

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 9, 2000

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 98-C-0689 - Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law, to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed.

ORDER ADOPTING PROCEDURES AND STANDARDS
FOR RECLAMATION OF CENTRAL OFFICE CODES

(Issued and Effective December 13, 2000)

BY THE COMMISSION:

By this Order we adopt procedures and standards for reclamation of central office codes, including standards for evaluating requests for extension of time in which to activate codes subject to reclamation.

BACKGROUND

Pursuant to authority delegated by the Federal Communications Commission (FCC), we issued an order in this proceeding on March 17, 2000 implementing measures to increase the efficiency of Central Office (or "NXX") code use. In

particular, we required carriers to certify that NXX codes have been activated or to justify why unactivated codes should not be reclaimed.

Some changes to the code reclamation process originally contemplated under our March 17 order were made necessary by the FCC's Numbering Resources Optimization Order (NRO Order),¹ issued March 31, 2000 and effective July 17, 2000. The NRO Order delegated additional responsibility to the states to reclaim central office codes and to rule on requests by carriers for extensions of time to comply with code activation deadlines. The NRO Order also allows state commissions to request proof from carriers that NXX codes have been activated and that numbers have been assigned.²

The North American Numbering Plan Administrator (NANPA) continues to play an active role in administering the number assignment process and monitoring initial compliance with the Central Office Code Assignment Guidelines developed by the industry. Under these Guidelines, carriers must activate central office codes within six months of the date they are assigned and must certify that activation by filing a Confirmation of Code Activation Form, or "Part 4," with NANPA. However, whereas the Guidelines allow NANPA to grant a carrier a 90-day extension of time in which to activate a code, the NRO order no longer permits NANPA to grant any extensions of time. Authority for extensions now rests with the states, and NANPA is not to take any action until the state commission provides

¹ In the Matter of Numbering and Resource Optimization, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rule Making, FCC 00-104 (released March 31, 2000).

² The FCC also modified the definition of an NXX code "in service" to mean that the code holder has begun to activate and assign numbers to end users within the NXX code.

direction. In addition, NANPA cannot accept any Part 4 Form after the six-month deadline. The procedures we adopt here conform our procedure to these changes in NANPA's role.

Proposed Procedures

On August 28, 2000, the Secretary issued a Notice Inviting Comments on a proposed process for reclamation, including the handling of carrier requests for extensions of time in which to activate central office codes. Notice of the proposed procedures was also published in the New York State Register on August 23, 2000.

Under the proposed procedures, NANPA would begin the reclamation process by notifying the Department of Public Service within 60 days after the end of the six-month code activation period if no Part 4 had been received from a carrier. This agency would send a notice to the carrier that the Commission must receive any request for extension of time within 14 days or the code(s) will be subject to reclamation without further notice. If no response is received from the carrier, we would direct NANPA to reclaim the NXX code in question. A copy of the Commission's direction to NANPA would be served upon the affected carrier.

If a carrier responded with a request for more time in which to activate a code, we could grant up to an additional 120 days from the date the Part 4 form was initially due. Such an extension would only be granted upon verifiable proof that the code was not activated due to reasons beyond the carrier's control, such as a delay in interconnection with another carrier or delay by a single customer that is to be assigned a full NXX code.

Under the proposed procedures, requests for extensions of time would be limited to 120 days after the original

certification of code activation (Part 4 form) was due. Also, additional extensions would not be granted.

Seven parties submitted comments: Cablevision Lightpath, Inc. (Cablevision); CCCNY, Inc. d/b/a Connect! (Connect); Cellco Partnership d/b/a Verizon Wireless (Verizon Wireless); Level 3 Communications (Level 3); RCN Telecom Services of New York, Inc. (RCN); WorldCom, Inc.; and Verizon New York Inc. (Verizon). The parties comments are addressed by issue in the discussion below.

DISCUSSION

Agency Notice of Delinquent Part 4

Comments were received which suggested that the notice emphasize the urgency of the matter. We concur that the notice must convey to the carriers the necessity to respond promptly. We believe that a notice as described in the proposed procedures will provide sufficient information for the recipient to understand the urgency of the need to respond. The notice will inform carriers that the Commission must receive within 14 days either a Part 4 Form or a request for an extension of time to activate the code and, absent such a timely request, the code will be reclaimed without any further notice.

In addition, RCN requests that the agency notice to the carriers be made by certified mail, and WorldCom suggests that carriers be allowed more than 14 days to respond. Since our notification will be the second notice that a carrier would receive (NANPA will have already issued a first notification), we do not believe that either request need be adopted.

