

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE REVISION OF THE)
COMMISSION'S CONSIDERATION OF TREAT-)
MENT OF SAFETY-VALVE APPLICATIONS FOR) PSC DOCKET NO. 07-99
TELEPHONE NUMBERING RESOURCES UNDER)
47 C.F.R. § 52.15(g)(4))
(FILED MARCH 1, 2007))

ORDER NO. 7183

This 22nd day of May, 2007, the Commission determines and Orders the following:

1. Pursuant to the plenary power granted under 47 U.S.C. § 251(e)(1), the Federal Communications Commission ("FCC") has crafted general rules relating to the administration of telephone numbering resources, such as area codes ("NPA") and central office codes ("NXX"). See 47 C.F.R. §§ 52.1 through 52.20. In the context of NXX numbers, the FCC looks to its designated "North American Numbering Plan Administrator" ("NANPA") or the "National Thousands Block Numbering Pool Administrator" ("PA") for the day-to-day administration of its rules. However, the FCC has also offered state utility commissions a role. They can monitor and enforce the assigned carrier's compliance with the federal "utilization" requirements. See 47 C.F.R. § 52.15(i), (j)(5). A state commission can also act to grant "safety-valve" relief that will allow a carrier - in limited circumstances - to obtain additional NXX numbers even if the carrier might not be able to meet the "utilization" and "months-to-exhaust" thresholds normally required to gain additional numbering resources. See 47 C.F.R. § 52.15(g)(4).

2. The Commission has consistently chosen not to become involved in the monitoring (and enforcement) of the utilization requirements surrounding assignments of NXX numbers. See PSC Order No. 6064 (Nov. 19, 2002). In contrast, the Commission has somewhat "bunny-hopped" on providing a "safety-valve" forum for carriers to plea for additional numbering resources in particular instances such as rapid growth in a rate center, a specific customer "non-variety" request, or other extraordinary circumstances. Initially, the Commission "returned" that safety-valve authority to the FCC. The Commission did so on the basis that this Commission's limited resources and timing schedules would likely not allow it to meet the 10 business day period that the FCC suggested should apply for acting on such applications. See PSC Order No. 6064 (Nov. 19, 2002). But when it became evident that the FCC itself could not even come close to meeting its own suggested timetable for turning around "safety-valve" applications filed there, the Commission chose to recapture its delegated "safety-valve" authority. See PSC Order No. 6600 (Apr. 5, 2005).

3. AT&T Corp. (on behalf of its wholly-owned certificated subsidiaries AT&T Communications of Delaware, LLC and TCG Delaware Valley, Inc.) has now asked the Commission to adopt procedures for a more expedited process to consider these "safety-valve" applications, suggesting that the Commission might adopt something akin to quick turn-around schemes now utilized by other state utility commissions.¹

¹Letter application filed by AT&T (March 1, 2007). AT&T's call for a more expedited process was apparently prompted by its loss of a customer when

Looking to the provisions of 26 Del. C. § 703(4), AT&T says that such expedited process can be obtained by "delegating" to the Staff the decisional authority for "safety-valve" applications.

4. Section 703(4) was passed soon after the enactment of the 1996 federal Telecommunications Act. That federal Act introduced a new scheme for State commissions to quickly arbitrate and review inter-carrier disputes involving new carriers making use of incumbent local carrier's networks. Plainly, section 703(4) was meant to allow the Commission to undertake the procedures involved in those inter-carrier disputes. At the same time, the Commission does not think it necessary, or appropriate, for it to delve into whether the language of section § 703(4) - allowing "the foregoing actions and proceedings" to be "conducted" by a "subordinate" - would also allow the Commission to delegate to a Staff subordinate the final "decision-making" authority in numbering resource requests. Finding such type of delegation permissible might, as a practical matter, be "harmless" in the context of "safety-valve" applications, but the Commission is leary of making such a statutory interpretation call (without full exploration) when any such reading could later be viewed as precedent in other contexts. Rather, the Commission believes that all that is necessary here is to announce a more formalized process that will allow Staff's recommendation to be transmitted early on to the NANPA and the National PA, and the Commission's final decision to promptly follow. The FCC has said that the "safety-valve" mechanism should

the Commission could not "grant" a "safety-valve" application fast enough to allow AT&T to hold onto the customer.

only be used as "a last resort" and such applications should only be granted in limited instances of demonstrated need.² Given that, the Commission believes that once Staff has made its review of an application and recommended that the requested numbering relief be granted, it will be the rare case where the Commission might thereafter reject Staff's recommendation. The procedure adopted here will, the Commission hopes, provide an internal timetable for Staff to review such applications and for the Commission to promptly enter its final decision.

5. The Commission believes that it can enter this Order setting forth a process to be followed, without notice and the opportunity for comment, pursuant to the provisions of 26 Del. C. § 703(4) and 29 Del. C. § 10113(b)(2)&(3).

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 703(4) and 29 Del. C. § 10113(b)(2)&(3), the Commission adopts the following process for this Commission's review of "safety-valve" applications submitted under 47 C.F.R. § 52.15(g)(4):

- (a) Any carrier seeking "safety-valve" relief under 47 C.F.R. § 52.15(g)(4) shall submit an application to the Commission for the release of blocks of telephone numbers. All such applications shall set forth with specificity:
 - (i) a compelling and permissible need for the

²Numbering Resource Optimization, Third Report and Order and Second Order on Recon. at ¶¶ 61-65, 17 FCC Rcd. 252(2001).

requested additional numbering resources (with appropriate references to rules or orders of the Federal Communications Commission); (ii) a description as to why the granting of the particular application will not run the risk that numbering resources will be inefficiently used; and (iii) written evidence that the North American Numbering Plan Administrator or National Pooling Administrator has rejected the carrier's direct request for the additional number resources. An applicant shall also describe what the long-term impact to the numbering resources would be if the particular request is granted;

- (b) The Executive Director or Deputy Director (or other Staff member designated by them) shall, within ten business days of the receipt of an application complying with the above requirements, review and investigate the numbering resource request, and submit a memorandum indicating: (i) the date the application was received; (ii) the Staff's findings as to the validity and strength of the applicant's request, specifically as to whether all of the requirements set forth in Paragraph (a) above are sufficiently satisfied; and (iii) whether the Staff advises the requested numbers

be released. The Staff shall submit this memorandum to the Commission and concurrently send a copy of the same to the carrier applicant and to the North American Numbering Plan Administrator or the National Pooling Administration, as appropriate; and

- (c) The Commission, upon receipt of the Staff Memorandum, shall consider the application and the Staff's recommendation at the Commission's next regularly scheduled meeting, provided the Commission's schedule so permits. If the Commission's schedule does not so permit, the application shall be formally considered and acted upon promptly at a later regularly-scheduled Commission meeting.

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

PSC Docket No. 07-99, Order No. 7183 Cont'd.

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary