

FCC MAIL SECTION

Federal Communications Commission

DA 99-2635

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

DISPATCHED BY

In the Matter of)
)
Petition of the Ohio Public Utilities)
Commission for Delegation of Additional)
Authority to Implement Number Conservation)
Measures)

CC Docket No. 96-98
NSD File No. L-99-74

ORDER

Adopted: November 30, 1999

Released: November 30, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. This order responds to the September 13, 1999, Petition of the Ohio Public Utilities Commission (Ohio Commission) for Delegation of Additional Authority to Implement Number Conservation Measures (Petition). We herein conditionally grant the Ohio Commission the authority to set NXX code allocation standards; reclaim unused and reserved NXX codes, and thousand-number blocks within those codes; investigate and order the return of reserved and protected NXX codes; require sequential number assignment; and institute thousands-block pooling trials. At this time, we decline to reach the Ohio Commission's request to adopt number rationing plans prior to reaching area code relief decisions, its request for authority to implement service-specific and technology-specific NPA overlays, and the authority to require carriers to assign numbers from an NXX code to end users within six months of receiving the code.

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 Ohio 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to institute many of the optimization measures in the Petition, we do so subject to the caveat that this grant will be superseded by forthcoming decisions in the *Numbering Resource Optimization* proceeding that will establish national guidelines, standards, and procedures for numbering optimization. This limited grant of 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*.

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*).

II. BACKGROUND

3. Congress granted the Commission plenary jurisdiction over numbering issues.² 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.³ 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.⁴ 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.⁵

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.⁶ The order further approved a mandatory thousands-block number pooling trial in Illinois.⁷ The order provided that state utility commissions could order voluntary pooling trials⁸ 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.⁹ 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.¹⁰

5. In September 1999, the Commission addressed five similar petitions from state utility commissions.¹¹ The Commission, in those five orders, addressed all of the issues raised in

² 47 U.S.C. § 251(e).

³ 47 U.S.C. § 251(e)(1).

⁴ 47 C.F.R. § 52.9(a).

⁵ 47 C.F.R. § 52.9(b).

⁶ *Pennsylvania Numbering Order* at 19025, ¶ 24.

⁷ *Id.* at 19029-30, ¶ 30.

⁸ *Id.* at 19027-28, ¶¶ 27-28.

⁹ *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.*

¹⁰ *Id.* at 19030, ¶ 31.

¹¹ See California Public Utilities Commission Petition for Delegation of Additional Authority Pertaining to Area 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

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 Ohio Commission requests that it be granted the authority to: (1) enforce current standards for number allocation, or to set and enforce new standards and requirements; (2) order the return of unused, improperly used, reserved, and/or protected NXX codes (and/or thousand blocks if number pooling is implemented); (3) order efficient number use practices within NXX codes; (4) investigate and order additional rationing measures; (5) require number pooling where and when the state determines it to be appropriate; and (6) implement technology- and /or service-specific overlays.¹² The Ohio Commission states that these measures will conserve numbers, thereby slowing the pace of area code relief.¹³ The Ohio Commission also states that this additional authority would help protect Ohio against the disruption as well as the economic and social costs of new area codes.¹⁴ On September 29, 1999, the Petition was placed on Public Notice for public comment.¹⁵

III. DISCUSSION

7. We recognize that Ohio has undergone area code relief several times in recent years, and that the life expectancies for Ohio area codes appear to be steadily decreasing.¹⁶ To empower the Ohio Commission to take steps to make number utilization more efficient, we herein grant significant additional authority to the Ohio Commission. In some instances, we are granting the Ohio 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 Ohio.

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

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*).

¹² Petition at 2.

¹³ Petition at 2.

¹⁴ Petition at 2.

¹⁵ Common Carrier Bureau Seeks Comment on the Ohio Public Utilities Commission's Petition for Delegation of Additional Authority to Implement Number Conservation Measures, *Public Notice*, DA 99-2016 (rel. Sept. 29, 1999).

¹⁶ Petition at 2.

the Commission administer the NANP in a manner which assures that numbering resources are available on an equitable basis.¹⁷ The Commission was also granted the authority to delegate this jurisdiction to state utility commissions. Thus, while we grant authority below to the Ohio Commission to engage in various matters related to administration of the NANP in Ohio, we require the Ohio Commission to abide by the same general requirements that the Commission has imposed on the numbering administrator. Thus, the Ohio 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 Ohio 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 Ohio Commission not unduly favor one telecommunications technology over another.¹⁸

9. The grants of authority herein are not intended to allow the Ohio Commission to engage in number conservation measures to the exclusion of, or as a substitute for, unavoidable and timely area code relief.¹⁹ While we are giving the Ohio Commission tools that may prolong the lives of existing area codes, the Ohio Commission continues to bear the obligation of implementing area code relief when necessary, and we expect the Ohio 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.²⁰ Other parties suggest 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.²¹

11. *Setting NXX code allocation standards.* The Ohio Commission seeks authority to enforce the NXX code allocation standards in the CO Code Assignment Guidelines as well as to set additional NXX code allocation standards and requirements.²² As an example of the former,

¹⁷ 47 U.S.C. § 251(e)(1).

¹⁸ See 47 C.F.R. § 52.9(a). See also 47 U.S.C. § 251(e)(1).

¹⁹ *Pennsylvania Numbering Order* at 19027, ¶ 26.

²⁰ See California Commission reply comments; Pennsylvania Office of Consumer Advocate comments; Texas Commission comments; Wisconsin Commission comments.

²¹ See Airtouch comments; CTIA comments; PCIA comments.

²² See Petition at 4-5.

the Ohio Commission requests authority to enforce the CO Code Assignment Guidelines' requirements that a requesting carrier be pre-certified to provide service in an area and that a forecasted need for a new NXX be demonstrated in a months-to-exhaust report.²³ Because we find that delegating such additional enforcement authority may enable the Ohio Commission to ensure that numbering resources are allocated efficiently, we delegate this authority to the Ohio Commission.

12. The Ohio Commission also seeks authority to set and enforce a fill rate "that must be met before a growth NXX can be granted."²⁴ Subject to the conditions set forth below, we delegate authority to the Ohio 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, even if the NPA is not in jeopardy.²⁵ In prior orders, the Commission stated that the establishment of fill rates would encourage more efficient use of NXX codes.²⁶ In those orders, the Commission addressed the competitive concerns associated with a fill-rate regime,²⁷ and parties commenting in the instant proceeding have not raised any new concerns. Based on Commission precedent, we therefore delegate authority to the Ohio Commission to establish fill rates, subject to the conditions the Commission imposed in prior orders.

13. Although we do not wish to dictate the parameters of the fill-rate regime, we urge the Ohio 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.

14. 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.²⁸ Therefore, during its implementation of this authority, we ask that the Ohio Commission consult and coordinate with other state commissions that may obtain authority to impose fill rates.²⁹ We encourage the Ohio Commission to establish fill rates that are not inconsistent with those imposed by other states.

²³ Petition at 5.

²⁴ Petition at 5.

²⁵ 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.

²⁶ See, e.g., *Massachusetts Delegation Order* at ¶ 31.

²⁷ See, e.g., *Massachusetts Delegation Order* at ¶¶ 32-36.

²⁸ See *Pennsylvania Numbering Order* at 19019-20, ¶ 15.

²⁹ See e.g., *California Delegation Order* at ¶ 27; *Florida Delegation Order* at ¶ 31; *Maine Delegation Order* at ¶ 13; *Massachusetts Delegation Order* at ¶ 33; *New York Delegation Order* at ¶ 27.

15. As the Ohio Commission recognizes in its petition, it 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.³⁰ That is, a carrier ought to be able to obtain initial numbering resources in rate centers where the carrier is authorized to offer service and plans to do so within the NXX activation timeframe established by the CO Code Assignment Guidelines (six months).

