industry Numbering Committee (INC), as long as the New Hampshire Commission accords the code holder an opportunity to explain the extenuating circumstances behind the unactivated NXX codes or a failure to establish facilities within the certified time period.

22. Although it did not specifically request authority to reclaim thousands blocks, in connection with its request to implement a thousands-block number pooling trial, the New Hampshire Commission notes that as a part of the trial, blocks of 1,000 numbers would need to be donated to a numbering pool.⁴⁰ In prior orders, the Commission recognized the utility to be gained by number pooling trials through the reclamation of blocks of 1,000 numbers with no, or relatively low, contamination.⁴¹ On our own motion, to the extent we delegate herein authority

³⁸ For example, the CO Code Guidelines dictate that the CO Code Administrator must refer to the INC for resolution of any matter relating to an NXX code that has not been activated within the timeframe specified in the guidelines. CO Code Assignment Guidelines at § 8.2.2. The INC must then investigate the referral and attempt to resolve the referral. CO Code Assignment Guidelines at § 8.3. Absent consensus resolution, the matter is then referred to the "appropriate regulatory body" for resolution. *Id.*

³⁹ See, e.g., *Massachusetts Delegation Order* at ¶ 24.

⁴⁰ See Petition at 9. We address the New Hampshire Commission's request for authority to implement thousands-block pooling *infra* at ¶¶ 24-34.

⁴¹ See, e.g., *Massachusetts Delegation Order* at ¶ 26. A "contaminated block" of numbers, in relation to thousands block pooling, refers to a block of 1,000 numbers (e.g., 3000-3999), in which at least one telephone number is not available for assignment. See *Numbering Resource Optimization Notice* at n.325.

to the New Hampshire Commission to initiate a thousands-block number pooling trial, we also delegate to it the authority to reclaim thousands blocks in connection with the trial. The conditions that apply to the implementation of a thousands-block number pooling trial shall also apply to any reclamation of unused blocks of numbers. In particular, the industry's guidelines regarding reclamation of thousands blocks shall apply to the New Hampshire Commission.⁴²

23. *Auditing carriers' use of numbering resources and requiring submission of utilization, forecast data.* The New Hampshire Commission seeks the authority to require the submission of utilization and forecast data.⁴³ The New Hampshire Commission also proposes to conduct random number utilization audits to identify and address inefficiencies within New Hampshire.⁴⁴ In prior orders, the Commission granted similar authority to the public utility commissions of New York and Florida, determining that state commissions should be able to monitor carriers' use of numbering resources, if they choose to do so.⁴⁵ Parties commenting on the instant petition raise issues similar to those which the Commission already addressed in these prior orders. Based on Commission precedent, we therefore delegate authority to the New Hampshire Commission to require carriers to submit information regarding number utilization and forecast demand for resources, and to conduct random number utilization audits. We reiterate, however, that because these are measures under consideration in the *Numbering Resource Optimization Notice*, this grant of authority is limited in duration until such time as the Commission enacts rules or policies relating to collecting number utilization and forecast data or auditing carriers' use of numbering resources.⁴⁶

24. *Thousands-block number pooling.* The New Hampshire Commission requests authority to institute thousands-block number pooling in New Hampshire.⁴⁷ The New Hampshire Commission states that it would likely limit an initial trial to the Manchester-Nashua area where the demand for new numbers as a result of competitive activity is heaviest.⁴⁸ The Commission

⁴² See Thousand Block Pooling Guidelines at §§ 8.1.4-8.1.5 (specifying only that blocks with less than ten percent contamination shall be donated to the industry pool of thousands blocks).

⁴³ Petition at 10-11.

⁴⁴ See Petition at 12-13.

⁴⁵ See *New York Delegation Order* at ¶ 35 (delegating authority to audit carriers' use of numbering resources); *Florida Delegation Order* at ¶ 36 (delegating authority to conduct number utilization surveys from all carriers); see also various commenters.

⁴⁶ See *Numbering Resource Optimization Notice* at ¶¶ 83-90.

⁴⁷ Petition 9. Historically, network routing mechanisms are based upon the understanding that geographic numbers are assigned on an NXX code basis and associated with a specific switch, and, correspondingly, that the network address to which the call must be routed is embedded in the first six digits (NPA-NXX) of the called number. Thousands-block number pooling allows service providers in a given area to receive numbers in blocks of 1,000 by breaking the association between the NPA-NXX and the service provider to whom the call is routed. Through number pooling, participating carriers can effectively share numbering resources from NXX codes rather than receiving an entire NXX code at a time. *Numbering Resource Optimization Notice* at ¶ 130.

⁴⁸ Petition at 9.

tentatively concluded that thousands-block pooling is an important numbering resource optimization strategy, essential to extending the life of the NANP.⁴⁹ In granting the Illinois Commission the authority to engage in a mandatory thousands-block pooling trial in the *Pennsylvania Numbering Order*, the Commission recognized that state number pooling trials could aid in developing national pooling implementation, architecture, and administrative standards.

25. The implementation of thousands-block pooling requires local number portability (LNP) capability. Because New Hampshire does not contain one of the top 100 Metropolitan Statistical Areas (MSAs),⁵⁰ carriers operating in that state are not required to implement LNP until they receive a customer request for this service.⁵¹ The New Hampshire Commission, however, informs us that Bell Atlantic, which is New Hampshire's largest incumbent local exchange carrier and provides service to 94% of the access lines in that state, is LNP capable.⁵² Moreover, the New Hampshire Commission informs us that all eighteen competitive local exchange carriers currently certified to provide non-dedicated, facilities-based service in New Hampshire were required to be LNP capable as of October 31, 1999. In light of the fact that LNP has been deployed by a substantial number of wireline carriers, we conclude that thousands-block pooling is technically feasible in New Hampshire.

26. In prior orders, the Commission has granted several state public utility commissions the authority to initiate thousands-block pooling trials.⁵³ In so doing, the Commission considered support for the proposal as well as concerns regarding the burdens that thousands-block pooling trials might impose.⁵⁴ The Commission noted that, in spite of the potential for strain on the network occasioned by multiple pooling trials, the relatively small volume of ported numbers and the importance of providing relief to states experiencing severe

⁴⁹ *Numbering Resource Optimization Notice* at ¶ 138.

⁵⁰ MSAs are geographic areas designated by the Bureau of Census for purposes of collecting and analyzing data. The boundaries of MSAs are defined using statistics that are widely recognized as indications of metropolitan character. See Policy and Rules Concerning Rates for Dominant Carriers, *Memorandum Opinion and Order*, CC Docket No. 87-313, FCC 97-168 (rel. May 30, 1997) at 17 n.26. When implementing LNP, the Commission established a phased implementation schedule based on MSAs. Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, RM 8535, 11 FCC Rcd 8352, 8394-95, ¶ 81 (1996).

⁵¹ See 47 C.F.R. § 52.23(c). When implementing LNP, the Commission established a phased implementation schedule based on MSAs. Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, RM 8535, 11 FCC Rcd 8352, 8394-95, ¶ 81 (1996).

⁵² Letter from Paul S. Keller, New Hampshire Commission, to Magalie R. Salas, Secretary, FCC, dated November 10, 1999. The New Hampshire Commission also states that the remaining 13 ILECs are independent telephone companies which filed for, and were subsequently granted, relief from the requirement that all carriers in the state be LNP capable by October 31, 1999. *Id.*

⁵³ See, e.g., *California Delegation Order* at ¶¶ 11-22; *Florida Delegation Order* at ¶¶ 10-21; *Maine Delegation Order* at ¶¶ 26-36; *Massachusetts Delegation Order* at ¶¶ 11-22; *New York Delegation Order* at ¶¶ 10-21.

⁵⁴ See, e.g., *California Delegation Order* at ¶ 12; *Florida Delegation Order* at ¶ 11; *Maine Delegation Order* at ¶ 28; *Massachusetts Delegation Order* at ¶ 12; *New York Delegation Order* at ¶ 11.

strain on their numbering resources weighed in favor of delegating authority to implement number pooling trials.⁵⁵

27. Since the release of the *Pennsylvania Numbering Order*, the telecommunications industry has arrived at detailed guidelines governing the technical and administrative functioning of thousands-block number pooling. In the *Pennsylvania Numbering Order*, the Commission stated that, upon the establishment of uniform, national standards for pooling, it may determine that it is appropriate to delegate to state commissions the additional authority to implement and enforce those standards.⁵⁶

28. Parties to the instant proceeding raise issues similar to those that the Commission addressed in its prior orders. Because no new issues peculiar to New Hampshire have been raised, based on Commission precedent, we grant authority to the New Hampshire Commission to conduct a mandatory thousands-block number pooling trial in New Hampshire, subject to the same conditions the Commission has previously imposed.

