

Federal Communications Commission

DA 01-2921

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

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In the Matter of)
)
Joint Petition of the New York State Public)
Service Commission, the New York State)
Consumer Protection Board and the City of)
New York for an Expedited Temporary)
Waiver of 47 C.F.R. § 52.19 (c)(3)(ii))

CC Docket No. 96-98 ✓
NSD File No. L-01-158

ORDER

Adopted: December 21, 2001

Released: December 26, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. On September 28, 2001, the New York State Public Service Commission (NYSPSC) was directed to implement 10-digit dialing in New York City by July 28, 2002.¹ On October 15, 2001, the NYSPSC, the New York State Consumer Protection Board and the City of New York (collectively Petitioners) requested an expedited temporary waiver of Section 52.19(c)(3)(ii) of the Federal Communications Commission's (Commission) rules, which requires 10-digit dialing when an area code overlay is implemented.² Specifically, Petitioners request an additional 14 months beyond the 10 months granted by the U.S. Court of Appeals to implement 10-digit dialing in New York City.³ We find that Petitioners have demonstrated good cause for a limited extension of time, and therefore we grant an additional 8 months for implementation of 10-digit dialing in New York City.

II. BACKGROUND

2. Section 52.19 of the Commission's rules expressly delegates to the state commissions the authority to resolve matters involving area code relief.⁴ When a state commission chooses to implement

¹ See *People of the State of New York and Public Service Commission of the State of New York v. Federal Communications Commission*, 267 F. 3d 91 (2nd Cir. 2001) (NYPSC v. FCC).

² See 47 C.F.R. § 52.19 (c)(3)(ii).

³ See *Joint Petition of the New York State Public Service Commission, the New York State Consumer Protection Board and the City of New York for an Expedited Temporary Waiver of 47 C.F.R. § 52.19 (c)(3)(ii)* (filed October 2, 2001) (Joint Petition).

⁴ Section 52.19(a) gives state commissions the authority to decide whether area code relief will take the form of a geographic split, an overlay, or a boundary realignment. See 47 C.F.R. § 52.19.

area code relief in the form of an area code overlay, the Commission requires mandatory 10-digit dialing for telephone calls within and between the area codes subject to the overlay.⁵ This rule seeks to ensure that competition will not be deterred in overlay area codes as a result of dialing disparity. In 1998, the NYSPSC implemented an area code overlay of the 212 Numbering Plan Area (NPA) in New York City, but did not implement 10-digit dialing at that time.⁶ Pursuant to a recent decision issued by the U.S. Court of Appeals for the Second Circuit, 10-digit dialing must be implemented in New York City by July 28, 2002.⁷

3. Petitioners assert that, due to the events of September 11, 2001 and the resulting damage to the infrastructure and businesses of New York City, it would be difficult to begin the necessary process for 10-digit dialing implementation. Petitioners contend that New York City is predicting approximately \$1 billion in lost revenues in this fiscal year and has estimates that it will take up to 12 months to remove the debris from the World Trade Center.⁸ Petitioners, therefore, seek a temporary waiver to provide New York City additional time to rebuild its infrastructure and businesses before transitioning to 10-digit dialing.

III. DISCUSSION

4. The Commission has plenary jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.⁹ Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive, any provision of the rules for good cause shown.¹⁰ In demonstrating such good cause, an applicant for a waiver "faces a high hurdle even at the starting gate."¹¹ Moreover, the Commission must in its decision "explain why deviation [from its rules] better serves the public interest."¹²

⁵ An area code overlay occurs when a new area code is introduced to serve the same geographic area as an existing area code. *Id.*

⁶ NYSPSC petitioned the Commission for a waiver of 10-digit dialing when it implemented the 212/646 area code overlay in New York City, claiming that 10-digit dialing was not necessary to promote local competition. The Commission denied the waiver request. The NYSPSC also challenged the Commission's jurisdiction to require mandatory 10-digit local dialing in federal court. The Court of Appeals for the Second Circuit recently affirmed the Commission's 10-digit dialing requirement and denial of NYSPSC's request for a permanent waiver. *See* NYSPSC v. FCC, 267 F. 3d at 95-100 (2nd Cir. 2001).

⁷ *See id.*

⁸ *See* Joint Petition at 2. We note that Verizon filed comments supporting the temporary waiver, and no comments were filed opposing the waiver request.

⁹ *See* 47 U.S.C. § 251 (e)(1).

¹⁰ *See* 47 C.F.R. § 1.3.

¹¹ *See* WAIT Radio v. FCC, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

¹² *See* Northeast Cellular Telephone Company, L.P. v. FCC, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

5. We have reviewed Petitioners' request and find that it has demonstrated good cause for a temporary waiver of 10-digit dialing implementation in New York City. We agree with Petitioners that New York City is confronting a number of challenges raised by the events of September 11, 2001 and that it needs to focus on rebuilding infrastructure and businesses. We must, however, balance this need with the potentially anti-competitive effects of an extended delay in 10-digit dialing. Mandatory 10-digit dialing prevents dialing disparity, and thus eliminates the anti-competitive effects of area code overlays.¹³ An 8-month extension, we believe, will provide sufficient breathing room for rebuilding to continue for several months before 10-digit dialing implementation must begin. Also, we find that an additional 8 months will provide ample time to conduct public education about 10-digit dialing.¹⁴ Thus, we find that an 8-month extension is reasonable.

6. We further find that a limited extension of 8 months is in the public interest because it will provide consumers and businesses additional time to recover from the events of September 11, 2001 before transitioning to 10-digit dialing. We, therefore, grant Petitioners' request for a temporary waiver of the 10-digit dialing requirement for an additional 8 months beyond the period granted by the U.S. Court of Appeals. Accordingly, Petitioners will now be required to implement 10-digit dialing by March 28, 2003.

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to 4(i), 10, and 251(e) of the Communications act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 251(e), and sections 0.91, 0.291, and 1.3 of the Commissions regulations, 47 C.F.R. §§ 0.91, 0.291, 1.3, that the petition filed by New York State Public Service Commission, New York State Consumer Protection Board and City of New York IS GRANTED to the extent herein described.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Chief, Common Carrier Bureau

¹³ See Implementation of Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19320 (1996).

¹⁴ We note that Petitioners have not alleged that an additional 14 months are necessary, from a technical standpoint, to implement 10-digit dialing.