16. 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.³¹ Therefore, to avoid imposing an additional burden on the NANPA, to the extent that the Ohio Commission chooses to implement a fill-rate requirement, we delegate authority to the Ohio Commission to ascertain carrier compliance with the fill-rate requirement. To avoid delay in NXX code application processing, we direct the Ohio 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 Ohio Commission with adequate evidence of compliance with the fill-rate requirement upon request will toll the running of this ten day timeframe. Further, while we delegate to the Ohio Commission the authority to request and evaluate information provided by carriers to demonstrate compliance with the fill rate, we request that the Ohio Commission not release such information to any entity other than the NANPA, the Commission, or the Common Carrier Bureau.

17. The Ohio Commission further requests the additional authority to set and enforce a demonstration of readiness requirement to provide service before an initial NXX code can be granted.³² 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.³³ 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.³⁴ 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

³⁰ See, e.g., *Massachusetts Delegation Order* at ¶ 35.

³¹ 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).

³² Petition at 5.

³³ See e.g., *Maine Delegation Order* at ¶ 11.

³⁴ 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>>.

based resellers) are not obtaining unnecessary NXX codes.³⁵ Based on Commission precedent, we therefore delegate authority to the Ohio 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.

18. *Reclamation of unused and reserved NXX codes and thousand-number blocks.* The Ohio Commission seeks the authority to order the return of initial and growth NXX codes if they are not activated in accordance with the existing CO Code Assignment Guidelines.³⁶ The CO Code Assignment Guidelines provide that carriers shall activate NXXs within six months of the “initially published effective date.”³⁷ 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.³⁸

19. Parties commenting in the instant proceeding have not raised any new concerns.³⁹ Based on Commission precedent, we grant authority to the Ohio Commission to investigate whether code holders 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 Ohio Commission determines have not been activated in a timely manner. This authority necessarily implies that the Ohio Commission may request proof from all code holders that NXX codes have been “placed in service” according to the CO Code Assignment Guidelines.⁴⁰ We further direct the NANPA to abide by the Ohio Commission’s determination to reclaim an NXX code if the Ohio Commission is satisfied that the code holder has not activated the code within the time specified by the CO Code Assignment Guidelines.

20. 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.⁴¹ The Commission

³⁵ See *Maine Delegation Order* at ¶ 11.

³⁶ Petition at 5.

³⁷ 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>>.

³⁸ See, e.g., *Massachusetts Delegation Order* at ¶ 23.

³⁹ See, e.g., *Massachusetts Delegation Order* at ¶ 23.

⁴⁰ Under the CO Code Assignment Guidelines, carriers are obligated to submit to the NANPA within six months of the requested effective date of newly obtained NXX codes a Part 4 certification that the code has been placed in service. See CO Code Assignment Guidelines NXX Assignment Request Form, Part 4.

⁴¹ 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.*

earlier recognized that new entrants, in particular, may suffer unexpected delays or scheduling setbacks beyond their control, which may lead to code activation delays.⁴² We clarify that the Ohio 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 Ohio Commission accords the code holder an opportunity to explain the extenuating circumstances behind the unactivated NXX codes.

21. The Ohio Commission also seeks authority to reclaim unused thousand number blocks.⁴³ In prior orders, the Commission recognized the utility to be gained in connection with number pooling trials through the reclamation of blocks of one thousand numbers with no, or relatively low, contamination.⁴⁴ Parties who commented on this aspect of the Petition raised issues similar to those the Commission addressed in these prior orders. We address below the Ohio Commission's request for authority to implement thousands-block number pooling.⁴⁵ Based on Commission precedent, to the extent we delegate herein the authority to the Ohio Commission to initiate thousands-block number pooling trials, we also delegate to it the authority to reclaim unused thousands blocks in connection with those trials. 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 Ohio Commission.⁴⁶

22. *Investigation and return of NXX codes.* The Ohio Commission further requests the authority to investigate and order the return of unused, improperly used, reserved and/or protected NXX codes if it becomes necessary and can be done without causing disruption to network operations.⁴⁷ In a prior order, the Commission granted similar authority to the Maine Commission.⁴⁸ Likewise, we grant the Ohio Commission the authority to investigate whether any reserved or protected NXX codes can be placed in carriers' pools for potential activation, without causing disruption to carriers' operations. If, after such an investigation, the Ohio Commission is satisfied that carriers' use of these codes for testing purposes is not warranted, the Ohio Commission may direct the NANPA to reclaim these codes for assignment to other carriers.

⁴² See, e.g., *Massachusetts Delegation Order* at ¶ 24.

⁴³ Petition at 5.

⁴⁴ 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.

⁴⁵ See *infra* paras. 28-45.

⁴⁶ 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).

⁴⁷ Petition at 5.

⁴⁸ See *Maine Delegation Order* at ¶ 21.

23. *Assignment of NXX codes.* Finally, the Ohio Commission requests the additional authority to require that, for a company to retain a newly obtained NXX code, it must not only be activated within six months, but numbers must actually be assigned to end users within that time.⁴⁹ We note that this issue has been raised in the *Numbering Resource Optimization* proceeding where the Commission noted that such a requirement could lead to undesirable behavior by carriers that might activate a few numbers in an otherwise unused NXX block to avoid reclamation.⁵⁰ For this reason, at the present time, we decline to reach this particular aspect of the Ohio Commission's request for additional authority. We believe that the authority we are delegating to the Ohio Commission elsewhere in this order will provide the Ohio Commission the tools it needs to address the underlying behaviors contributing to the inefficiencies of numbering use in Ohio.

24. *Sequential number assignment.* The Ohio Commission also seeks the authority to order sequential use of numbers within an NXX or thousands block.⁵¹ In a prior order, the Commission delegated authority to the California Public Utilities Commission to order sequential number assignment,⁵² and parties commenting on this aspect of the instant petition raise issues which the Commission considered in this prior order. Based on Commission precedent, we therefore grant the Ohio Commission the authority to order sequential number assignment. We are concerned, however, that this requirement could interfere with a carrier's ability to satisfy a customer request for a particular set of numbers. In light of this concern, we urge the Ohio Commission to allow carriers some flexibility in assigning numbers sequentially. For example, like Illinois, the Ohio Commission may simply wish to require that carriers assign a certain percentage of numbers from a given thousands-block prior to assigning numbers from another thousands-block to other customers.⁵³ This allows for some flexibility for carriers to meet customer requests for numbers, as well as minimizing "contamination" of blocks of numbers for future implementation of thousands-block pooling.⁵⁴ We also urge the Ohio Commission to consult with other state commissions that may have already ordered carriers to implement sequential number assignment.

25. *Additional NXX code rationing authority.* The Ohio Commission has also sought the authority to investigate and order rationing as an area code nears jeopardy.⁵⁵ The Ohio Commission may currently order and revise rationing processes where it has ordered area code

⁴⁹ Petition at 5.

⁵⁰ *Numbering Resource Optimization Notice* at ¶ 98.

⁵¹ Petition at 6.

⁵² See *California Delegation Order* at ¶ 31 (noting that the Illinois Commission had ordered sequential numbering in connection with its pooling trial in Chicago).

⁵³ See *Petition to Implement a Form of Telephone Number Conservation Known as Number Pooling Within the 312, 773, 847, 630 and 708 Area Codes*, ICC Docket Nos. 97-0192/97-0211 (cons.) (May 11, 1998) at 23.

⁵⁴ See *Numbering Resource Optimization Notice* at ¶ 190.

⁵⁵ Petition at 6.

relief and established a relief date, and the industry has been unable to reach consensus on a rationing plan.⁵⁶ As determined in the *Pennsylvania Numbering Order*, however, the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan.⁵⁷ Further, state commissions may not use rationing as a substitute for area code relief.⁵⁸ In prior orders, the Commission has declined to grant state commissions authority to adopt NXX code rationing procedures prior to adopting an area code relief plan, except in the most extreme circumstances.⁵⁹ To the extent that Ohio is requesting authority to adopt rationing measures prior to having decided on a specific plan for area code relief, absent a demonstration of such extreme circumstances, we decline to grant this aspect of Ohio's petition. We believe that the authority we are herein granting to the Ohio Commission will provide it with the tools it needs to address the underlying behaviors contributing to inefficiencies in number use in Ohio.

26. On our own motion, however, we grant the Ohio Commission the authority to address extraordinary need for numbering resources in an NPA subject to a rationing plan. We conclude that such delegation will provide the Ohio Commission with sufficient authority to assure that customers in Ohio retain their choice of service providers in the face of an NXX code rationing scheme. In order to address such situations, if requested, the Ohio Commission may hear and address claims of carriers that do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX code, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service.⁶⁰ This grant of authority further empowers the Ohio Commission to direct the NANPA to assign an NXX code to a carrier outside the rationing plan currently in place in an area code, upon the Ohio Commission's determination that such relief is necessary. We also grant the Ohio Commission the authority to request whatever information it deems necessary to evaluate a carrier's request for additional numbering resources. This information may include the carrier's business plan, requests for new service that the carrier has denied because of its lack of numbering resources, historical information on the carrier's growth rate, and information on any extraordinary steps the carrier is taking to provide service.⁶¹ Further, while we delegate to the Ohio Commission the authority to request and evaluate this information, we request that it not release such information to any entity other than the NANPA, the Commission, or the Common Carrier Bureau. This grant of authority empowers the Ohio

⁵⁶ See *Pennsylvania Numbering Order* at 19026, ¶ 25.

⁵⁷ *Pennsylvania Numbering Order* at 19025, ¶ 24.

⁵⁸ *Pennsylvania Numbering Order* at 19027, ¶ 26.

⁵⁹ See *Massachusetts Delegation Order* at ¶ 41; *Florida Delegation Order* at ¶ 40; *New York Delegation Order* at ¶ 32; but see *California Delegation Order* at ¶¶ 38-41 (noting that unique circumstances exist in California which require public participation in the area code relief planning process at least 30 months prior to the submission of a recommended relief plan to the California Commission).

⁶⁰ *Pennsylvania Numbering Order* at 19039, ¶ 49.

⁶¹ See *id.*

Commission to ensure that carriers in dire need of numbering resources can obtain the numbering resources necessary to continue to provide service to their prospective customers, if the rationing plan will not ensure that the carrier will have adequate and timely access to numbering resources.

27. *Thousands-block number pooling.* The Ohio Commission requests authority to implement mandatory thousands-block number pooling where and when the state determines it to be appropriate.⁶² The Commission tentatively concluded that thousands-block pooling is an important numbering resource optimization strategy, essential to extending the life of the NANP.⁶³ 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.

28. In prior orders, the Commission has granted several state public utility commissions the authority to implement thousands-block pooling trials.⁶⁴ In so doing, the Commission considered support for the proposal as well as concerns regarding the burdens that thousands-block pooling trials might impose.⁶⁵ 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 strain on their numbering resources weighed heavily in favor of delegating authority to implement number pooling trials.⁶⁶

29. 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

⁶² Petition at 6. 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.

⁶³ *Numbering Resource Optimization Notice* at ¶ 138.

⁶⁴ 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.

⁶⁵ 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.

⁶⁶ See, e.g., *Massachusetts Delegation Order* at ¶¶ 13-14.

that it is appropriate to delegate to state commissions the additional authority to implement and enforce those standards.⁶⁷

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

31. We direct the Ohio Commission to conduct its pooling trial in accordance with industry-adopted thousands-block pooling guidelines.⁶⁸ Where the Ohio Commission determines that changes, modifications, or departures from the guidelines are desirable, we direct the Ohio Commission to consult with the industry prior to implementing such changes. Although we will not dictate the manner in which the Ohio 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.

32. 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.⁶⁹ Thus, we require that in any NPA which is in jeopardy in which the Ohio Commission implements a pooling trial, the Ohio Commission must take all necessary steps to prepare an NPA relief plan that may be adopted by the Ohio Commission in the event that numbering resources in the NPA at issue are in imminent danger of being exhausted.⁷⁰ This criterion is not intended to require the Ohio Commission to implement an NPA relief plan prior to requiring thousands-block number pooling in Ohio. Rather, we require only that the Ohio Commission must be prepared to implement a "back-up" NPA relief plan prior to the exhaustion of numbering resources in the NPA at issue.⁷¹ Consumers should never be in the position of being unable to exercise their

⁶⁷ *Id.* at 19028, ¶ 28.

⁶⁸ 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>>.

⁶⁹ *Pennsylvania Numbering Order* at 19029-30, ¶ 30.

⁷⁰ 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.*

⁷¹ 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).

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 or trials do not stave off the need for area code relief.

33. Only those carriers that have implemented permanent LNP shall be subject to the trial.⁷² At the present time, we do not grant the Ohio 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.⁷³ Within NPAs 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 Ohio 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.⁷⁴ 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 Ohio 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.

34. We direct the Ohio Commission to ensure that an adequate transition time is provided to carriers to implement pooling in their switches and administrative systems. 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.⁷⁵ In addition, we also urge the Ohio Commission not to

⁷² 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).

⁷³ See 47 C.F.R. § 52.23(b)-(c).

⁷⁴ See *supra* ¶ 3.

⁷⁵ See Letter from Todd D. Daubert, Counsel for Winstar, to Magalie R. Salas, Secretary, FCC, dated July 28, 1999.

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.⁷⁶

35. We further require that the Ohio Commission determine the method to recover the costs of the pooling trial.⁷⁷ The Ohio Commission must also determine how carrier-specific costs directly related to pooling administration should be recovered.⁷⁸ 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.⁷⁹ We conclude that, inasmuch as we are hereby delegating numbering administration authority to the Ohio Commission, the Ohio 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.⁸⁰ 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.⁸¹ The Ohio 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:

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

⁷⁶ 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).

⁷⁷ 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.

⁷⁸ See *id.* at ¶ 197.

⁷⁹ *Id.* at ¶ 193.

⁸⁰ 47 U.S.C. § 251(e)(2).

⁸¹ 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.*

mechanism “should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.”⁸²

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 Ohio Commission to consider the “road map” provided by the *Numbering Resource Optimization Notice* regarding cost recovery for thousands-block number pooling.⁸³

36. In order to minimize possible disruption and expense and maximize the value of the information that can be obtained from number pooling trials, we believe that such trials should be limited in nature. As an initial matter, we limit the authority we grant to the Ohio Commission to a trial that generally covers one Metropolitan Statistical Area (MSA).⁸⁴ We believe that such a limitation strikes the appropriate balance between the Ohio Commission’s desire to move quickly to implement measures that will enhance number utilization efficiency, and possibly prolong the lives of certain area codes in Ohio and our obligation to ensure that such pooling trials are implemented and conducted in a manner that does not disrupt network operations or reliability. We believe these goals ultimately benefit consumers in Ohio by allowing the Ohio Commission to move forward with a pooling trial quickly in whatever area it determines it is most necessary, while providing some assurance that the network changes required for the trials are implemented in a manner that does not disrupt the normal functioning of the network in Ohio and nationwide.