29. We direct the New Hampshire Commission to conduct its pooling trial in accordance with industry-adopted thousands-block pooling guidelines.⁵⁷ Where the New Hampshire Commission determines that changes, modifications, or departures from the guidelines are desirable, we direct the New Hampshire Commission to consult with the industry prior to implementing such changes. Although we will not dictate the manner in which the New Hampshire Commission should consult with industry, it should, at a minimum, seek input from the industry regarding the implications of any proposed changes to the guidelines so that it may be able to weigh the industry's concerns in its decision-making process.

30. We grant this authority subject to the conditions and safeguards similar to those enumerated in the *Pennsylvania Numbering Order* that granted such authority to Illinois.⁵⁸ Thus, we require that the New Hampshire Commission must take all necessary steps to prepare an NPA relief plan that may be adopted by the New Hampshire Commission in the event that numbering resources in the 603 NPA are in imminent danger of being exhausted.⁵⁹ This criterion is not intended to require the New Hampshire Commission to implement an NPA relief plan prior to requiring thousands-block number pooling in New Hampshire. Rather, we require only that the New Hampshire Commission must be prepared to implement a "back-up" NPA relief plan prior to the exhaustion of numbering resources in the 603 NPA.⁶⁰ Consumers should never

⁵⁵ See, e.g., *Massachusetts Delegation Order* at ¶¶ 13-14.

⁵⁶ *Id.* at 19028, ¶ 28.

⁵⁷ Thousand Block (NXX-X) Pooling Administration Guidelines, Draft (INC 99-0127-023) (rev. Jan. 27, 1999) (Thousand Block Pooling Guidelines). This document is available at <<http://www.atis.org/atis/clc/inc/incdocs.htm>>.

⁵⁸ *Pennsylvania Numbering Order* at 19029-30, ¶ 30.

⁵⁹ In Illinois, the Illinois Commission recognized a "back-up plan" was necessary because the pooling solution had not been completely developed or tested. Thus, it ordered that an all-services overlay would supersede the pooling trial in the event that the NXXs in the 847 NPA were depleted. *Id.*

be in the position of being unable to exercise their choice of carrier because that carrier does not have access to numbering resources. This criterion attempts to ensure that consumers continue to retain a choice of telecommunications providers in the event that the pooling trial does not stave off the need for area code relief.

31. Only those carriers that have implemented permanent LNP shall be subject to the trial.⁶¹ At the present time, we do not grant the state commission the authority to require a carrier to acquire LNP solely for the purpose of being able to participate in a thousands-block pooling trial. Carriers are only required to implement LNP if requested by another carrier subject to the requirements established by the Commission.⁶² Within areas that are subject to the pooling trial, non-LNP capable carriers shall have the same access to numbering resources after pooling is implemented that they had prior to the implementation of a pooling regime, *i.e.*, non-LNP capable carriers shall continue to be able to obtain full NXX codes. We recognize that conditioning the New Hampshire Commission's authority to implement a mandatory thousands-block pooling trial on exemption of non-LNP capable carriers from participation in the trial will create a disparity in the way different types of service providers obtain access to numbering resources, in tension with the criteria set forth above.⁶³ In order to ensure that consumers may continue to obtain service from non-LNP capable carriers of their choosing, however, we find that for the purposes of this interim delegation, it is necessary to safeguard these carriers' access to numbering resources, while they lack the technical capability to participate in pooling. The *Numbering Resource Optimization Notice* raises a number of issues relating to non-LNP capable carriers' participation in pooling, and we believe these issues are best addressed in the larger rulemaking context. In the meantime, we suggest to the New Hampshire Commission that it urge the non-LNP capable carriers to use various other numbering resource optimization strategies such as those discussed in the *Numbering Resource Optimization Notice* to improve the efficiency of numbering resources assigned to such carriers.

32. We direct the New Hampshire Commission to ensure that an adequate transition time is provided to carriers to implement pooling in their switches and administrative systems.

⁶⁰ See Petition by Citizens Utility Board to Implement a form of telephone number conservation known as number pooling within the 312, 773, 847, 630, and 708 area codes and Petition by Illinois Bell Telephone Company for Approval of an NPA Relief Plan for the 847 NPA, Docket Nos. 97-0192 and 97-0211 (Consol.), *Order* (May 11, 1998) (establishing an area code overlay as a back-up plan concurrently with ordering thousands-block pooling in the 847 NPA). Although the Illinois Commission had an NPA relief plan in place in the 847 NPA to relieve what it had forecast to be imminent exhaust, through number conservation measures, including thousands-block pooling, it has forestalled the need for area code relief. See Petition of the Illinois Commerce Commission for Expedited Temporary Waiver of 47 C.F.R. § 52.19(c)(3)(ii) at 2-3 (filed August 11, 1999).

⁶¹ Wireless carriers are not required to implement LNP until November 2002, or until the Commission releases an order establishing requirements for wireless carriers' participation in number pooling in the *Numbering Resource Optimization* docket. See Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, *Memorandum Opinion and Order*, WT Docket No. 98-229 and CC Docket No. 95-116, 14 FCC Rcd. 3092, 3116, ¶ 48 (1999).

⁶² See 47 C.F.R. § 52.23(b)-(c).

⁶³ See *supra* ¶ 3.

Thousands-block pooling requires carriers to alter significantly the manner in which they account for their inventory of telephone numbers, including changing their Operations Support Systems (OSSs) and retraining their staffs.⁶⁴ In addition, we also urge the New Hampshire Commission not to require carriers to engage in processes related to thousands-block pooling which might divert critical resources away from preparations related to the Year 2000 rollover.⁶⁵

33. We further require that the New Hampshire Commission determine the method to recover the costs of the pooling trial.⁶⁶ The New Hampshire Commission must also determine how carrier-specific costs directly related to pooling administration should be recovered.⁶⁷ The Commission has tentatively concluded that thousands-block number pooling is a numbering administration function, and that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanisms for the interstate and intrastate costs of number pooling.⁶⁸ We conclude that, inasmuch as we are hereby delegating numbering administration authority to the New Hampshire Commission, the New Hampshire Commission must abide by the same statute applicable to the Commission, and, therefore, ensure that costs of number pooling are recovered in a competitively neutral manner.⁶⁹ We note that the *Telephone Number Portability* proceeding found that section 251(e)(2) requires all carriers to bear the costs of number portability on a competitively neutral basis, and, thus, established a cost recovery mechanism that assesses even carriers that cannot or have not implemented LNP to date.⁷⁰ The New Hampshire Commission may consider the recently released *Telephone Number Portability Order* for guidance regarding the criteria with which a cost recovery mechanism must comply in order to be considered competitively neutral:

⁶⁴ See Letter from Todd D. Daubert, Counsel for Winstar, to Magalie R. Salas, Secretary, FCC, dated July 28, 1999.

⁶⁵ See National Association of Regulatory Utility Commissioners (NARUC), "Resolution Urging State Commissions to Consider Honoring Utility Requests to Defer Deadlines Because of Y2K Considerations," adopted July 23, 1999. See also Memorandum from Jacob J. Lew, Director, Chief Information Officers Council, to the heads of executive departments and agencies, dated May 14, 1999 (requesting that federal agencies refrain from establishing requirements that would have an adverse effect on the Year 2000 readiness of regulated entities).

⁶⁶ The *Numbering Resource Optimization Notice* tentatively concluded that thousands-block number pooling administration involved three categories of costs: (1) shared industry costs, which include the cost to fund the pooling administrator; (2) carrier-specific costs directly related to thousands-block pooling implementation, including, for example, costs directly related to updating carriers' LSMS to support pooling; and (3) carrier-specific costs not directly relating to thousands-block pooling implementation. *Numbering Resource Optimization Notice* at ¶¶ 203-09.

⁶⁷ See *id.* at ¶ 197.

⁶⁸ *Id.* at ¶ 193.

⁶⁹ 47 U.S.C. § 251(e)(2).

⁷⁰ Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701, 11759 (1998). The Commission also found that it was equitable for all telecommunications carriers, even those without end-user revenues and those not directly involved in number portability, to contribute towards LNP costs because they will all benefit from number portability's role in increasing local competition and ameliorating number exhaust concerns by making number pooling possible. *Id.*

First, “a ‘competitively neutral’ cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.” Second, the cost recovery mechanism “should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.”⁷¹

Consistent with the Commission’s treatment of cost recovery in the *Telephone Number Portability* proceeding, we believe that even those carriers that cannot participate in pooling at this time will benefit from the more efficient use of numbering resources that pooling will facilitate. We also encourage the New Hampshire Commission to consider the “road map” provided by the *Numbering Resource Optimization Notice* regarding cost recovery for thousands-block number pooling.⁷²

34. We reiterate that the authority we grant herein to the New Hampshire Commission to undertake a thousands-block pooling trial is interim in nature, and is in no way intended to relieve the New Hampshire Commission of its obligation to implement necessary area code relief in a timely fashion. Whatever decisions the Commission reaches with regard to thousands-block pooling administration and guidelines will supersede whatever systems the New Hampshire Commission puts in place prior to enactment of those rules.

35. *Revision of rationing procedures.* The New Hampshire Commission has also sought the authority to revise rationing procedures during jeopardy situations without industry consensus.⁷³ Although the New Hampshire Commission may order and revise rationing processes where it has ordered area code relief and established a relief date or, the industry has been unable to reach consensus on a rationing plan,⁷⁴ rationing of NXX codes should only be for the express purpose of extending the life of the area code until the date of area code relief implementation.⁷⁵ As determined in the *Pennsylvania Numbering Order*, state commissions may not use rationing as a substitute for area code relief.⁷⁶ We believe that the authority we are herein delegating to the New Hampshire Commission will provide it with the tools it needs to address the underlying behaviors contributing to the inefficiencies of numbering use in New Hampshire. We hope that the New Hampshire Commission’s judicious exercise of these measures will, indeed, extend the lives of the 603 area code, and we invite the New Hampshire Commission to keep the Common Carrier Bureau apprised regarding the efficacy of these measures.

⁷¹ Telephone Number Portability, *Fourth Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, RM 8535, FCC 99-151, at ¶ 32 (rel. July 16, 1999) (citing Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8420-21 (1996)).

⁷² *Numbering Resource Optimization Notice* at ¶¶ 193-210.

⁷³ Petition at 13.

⁷⁴ See *Pennsylvania Numbering Order* at 19026-27, ¶ 25

⁷⁵ *Id.* at 19038-39, ¶ 48.

⁷⁶ See *id.* at 19027, ¶ 26.

Accordingly, at this time, we decline to reach the New Hampshire Commission's request for authority to revise rationing plans put into place pursuant to industry consensus.

36. *Unassigned Number Porting.* The New Hampshire Commission requests the authority to implement interim Unassigned Number Porting (UNP) as an additional tool to conserve numbering resources. As described in the 1998 NANC Numbering Resource Optimization Report (NANC Report), UNP is a telephone number usage optimization measure where available individual telephone numbers in one service provider's inventory are ported, using LNP, to another service provider under the direction of a neutral third party coordinator for assignment by the second service provider to a specific customer.⁷⁷ In prior orders, the Commission agreed with commenters that UNP was at too early a stage of development to order implementation.⁷⁸ The Commission also detailed its concerns that UNP might adversely affect service providers' switching systems.⁷⁹ Because the arguments raised by parties commenting on this aspect of the instant Petition are similar to those already addressed by the Commission in prior orders, we decline to grant the New Hampshire Commission's request for authority to implement UNP.

37. We emphasize, however, that our determination not to grant the New Hampshire Commission the authority to order carriers to use UNP does not preclude carriers from voluntarily engaging in UNP where mutually agreeable and where there are no public safety or network reliability concerns. As a matter of fact, we encourage the carriers to do so. Furthermore, we also encourage the New Hampshire Commission and the carriers to work together to identify and promote other innovative measures as well that would encourage the conservation of NXX codes.

IV. CONCLUSION

38. We recognize that area code changes can be expensive and confusing for consumers. The authority we have herein delegated to the New Hampshire Commission, we hope, will provide it the tools it needs to address New Hampshire's concerns about numbering exhaust. For example, the authority to order a thousands-block pooling trial allows the New Hampshire Commission to address inefficiencies on the supply side of the telephone number assignment regime by ordering that LNP-capable carriers receive smaller blocks of numbers than they now do. The authority to address carriers' fill rates allows the New Hampshire Commission to address the demand side of the number assignment regime by requiring that carriers not request more numbering resources until they have used a certain percentage of those already in their inventory.

⁷⁷ NANC Report at § 6.1.1.

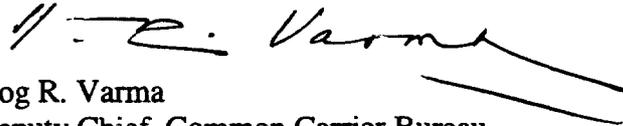
⁷⁸ See, e.g., *Massachusetts Delegation Order* at ¶ 43.

⁷⁹ See, e.g., *Massachusetts Delegation Order* at ¶ 43.

V. ORDERING CLAUSE

39. Accordingly, pursuant to sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 251, and pursuant to sections 0.91, 0.291, 1.1 and 52.9(b) of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, 1.1 and 52.9(b), IT IS ORDERED that the New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Are Code is GRANTED IN PART and DENIED IN PART to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau