

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

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In the Matter of)	
)	
New York Department of Public Service)	CC Docket No. 96-98
Request for Release of a New Area Code)	NSD File No. L-00-161
to Provide Relief for the 716 Numbering)	DA 00-1806
Plan Area)	

REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, AT&T Corp. ("AT&T") hereby submits its reply to the comments of other parties concerning the New York Department of Public Service's ("NYDPS") June 20, 2000 letter seeking release of a new area code to relieve the 716 NPA ("Letter").¹ As AT&T stated in its initial comments, it does not oppose the NYDPS's request for permission to implement an NPA relief plan that would split fourteen rate centers. In this reply, AT&T responds to certain parties who have asserted, incorrectly, that state commissions' area code relief planning activities are not subject to the Industry Numbering Committee's ("INC") NPA Code Relief Planning guidelines.

Those parties that contend that state commissions need not comply with industry guidelines make two arguments: (i) that the Commission has never ruled that such guidelines are binding,² and (ii) that state commissions' authority to "establish[] new area code boundaries"³

¹ Letter from Lawrence G. Malone, General Counsel, NYDPS to Lawrence Strickling, Chief, Common Carrier Bureau, FCC (June 20, 2000) ("Letter").

² See, e.g., California PUC, pp. 2-3; Connecticut DPUC, pp. 3-4; Texas PUC, pp. 1-2.

³ 47 C.F.R. § 52.19(a).

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somehow encompasses the power to violate those guidelines.⁴ Both of these contentions are meritless.

First, the Commission has repeatedly made clear that industry guidelines are binding on the NANPA. The Third NANP Order ruled that “[t]he NANPA ... shall follow Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to administration and assignment of numbering resources.”⁵ The Commission’s rules repeatedly and unambiguously make this same point:

- “[The NANPA] shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations.” 47 C.F.R. § 52.13(b) (emphasis added).
- “[The NANPA shall] [c]omply[] with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and orders, and the guidelines of other appropriate policy-making authorities, all of which may be modified by industry fora or other appropriate authority.” Id. § 52.13(b)(3) (emphasis added).
- “The NANPA and, to the extent applicable, the B&C Agent, shall administer numbering resources in an efficient and nondiscriminatory manner, in accordance with Commission rules and regulations and the guidelines developed by the INC and other industry groups pertaining to administration and assignment of numbering resources....” Id. § 52.13(d) (emphasis added).
- “The NANPA shall perform its CO Code Administration functions in accordance with the published industry numbering resource administration guidelines and Commission

⁴ See, e.g., Nextel, p. 2; New Hampshire PUC, p. 1.

⁵ Third Report and Order, Administration of the North American Numbering Plan, CC Docket No. 92-237, FCC 97-372 (released October 9, 1997) ¶ 95 (emphasis added) (“Third NANP Order”). In a footnote to the above-quoted text, the Commission stated that these industry guidelines “include, but are not limited to” the Central Office Code (NXX) Assignment Guidelines, NPA Code Relief Planning and Notification Guidelines, Recommended Notification Procedures to Industry for Changes in Access Network Architectures, and NPA Allocation Plan and Assignment Guidelines.

orders and regulations....” Id. § 52.15(d) (emphasis added).

Because the Commission’s rules and orders expressly require NANPA to adhere to industry guidelines, NANPA plainly may not release a new NPA on terms that would violate those guidelines. While AT&T agrees that deviation from federal numbering rules or industry guidelines may be appropriate in some instances, the Commission’s orders mandate that such exceptions be approved by the Commission itself: “If there is a dispute regarding the application of a particular guideline, ... the Commission will address the dispute, either initially or after receiving a recommendation from the NANC, and will if necessary codify formal regulations.”⁶ Plainly, state commissions or other entities that seek NANPA action that would violate industry guidelines must invoke the Commission’s waiver process, as the New York commission has done in this matter.

Second, there is simply no basis for the claim that the delegation to state commissions of authority to establish area code boundaries constitutes an implicit amendment or waiver of the requirement that NANPA adhere to industry guidelines. As noted above, the Commission’s orders provide that in order to deviate from industry guidelines, NANPA must

⁶ Third NANP Order ¶ 95 (emphasis added). This same paragraph also urged

[p]arties with disputes or questions regarding industry guidelines .. to seek assistance from the NANC first. We reject arguments that NANC ‘adds an additional layer to decision-making on numbering issues’ and therefore should be removed from the arena of resolving numbering disputes. As amply demonstrated by its record thus far, the NANC, proceeding at a rapid pace to resolve technically complex issues that affect the competitiveness of the entire telecommunications industry, has greatly facilitated the Commission’s work in numbering. As we have stated many times before, we have carefully balanced the membership of NANC so that it represents the numbering interests of service providers, users, and regulators throughout the countries served by the NANP.

obtain permission from the FCC. Nothing in the general delegation of power to state commissions to determine area code boundaries limits or alters this specific mandate. Indeed, when the Commission intended to allow state commissions to deviate from industry standards it has said so expressly. For example, the order granting the California commission interim authority to implement number conservation measures ruled that the CPUC “need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines....”⁷ Such permission plainly would not have been necessary if state commissions were otherwise at liberty to override industry guidelines.

The authority to define NPA boundaries does not carry with it the implicit power to override Commission rules or industry guidelines in the course of carrying out that power. A state commission can (and must, absent an FCC waiver) implement an NPA split without violating federal numbering requirements, which expressly include industry guidelines. The contrary argument rests on the indefensible proposition that a state commission is free to disregard the Commission’s rules whenever it acts to carry out a delegated power.

The Commission has repeatedly made clear that, although it has delegated substantial powers to the states, those delegations must be exercised within the framework of uniform national numbering standards because “[o]verall administration of numbering is critical to

⁷ Order, Petition of the California Public Utilities Commission for Delegation of Additional Authority, CC Docket No. 96-98, NSD File No. L-98-136 (released September 15, 1999) ¶ 35. See also Report and Order and Further Notice of Proposed Rulemaking, Numbering Resource Optimization, CC Docket No. 99-200, FCC 99-122 (released June 2, 1999) ¶ 239 (“We clarify that the state commissions need not follow the reclamation procedures set forth in the CO Code Assignment Guidelines relating to referring the issue to the INC, as long as the state commission accords the code holder an opportunity to explain the circumstances causing the delay in activating NXX codes.”).

the effective and reliable operation of telecommunications within the United States.’⁸

While we authorize states to resolve specific matters related to initiation and development of area code relief plans, we do not delegate the task of overall number allocation, whether for NPA codes or CO codes. To do so would vest in fifty-one separate commissions oversight of functions that we have already decided to centralize in the new NANPA. A nationwide, uniform system of numbering, necessarily including allocation of NPA and CO code resources, is essential to efficient delivery of telecommunications services in the United States.⁹

The Commission’s rules and orders also make clear that industry guidelines are a critical element of its overall scheme to ensure effective number administration.¹⁰ Complaints from some commenters that participation in the INC and other industry organizations “is limited to representatives of the telecommunications industry”¹¹ are simply incorrect -- state representatives are, and long have been, free to take part in these bodies. To the extent state commissions complain that they lack the resources to fully participate in the extensive work of the INC and other industry fora, their comments merely restate one of the chief reasons that the Commission found the work of these groups to be essential to number administration. Regulators generally do not have sufficient resources to undertake all of the tasks entrusted to the

⁸ Report and Order, Administration of the North American Numbering Plan, CC Docket No. 92-237, FCC 95-283 (released July 13, 1995) ¶ 13 (“First NANP Order”).

⁹ Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-333 (released August 8, 1996) ¶ 320 (“Second Local Competition Order”).

¹⁰ See, e.g., First NANP Order ¶ 13 (“The Industry Numbering Committee (INC) and its workshops also play an important role, particularly in developing numbering policy, establishing number assignment guidelines and resolving technical and operations issues related to numbering.”).

¹¹ NY Commission, p. 3.

INC, and the regulatory process moves too slowly to accommodate rapid changes in technology and the marketplace. “The NANC membership, working together to achieve consensus on issues for which time is of the essence, has expedited what would otherwise likely be a much longer process if the Commission were to rely on traditional rulemaking exclusively.”¹² If any party believes, as some have alleged in their comments, that particular provisions in industry guidelines should be revised, they can seek Commission review pursuant to the procedures established in the Third NANPA Order -- although to AT&T’s knowledge, none of the commenters has sought to do so. The Commission incorporated industry guidelines into its rules in recognition of the industry’s longstanding efforts to create workable number administration standards, and did so in large measure because it correctly recognized that regulatory oversight was both more efficient and more effective than direct regulatory involvement in this area. To attempt to incorporate not just one regulatory body, but more than fifty separate state regulators, into the development of numbering rules would invite regulatory “gridlock” and would be directly contrary to the deregulatory intent of the Telecommunications Act.

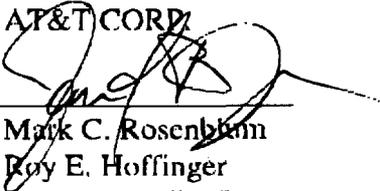
¹² Third NANP Order ¶ 95.

CONCLUSION

AT&T urges the Commission to act on the NYDPS's Letter in a manner consistent with these reply comments and its initial comments in this proceeding.

Respectfully submitted,

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September 20, 2000

CERTIFICATE OF SERVICE

I, Tracy Rudnicki, do hereby certify that on this 20th day of September, 2000, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first-class mail, postage prepaid to the parties listed below:

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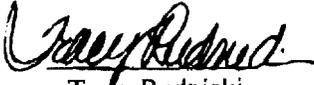
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