

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

In the Matter of)
)
Numbering Resource Optimization) CC Docket No. 99-200
)
Petition of TeleCorp PCS, Inc.)
for Waiver of Section 52.15(g)(3)(iv)) NSD File No. L-01-155
47 C.F.R. § 52.15(g)(3)(iv))

ORDER

Adopted: November 7, 2001

Released: November 8, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. On August 24, 2001, TeleCorp PCS, Inc., on behalf of its affiliates and subsidiaries, (collectively referred to as TeleCorp), requested a waiver of Section 52.15(g)(3)(iv), which sets forth the requirements for receiving growth numbering resources. TeleCorp requests a waiver of the months-to-exhaust (MTE) and utilization threshold requirements to receive new growth central office (CO) or NXX codes for its post-pay services during the phase-out of its pre-pay services. Specifically, TeleCorp seeks to exclude from its utilization calculation those resources used for its pre-pay services and calculate its utilization threshold and MTE using only the numbering resources it has assigned for its post-pay services. In the alternative, TeleCorp requests a one-time waiver of Section 52.15(g)(3)(iii)-(iv) to allow the NANPA to assign to it three new growth NXX codes for its post-pay services in the Puerto Rico rate center. We grant TeleCorp's petition, in part, and direct the NANPA to assign TeleCorp two new growth NXX codes for its post-pay services to accommodate the phase-out of its pre-pay services.

II. BACKGROUND

2. TeleCorp states that its original business plan provided for two types of services, pre-pay and post-pay service, but due to a company refocus, TeleCorp has begun a transition to phase-out

1 47 C.F.R. § 52.15 (g)(3)(iv).

2 Pre-pay service is mobile telephony service operating off of a debit account that can be replenished by purchasing additional air time on an on-going basis. Post-pay is the conventional mobile service billed in arrears on an on-going basis.

3 See In the Matter of TeleCorp PCS, Inc. Request for Waiver of Section 52.15(g)(3)(iv) of the FCC Rules (filed August 24, 2001) (TeleCorp Petition).

4 See id.

its pre-pay services, and intends to consolidate its pre-pay customers into one of its existing pre-pay NXX codes.⁵ TeleCorp has committed to aggressively clear its pre-pay NXX codes in a timely manner, and TeleCorp asserts that its current business plan to phase out pre-pay services has skewed the calculations on the MTE worksheet and, thus, its available numbering resources are not accurately reflected.⁶ Currently, TeleCorp's MTE worksheet shows that it has a supply of numbers available that exceeds its projected six-month demand. TeleCorp states, however, that this calculation does not consider that its pre-pay NXX are "unavailable for assignment" due to its efforts to vacate these codes. TeleCorp contends that it will not have enough numbers in its inventory to meet its projected demand for the next six months for new post-pay customers. TeleCorp, therefore, requests a temporary waiver so that it may receive additional numbering resources for its post-pay services.

3. Section 52.15 of the Commission's rules requires that, among other things, carriers requesting growth numbering resources submit a MTE worksheet indicating that their numbering resources will be exhausted within six months to be eligible to receive growth numbering resources in a particular rate area.⁷ Carriers requesting growth NXX codes must also meet the 60% utilization level for the rate center in which growth resources are requested.⁸ This rule seeks to ensure that existing numbering resources are used efficiently and to prevent carriers from carrying large inventories of numbers that could be used more efficiently by other carriers.⁹

III. DISCUSSION

4. The Commission has plenary jurisdiction of those portions of the North American Numbering Plan that pertain to the United States.¹⁰ Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive, for good cause shown.¹¹ In demonstrating such good cause, an applicant for a waiver "faces a high hurdle even at the starting gate."¹² Moreover, the Commission must in its decision "explain why deviation [from its rules] better serves the public interest."¹³

⁵ According to TeleCorp, due to its billing and roaming systems, it does not intermingle pre-pay and post-pay customers within the same NXX.

⁶ See TeleCorp Petition at 2-4.

⁷ 47 C.F.R. § 52.15.

⁸ That is, carriers must demonstrate that they have assigned at least 60% of their numbering resources.

⁹ See Numbering Resource Optimization, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000).

¹⁰ See generally 47 C.F.R. §§ 52.15 et. seq.

¹¹ 47 C.F.R. § 1.3.

¹² See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969).

¹³ See *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

5. We have reviewed TeleCorp's petition and find that it has adequately demonstrated that it will likely run out of numbering resources for its post-pay services during the phase-out of its pre-pay services. TeleCorp has shown that it has put forth significant efforts to consolidate its numbering resources and to utilize them efficiently, and thus a waiver is warranted to enable TeleCorp to continue to provide its post-pay service during the phase-out period of its pre-pay service. We also find that it is in the public interest to grant a waiver to allow for a smooth phase-out of TeleCorp's pre-pay services in a manner that is minimally disruptive to its customers. Granting this waiver also promotes the Commission's policies by encouraging carriers to take measures such as consolidating and returning unused numbering resources so that they can be used more efficiently.

6. We therefore grant, in part, TeleCorp's petition for a one-time waiver and direct the NANPA to assign two growth NXX codes to TeleCorp for use while it continues to clear its pre-pay NXX codes. Upon clearing its pre-pay NXX codes, TeleCorp may retain one pre-pay NXX code to provide post-pay service in lieu of receiving three NXX codes at this time, as requested. TeleCorp must return the remaining pre-pay NXX codes to the NANPA as soon as they are vacated, but in no event later than 18 months from the date of release of this order. TeleCorp has committed to aggressively clear out its pre-pay NXX codes, and 18 months should be sufficient time in which to do so. We deny TeleCorp's alternative request to calculate its utilization threshold and MTE using only the numbering resources it has designated for its post-pay services. Finally, we emphasize that TeleCorp must meet both the utilization threshold and MTE requirements in the Commission's rules to receive growth numbering resources in the future.

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 TeleCorp PCS, Inc. IS GRANTED, in part, and DENIED, in part, to the extent herein described.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Common Carrier Bureau