Criteria for Extensions

In general, commenters object to what they characterize as the stringent and inflexible nature of the

proposed criteria for determining if extensions of time should be granted. Both RCN and Level 3 indicate that the Commission should adopt flexible guidelines, rather than specific criteria. Level 3 goes so far as to argue that limiting the acceptable reasons for requests for extensions exceeds the authority delegated to the Commission by the NRO Order, as the procedures do not afford carriers the opportunity to explain the circumstances causing the delay. Other commenters indicate that it should be noted that the examples of acceptable reasons for delay in activating central office codes are illustrative, not exhaustive.

Cablevision asks that the initial central office code in each rate center assigned to a competitive local exchange carrier be exempt from the reclamation procedures, even if no customers are being served, prior to the implementation of thousand number block pooling in the given rate center. Lastly, RCN indicates that the authority delegated to the Commission to reclaim numbering resources is subject to the carriers' ability to maintain a six-month inventory of numbering resources and thus, although not explicitly stated, maintaining such an inventory should be deemed an acceptable reason in support of an extension request.

As both the NRO Order and this Commission's March 17, 2000 Order set forth stricter criteria for the initial assignment of NXX codes than previously existed, we expect that bona fide requests for extensions will be fewer than the number received by NANPA in the past. The proposed reclamation procedures provide objective criteria against which each carrier's request for extension of time can be judged. We believe employing the proposed criteria is a reasonable measure to ensure that unactivated codes are not held by a carrier, in contravention of our goal to optimize the allocation of

numbering resources within the State. The objective measures put carriers on notice that, if the delay is caused by them, the code will be reclaimed. Moreover, existence of objective criteria will allow us to handle extension requests expeditiously.

We do not agree with Level 3's contention that the proposed criteria do not comport with the requirements of the NRO order. The Commission clearly has discretion to establish criteria for evaluating extension requests. Moreover, these criteria can be revised as warranted following some experience in implementing them.

We reject Cablevision's suggestion to exempt from reclamation the initial central office code in each rate center assigned to a competitive local exchange carrier, even if no customers are being served, prior to the implementation of thousand number block pooling in the given rate center. This action would defeat the FCC's modified definition of "in service", which requires a code holder to have actually assigned numbers to end users within the code.

RCN contends that maintaining a six-month inventory of numbering resources should be deemed an acceptable reason for an extension request. Allowing every carrier to maintain a six-month inventory of NXX codes, which have not yet been activated and may not actually be activated within any given six-month period, would minimize the benefits of the Commission's numbering optimization measures. A carrier from which a code is reclaimed can apply to NANPA and request that the new code be made effective within approximately two months (66 days). In the NRO Order, the FCC concluded that allowing carriers to build inventories of numbers before they are prepared to offer service results in highly inefficient distribution of numbering resources and is counterproductive to the goal of optimizing the

use of numbering resources.³ In addition, the sections of the NRO Order that RCN cites in support of its argument are specifically addressing the inventory levels for thousands block number pooling, not full codes. Therefore, they are inapplicable.

Finally, we note that these procedures are predicated on the principle that carriers have an obligation to return NXX codes that have not been timely activated. This requirement is explicitly set forth in the Central Office Code Assignment Guidelines,⁴ and we adopt and make it explicit here as well. Carriers should be on notice that the filing of patently frivolous requests for extensions of time will be considered a violation of that requirement and this Order and subject to a penalty action under PSL §§ 24 and 25.

Proof required for extension requests

The procedures require any carrier requesting an extension of time to activate a central office code to provide verifiable details in support of the reason for the delay. RCN requests that the type of acceptable proof be amended to include affidavits from the carrier as to the factors which led to the carrier's initial code request.

We believe this change is unnecessary. Accepting affidavits from the carrier as to why the code was applied for initially would do little to support the continued assignment of a code to a carrier that had not activated it during a six-month time frame. The question is not whether the code was applied for properly, but whether or not the code should be reclaimed

³ NRO Order, ¶ 96.

⁴ E.g., §§6.3.3 and 8.1.

after it has not been activated. A carrier must demonstrate that returning the code and reapplying would be harmful to it or an end user. If the reason for the initial code request is relevant to the reason for the delay in activating it, such evidence would be acceptable under the procedures already proposed.

Length of extensions and subsequent extension requests

Commenters object to the 120-day limit on extensions (RCN, Verizon and Connect!) and the limit to a single extension (Level 3, WorldCom and RCN). In general, they argue that, if the circumstances are beyond the carrier's control, there are legitimate reasons why multiple extensions or an extension longer than 120 days may be required.

We believe that the current central office code request process and the proposed code reclamation procedures provide reasonable time frames during which carriers should be able to activate assigned codes. When a carrier applies for a code, it has the ability to request NANPA to delay activation of the code for up to six months after its request. The carrier then has a six-month window in which to begin to use the code and serve end users. If it finds it cannot activate the code in those six months due to circumstances beyond its control or delay by a single customer that will use the entire NXX, the proposed reclamation procedures allow an extension of up to four months. All told, a carrier could have up to 16 months to activate a code. Given the critical need to optimize the use of central office codes in the State, we cannot justify granting additional extensions. Carriers will not be prohibited from obtaining codes; they merely must start the application process again. This policy will best meet the needs of end users and carriers for equitable code distribution and use.