37. After having implemented a thousands-block number pooling trial in one MSA, the Ohio Commission may wish to expand to another MSA.⁸⁵ Should it wish to do so, we direct the Ohio Commission to allow sufficient transition time for carriers to undertake any necessary steps, such as modifying databases and upgrading switch software, to prepare for an expansion of thousands-block pooling to other MSAs.⁸⁶ In other words, start dates for thousands-block

⁸² 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)).

⁸³ *Numbering Resource Optimization Notice* at ¶¶ 193-210.

⁸⁴ 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)

⁸⁵ A thousands-block pooling trial is implemented when LNP-capable carriers are contributing and receiving numbers in blocks of 1,000 from the pool. Furthermore, for a pooling trial to have been implemented, a pooling administrator must be chosen and responding to requests from carriers for numbering resources.

⁸⁶ See Letter from Todd D. Daubert, Counsel for Winstar, to Magalie R. Salas, Secretary, FCC, dated July 28,

pooling trials in different MSAs should be appropriately staggered to permit the industry to undertake all necessary steps. The purpose of a staggered roll-out is to provide carriers time to upgrade or replace their Service Control Points (SCPs) and other components of their network, as necessary, if the increased volume of ported numbers as a result of the pooling trial requires them to do so.

38. We suggest to the Ohio Commission that it consider concentrating its thousands-block pooling trial in those NPAs which are the best candidates for pooling, based on the considerations set forth in the *Numbering Resource Optimization Notice*.⁸⁷ For example, we encourage the Ohio Commission to consider number pooling in areas where multiple LNP-capable carriers exist. We also suggest to the Ohio Commission that it allow for exceptions to participating in a pooling trial, if doing so would prove prohibitively expensive to a particular carrier. For example, certain switch types may not be able to accommodate thousands-block number pooling.⁸⁸ Finally, as the Commission stated in the *Numbering Resource Optimization Notice*, we encourage the Ohio Commission, to the extent it has not already done so, to consider consolidating rate centers prior to implementing pooling.⁸⁹ Fewer, larger pools logically increase the effectiveness of thousands-block pooling.⁹⁰

39. We reiterate that the authority we grant herein to the Ohio Commission to undertake a thousands-block pooling trial is interim in nature, and is in no way intended to relieve the Ohio 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 Ohio Commission puts in place prior to enactment of those rules.

40. *Technology- and/or service-specific overlays.* The Ohio Commission also seeks the authority to implement service-specific and technology-specific NPA overlays where such overlays are found to be in the public interest.⁹¹ In the *Numbering Resource Optimization Notice*, the Commission announced its intent to reexamine its prohibition on technology and service-specific overlays and determined that it would address pending petitions for rulemaking and waiver of this prohibition in the broader context of that proceeding.⁹² For this reason, we decline to reach this portion of the Ohio Commission's request at this time.

1999 (detailing concerns with expanding the thousands-block pooling trial in Illinois to other NPAs, and noting that Winstar requires approximately 90 days to prepare its OSS systems for new pooling markets).

⁸⁷ *Numbering Resource Optimization Notice* at ¶¶ 148-53.

⁸⁸ *See id.* at ¶ 149.

⁸⁹ *See id.* at ¶ 151.

⁹⁰ *See id.*

⁹¹ Petition at 7.

⁹² *See Numbering Resource Optimization Notice* at ¶¶ 245, 256-61.

IV. CONCLUSION

41. We recognize the difficult situation for consumers in Ohio, having had to undergo area code changes in only a few years, with the potential for more on the near horizon. The authority we have herein delegated to the Ohio Commission, we hope, will provide it the tools it needs to address the situation. For example, the authority to order thousands-block pooling trials allows the Ohio 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 require sequential number assignment allows the Ohio Commission to address the demand side of the number assignment regime by requiring that carriers not request more numbering resources until they have efficiently used numbers already in their inventory.

V. ORDERING CLAUSE

42. 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 Petition of the Public Utility Commission of Ohio for Expedited Decision for Authority to Implement Number Conservation Measures is GRANTED IN PART and DENIED IN PART to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau