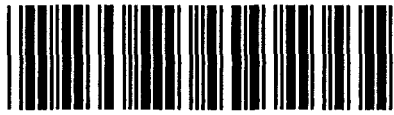




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**APPLICATION OF AT&T
COMMUNICATIONS OF TEXAS,
L.P. AND TELEPORT
COMMUNICATIONS GROUP-
DALLAS FOR WAIVER OF
DENIAL BY NANPA OF NXX
CODE REQUEST**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the application of AT&T Communications of Texas, L.P. and Teleport Communications Group-Dallas (collectively AT&T or the Applicant), for waiver of denial by the North American Numbering Plan Administrator (the NANPA) of the Applicant's request for a second central office code or NXX in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers. The Public Utility Commission of Texas (Commission) finds that this docket was processed in accordance with applicable statutes and Commission rules. No protests, motions to intervene, or requests for hearing were filed. The Commission Staff and AT&T are the only parties to the proceeding. AT&T's request is approved.

I. Discussion

A. Background

AT&T is a competitive local exchange carrier (CLEC) operating in the Dallas/Ft. Worth Metroplex area.¹ AT&T competes with the incumbent local exchange carrier (ILEC), Southwestern Bell Telephone Company (SWBT). In the Dallas Local Access and Transport Area, SWBT offers customers optional two-way Extended Area Service (EAS) in 31 of the 57 rate centers it serves. Optional two-way EAS is a flat fee service that provides subscribers with unlimited toll-free calling within a defined geographical area that would normally be toll calls. Optional two-way EAS requires two unique central office codes for any Local Exchange Carrier (LEC) offering the service. Call routing for the two different calling scopes, local and EAS, is done over separate trunk

¹ AT&T is authorized to provide service in Texas under Certificate of Operating Authority No. 50003.

groups. Currently, this use of separate trunk groups and therefore separate central office or NXX codes within the same rate center is the only viable technical methodology for providing optional two-way EAS. Therefore, a single NXX is not adequate to accommodate the immediate needs of an LEC offering or seeking to offer optional two-way EAS. Consequently, a carrier must obtain a second central office code or NXX to offer EAS and non-EAS services in one rate center.

On July 23, 2001, the Applicant applied to the NANPA for a second NXX code for the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers.² On August 8, 2001, the NANPA denied the Applicant's request. The NANPA relied on Paragraph 22 of the Federal Communications Commission's (FCC) Second Report and Order on Reconsideration in the Matter of Numbering Resource Optimization.³ The NANPA stated "all growth requests as of May 8, 2001, per the FCC 2nd Report and Order (FCC 00-429), must meet the 60% utilization level." The NANPA denied the request because AT&T had not provided evidence to satisfy the FCC mandated 60% utilization threshold for growth NXXs. On August 20, 2001, AT&T filed with the Commission a request that the Commission find good cause to waive the denial by NANPA of Applicant's request for a second NXX code in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers because AT&T cannot provide optional two-way extended area service (EAS) without a second NXX code.

B. Jurisdiction

The FCC has plenary jurisdiction over the North American Numbering Plan and related telephone numbering issues.⁴ The FCC has delegated to NANPA the authority to grant or withhold central office codes requested by carriers. It was pursuant to this authority that NANPA denied AT&T's request for more than one central office code or NXX because the growth threshold had not been met.

² The Arlington and Roanoke rate centers are in the 817 Numbering Plan Area (NPA) or area code and the Cedar Hill, McKinney, and Lewisville rate centers are in the 469 NPA.

³ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Second Report and Order and Second Further Notice of Proposed Rulemaking, at para 22, FCC 00-429 (rel. Dec. 29, 2000) (*Second NRO Order*).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, (FTA) 47 U.S.C. § 251(e).

The FCC's *Report and Order and Further Notice of Proposed Rule Making in the Matter of Numbering Resource Optimization*⁵ expressly allows carriers to appeal to the appropriate state commission when the NANPA denies a request for numbering resources based on a determination by the NANPA that the carrier failed to comply with the requirements for assignment of an initial code.⁶ In this case, however, the NANPA did not treat the Applicant's request for a second NXX as a request for an initial NXX, and did not deny the request based on the initial code assignment criteria. Instead, the NANPA granted the Applicant a single initial code and treated the request for a second code as a request for a growth code. Thus, the NANPA's denial of the second code was based, not on the criteria for an initial NXX, for which the Commission has express authority to overturn or waive the NANPA's determination, but rather on the Applicant's failure to satisfy the requirements for the award of a growth code. Consequently, a narrow reading of the FCC's *First Order* would limit a carrier's right to appeal to the Commission to cases in which the NANPA denied the carrier's request for an initial code. For the following reasons, however, such a narrow reading is not warranted in this case.

First, the *First Report's* apparent limitation of the Commission's power to overturn or waive the NANPA's decisions regarding whether an applicant has satisfied the criteria for an initial code was not included in the codification of the provision. Instead, the Code of Federal Regulations grants state commissions the broader authority

⁵ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, FCC 00-104 (rel. March 31, 2000) (*First Order*) at ¶100. The FCC stated:

100. We also clarify that our intent is to allow qualified carriers to seek one initial code or thousands-block for the purpose of establishing a footprint or presence in a particular rate center. If an initial request for numbering resources seeks more than one code or thousands-block, the additional codes or thousand-block will be treated as growth codes and must meet the requirements outlined in that section below.

⁶ *First Order* at ¶98. Unless otherwise noted, all emphasis is supplied. The requirements for assignment of an initial code are set forth in ¶97. These requirements are:

1. Evidence demonstrating license or certification to provide service in the area in which they seek the numbering resource; and
2. Evidence that the applicant can provide the services within 60 days of the numbering resource activation date.

to “affirm or overturn the NANPA's decision to withhold numbering resources . . . based on its determination of compliance with the reporting and numbering resource application requirements,” without distinguishing between initial and growth codes.⁷ Thus, the Code of Federal Regulations expressly grants the Commission the authority to overturn the NANPA’s decision to withhold growth numbering resources, as well as initial numbering resources.⁸

Second, the Commission’s exercise of jurisdiction granted by the Federal Regulations is consistent with the FCC’s goals. According to the *First Order*, the FCC has two goals: to ensure the efficient allocation of the limited numbering resources, and to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications marketplace.⁹ In denying the Applicant’s request for a second NXX in this case, the NANPA presumably furthered one of these goals by preserving an NXX, but frustrated the other, by denying to the Applicant the numbering resources it needs to compete. While it may be possible for the Applicant or the Commission to petition the FCC for a waiver or a delegation of authority, either process would require considerable time. In the interim, the Applicant would be denied the opportunity to compete for optional two-way EAS customers and consumers in the Dallas/Ft. Worth Metroplex area who desire optional two-way EAS would be unable to choose Applicant as their carrier because of Applicant’s lack of access to the numbering resources required to provide that service. Such an outcome violates the FCC’s requirements that the Commission act to ensure that numbering resources are made available on an efficient and timely basis, that Applicant not be competitively

⁷ 47 C.F.R. § 52.15(g)(3)(iv).

⁸ The Applicant’s request for a second NXX challenges the FCC’s use of the terms “growth” and “initial” codes. “Growth codes are the additional codes that a carrier requests when its existing codes are exhausted.” *First Order* at 23, n.86. Initial codes are used to establish a footprint, and growth codes are used to expand service within existing coverage areas. *Id.* at ¶58. A “footprint” is a commercial presence. *Id.* at ¶86. Thus, because the Applicant’s request for a second NXX is to enable the Applicant to establish a meaningful and competitive commercial presence or footprint, the requested code has features of an initial code, notwithstanding the fact that the FCC’s use of the term “initial code” does not appear to contemplate more than one initial code. *See, e.g., id.* at 23, n.86 (“An initial code is the first NXX code that carriers receive in a rate center.”). As discussed below, this is precisely the type of change in the telecommunications industry to which state commissions must remain free to timely respond.

⁹ *First Order* at ¶1.

disadvantaged, and that consumers never be denied a choice of a carrier because that carrier does not have access to necessary numbering resources.¹⁰

The FCC has repeatedly recognized the important role of state commissions in managing numbering resources.¹¹ Part of this role is ensuring that numbering resources are made available on a timely basis.¹² For all of these reasons, the Commission exercises the authority expressly granted to it by the FCC in 47 C.F.R. § 52.15(g)(3)(iv).

C. Review of the NANPA's Decision

Some of the same reasons that support the Commission's exercise of jurisdiction in this matter also support granting the Applicant's request that the Commission overturn the NANPA's denial of a second NXX in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers. Most importantly, the Applicant is unable to compete with the ILEC for optional two-way EAS without a second NXX. Likewise, consumers are put in the position of being unable to exercise their choice of carrier because the carrier did not have access to numbering resources. When it has delegated authority to the Commission, the FCC has imposed a duty that the Commission ensure numbering resources are "*made available on an efficient and timely basis*" and in a way that does not unduly favor or disfavor any segment of the telecommunications industry or group of telecommunications consumers.¹³ In addition, the FCC has stated that "it is imperative that competitors in the telecommunications marketplace face as few barriers as possible" and that "[c]onsumers should never be in the position of being unable to exercise their choice of carrier because that carrier does not have access to numbering resources."¹⁴ Finally, the FCC stated that its intent was not to circumscribe any carrier's ability to

¹⁰ See *Petition of the Public Utility Commission of Texas for Expedited Decision for Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order, DA 99-2636 (rel. Nov. 30, 1999) (*Texas Delegation Order*) at ¶8.

¹¹ See, e.g., *First Order* at ¶¶75, 77.

¹² *Texas Delegation Order* at ¶¶8, 9, and 16.

¹³ *Id.* at ¶8.

¹⁴ *Id.* at ¶¶9, 16.

obtain initial numbering resources in order to initiate service; but to prevent actual or potential abuses of the number allocation process.”¹⁵

The Commission is additionally guided by the FCC’s statements regarding its goals in optimizing the use and allocation of numbering resources. Specifically, the *First Order* requires that *all* carriers be provided sufficient access to numbering resources to enter into or compete in telecommunications markets. Likewise, the FCC insists that the allocation of numbering resources “ensure competitive neutrality” and that “no class of carrier or consumer is unduly disfavored by [the] optimization efforts.”¹⁶ On the other hand, the protection of consumers, carriers, and competition promised by the FCC requires finding a carrier’s actual need for numbering resources to serve the carrier’s customers, and prevention of abuse of the system and stockpiling of numbers.¹⁷

In this case, it is undisputed that the Applicant cannot provide optional two-way EAS without a second NXX. The Applicant’s need for the resource is therefore established. Moreover, to help ensure that granting Applicant’s request will not result in the abuse of the system or stockpiling of NXX codes, Applicant will be required to report its utilization of and forecasts for the utilization of numbering resources.¹⁸ The basic frequency of the reporting shall be semi-annually.¹⁹

In granting Applicant’s request, the Commission also establishes conditions to ensure the preservation of numbering resources. While the evidence is undisputed that the Applicant cannot provide optional two-way EAS without a second NXX, there is no evidence regarding the number of consumers to whom Applicant reasonably anticipates providing optional two-way EAS. To conserve numbering resources, the Applicant shall be required to assign numbers sequentially. In addition, the Applicant shall set aside (i.e., restrict from assignment in their telephone administration systems by assuring that they

¹⁵ *First Order* at ¶99.

¹⁶ *Id.* at ¶3.

¹⁷ *Id.* at ¶¶4, 5, 88.

¹⁸ *Id.* at ¶40.

¹⁹ *Id.* at ¶67. In addition, the FCC reserved to the states the power to audit a specific carrier to gather data for a specific purpose. *Id.* at ¶76.

are not accessible to sales, marketing, or customer service personnel) all unopened thousand-blocks assigned to Applicant, unless no other numbers are available. Finally, the Applicant shall refrain from assigning numbers from any thousand-blocks with 100 or fewer numbers currently in use, unless there are no other numbers available.²⁰ Thus, the Applicant will be equipped with the numbering resources to compete fully and consumers' choice will not be frustrated by lack of access to numbering resources. However, numbering resources not required by the Applicant to further competition or support consumer choice will be protected in preparation for the implementation of thousand-block number pooling.

Therefore, the Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural History

1. On August 20, 2001, AT&T filed with the Commission a request that the Commission find good cause to waive the denial by NANPA of Applicant's request for a second "central office" or "NXX" code in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers.
2. On August 23, 2001, the Commission issued an Order establishing a procedural schedule and requesting Commission Staff (Staff) comment or recommendation.
3. Notice of the application was published in the *Texas Register* on September 7, 2001.
4. On September 21, 2001, Allegiance Telecom of Texas, Inc. (Allegiance) filed comment in support of AT&T's petition. Like AT&T, Allegiance stated that based on

²⁰ These conservation measures parallel the measures the Commission has made applicable to all codeholders in the Thousand-Block Number Pooling Trials in Texas. See *Thousand-Block Number Pooling Trials in Texas*, Project No. 24186, Order Implementing Procedural Changes Regarding Number Pooling and Optional Two-Way EAS at 6 (June 4, 2001).

growth codes restrictions, NANPA had denied Allegiance's request for an additional NXX code to support extended metropolitan service.

5. On September 21, 2001, Staff filed a recommendation of approval of AT&T's request. Staff recommended that the Commission issue an order directing the NANPA to assign the requested NXX to AT&T.

6. The following items are admitted into evidence: (1) application of AT&T Communications of Texas, L.P. and Teleport Communications Group-Dallas filed on August 20, 2001; (2) *Texas Register* acknowledgement of receipt filed on August 29, 2001; and (3) Staff response to Order No. 1 filed on September 21, 2001.

Background

7. AT&T is a competitive local exchange carrier (CLEC) offering cable telephony services in the Dallas/Ft. Worth Metroplex. AT&T is authorized to provide service in Texas under Certificate of Operating Authority No. 50003.

8. The incumbent local exchange carrier, SWBT, offers EAS-type services in 31 of its 57 rate centers in the Dallas/Ft. Worth area. Optional two-way EAS is a flat fee service that provides subscribers with unlimited toll-free calling within a defined geographical area that would otherwise typically be toll calls.

9. Optional EAS requires a second NXX, in addition to the NXX assigned for basic local service. Therefore, Applicant requires a second, separate NXX in order to be able to offer EAS and non-EAS services in one rate center.

10. The NANPA denied Applicant's request for a second NXX based on Paragraph 22 of the FCC's *Second NRO Order*. The NANPA stated that per the *Second NRO Order* "all growth requests as of May 8, 2001, per the FCC 2nd Report and Order (FCC 00-429),

must meet the 60% utilization level.” The NANPA denied the request because AT&T had not provided evidence to satisfy the FCC mandated 60% utilization threshold for growth NXXs.

11. Carriers may appeal the NANPA’s decision to the appropriate state regulatory commission. The state regulatory commissions may affirm or overturn the NANPA’s decision to withhold numbering resources. 47 C.F.R. § 52.15(g)(3)(iv).

12. The denial of a second NXX would create an entry barrier to AT&T because it would not be able to offer optional two-way EAS.

13. If the Applicant is denied a second NXX and therefore cannot offer optional two-way EAS, consumers desiring optional two-way EAS would be denied a choice of AT&T as a carrier because AT&T would not have access to necessary numbering resources.

14. Denying Applicant a second NXX would circumscribe Applicant’s ability to obtain numbering resources necessary to initiate optional two-way EAS.

15. Requiring the Applicant to seek a waiver from the FCC would prevent making the numbering resources required to allow the Applicant to compete available on a timely basis.

16. Seeking a delegation from the FCC would prevent making available on a timely basis the numbering resources required to allow the Applicant to compete.

17. By requiring the Applicant to (1) assign numbers sequentially, (2) set aside all unopened thousand-blocks assigned to Applicant, unless no other numbers are available, and (3) refrain from assigning numbers from any thousand-blocks with 100 or fewer numbers currently in use, unless there are no other numbers available, numbering resources not required by Applicant are protected.

Informal Disposition

18. More than 15 days have passed since completion of the notice provided in this docket.

19. No requests for hearing have been filed. No issues of fact or law are disputed by any party. No hearing is necessary.

III. Conclusions of Law

1. The Applicant is a telecommunications provider as defined in § 52.002 of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 1998 & Supp. 2001) (PURA).

2. The Commission has jurisdiction and authority over this application pursuant to § 52.002 of PURA, and § 52.15(g)(3)(iv) of the Code of Federal Regulations.

3. Reasonable and adequate notice of the application was provided.

4. The requirements of informal disposition, pursuant to P.U.C. PROC. R. 22.35, have been met in this proceeding.

5. AT&T's application was processed in accordance with the requirements of PURA and the Administrative Procedure Act.²¹

6. This proceeding, consistent with the parties' agreement, may be approved without a hearing pursuant to TEX. GOV'T CODE ANN. § 2001.056 (Vernon 2001).

²¹ TEX. GOV'T CODE ANN. Chapter 2001 (Vernon 2001).

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. AT&T's request for waiver of denial by the NANPA for additional NXX codes in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers is APPROVED.
2. The denial by the NANPA of AT&T's request for a second NXX assignment in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers is waived.
3. The NANPA is directed to assign a second NXX code to AT&T for the provision of optional two-way EAS in the Roanoke, Arlington, Cedar Hill, McKinney, and Lewisville rate centers.
4. The Applicant shall assign numbers sequentially.
5. The Applicant shall set aside (i.e., restrict from assignment in their telephone administration systems by assuring that they are not accessible to sales, marketing, or customer service personnel) all unopened thousand-blocks assigned to Applicant, unless no other numbers are available.
6. The Applicant shall refrain from assigning numbers from any thousand-blocks with 100 or fewer numbers currently in use, unless there are no other numbers available.

7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

SIGNED AT AUSTIN, TEXAS the 20th day of December 2001.

PUBLIC UTILITY COMMISSION OF TEXAS



MAX YZAGUIRRE, CHAIRMAN



BRETT A. PERLMAN, COMMISSIONER



REBECCA KLEIN, COMMISSIONER