Appeal from denial of extension

Verizon Wireless requests a mechanism to appeal rejection of a request for an extension of time to activate a central office code. It is contemplated at this time that any code reclamation will be pursuant to a Commission order, which is already appealable under New York law. Thus, no separate appeal mechanism is necessary. If we choose to modify the agency process in the future, we can revisit the appeal issue at that time.

The Commission orders:

1. The attached procedures, initially released for comment in August, are adopted without change.

2. Because carriers have an obligation to return central office codes that have not been activated in timely fashion, absent circumstances justifying an extension of time, patently frivolous requests for extensions of time will be deemed a violation of this order.

3. This proceeding is continued.

By the Commission,

(SIGNED)

JANET HAND DEIXLER
Secretary

CASE 98-C-0689

ATTACHMENT

RECLAMATION PROCEDURES

December, 2000

NEW YORK STATE
PUBLIC SERVICE COMMISSION

PROCEDURES FOR CENTRAL OFFICE CODE RECLAMATION
AND REQUESTS FOR EXTENSIONS

RECLAMATION PROCEDURES

Pursuant to the Industry Numbering Committee's Central Office Code Assignment Guidelines, carriers must activate central office codes (or "NXX Codes") assigned to them within six months. When they activate a code, carriers must file a Confirmation of Code Activation Form, or "Part 4" with the North American Numbering Plan Administrator (NANPA). NANPA will send each carrier a notice during the month when the carrier's Part 4 is due with respect to a particular NXX code. If the Part 4 is not received when due, NANPA will then forward a list of codes for which the Part 4 form has not been received to the Department of Public Service.

Upon receipt of the list of delinquent codes from NANPA, this agency will send a notice to all affected carriers that they are included on the list that has been filed with the Department. Carriers will be notified that the Commission must receive the Part 4 or any request for extension within 14 days or the codes will be subject to reclamation without further notice.

If no response is received from the carrier, we will direct NANPA to reclaim the NXX code in question. A copy of our direction to NANPA will be served upon the affected carrier.

REQUESTS FOR EXTENSIONS

Both the FCC's Numbering Resource Optimization Order⁵ and this Commission's March 17, 2000 Order in this proceeding set forth stricter criteria for the assignment of NXX codes in the first place, such as more stringent proof of need for an initial code in a given rate center and proof of a high percentage of utilization of existing codes before additional, or "growth," codes are assigned. Consequently, we envision that bona fide requests for extensions will be fewer than those received by NANPA in the past. Nevertheless, requests can be expected and objective criteria need to be in place in order to set forth acceptable reasons for delay.

a. Reasons for delay

The Central Office Code Assignment Guidelines currently allow a carrier to receive an extension if the activation has not occurred due to reasons beyond the carrier's control, such as a delay in interconnection with another carrier. We believe that this is an acceptable reason. A second reason for delay that will be acceptable is delay by a single customer that will be assigned a full NXX code.

b. Proof required

In each case, the carrier requesting an extension must provide verifiable details to demonstrate that its inability to activate the code falls into one of the two categories

⁵ FCC 00-104, Report and Order and Further Notice of Proposed Rule Making, CC Docket No. 99-200, In the Matter of Numbering Resource Optimization (released March 31, 2000).

identified above. For example, the carrier should identify the customer or other carrier, as applicable, and identify a representative of that customer or other carrier that Department staff can contact to verify the information set forth in the carrier's request. Alternatively, the carrier may be able to make its case through a record of correspondence submitted with its request. Carriers may avail themselves of the Department's procedures regarding protection of trade secret information if they deem it necessary in complying with this process.

A carrier must demonstrate that returning the codes and reapplying at a later date would be harmful to it or an end-use customer. The burden of proof lies with the carrier requesting the extension and mere statements to that effect will not be acceptable.

Carriers must specify and justify the length of the extension of time needed in which to activate a code. In no event, however, will requests for extensions greater than 120 days from the date the Part 4 was originally due be entertained.

c. Submission of requests

Any carrier seeking an extension should submit its request in writing to the Secretary to the Commission. Requests should be send to:

Janet Hand Deixler
Secretary
New York State Public Service Commission
3 Empire State Plaza
Albany, New York 12223-1350

d. Notification of grant or denial

Carriers and NANPA will be notified simultaneously, in writing, of either a grant or denial of a request for an

extension. In the case of a denial of a request, NANPA should proceed forthwith to reclaim the affected NXX code. In the case of a grant of a request, NANPA may reclaim the code if the Part 4 is not received by the end of the extension period without further notification by the Department or the Commission.

e. Subsequent extension requests

Additional requests for extensions will not be entertained.