

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

In the Matter of)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications)	CC Docket No. 96-98
Act of 1996)	
)	
Florida Public Service Commission Petition for)	
Expedited Declaratory Statement and/or)	NSD-L-01-160
Expedited Petition for Temporary Waiver of 47)	
C.F.R. Section 52.19(c)(3)(ii) in the 954 NPA)	
)	

ORDER

Adopted: December 21, 2001

Released: December 28, 2001

By the Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. This Order addresses the Florida Public Service Commission's (Florida Commission) petition requesting a declaratory ruling that its actions, as described below, are consistent with 47 C.F.R. § 52.19(c)(3)(ii) or, alternatively, requesting a temporary waiver of section 52.19(c)(3)(ii), the ten-digit dialing rule.¹ As discussed below, we find that the Florida Commission's actions are inconsistent with section 52.19(c)(3)(ii). Nevertheless, we grant a temporary waiver of the ten-digit dialing rule for the 954 numbering plan area (NPA) until April 1, 2002 and for the 954/754-561 extended area services (EAS) routes until September 1, 2002.

2. *Background.* On August 8, 1996, the Federal Communications Commission (Commission) released the *Local Competition Second Report and Order*.² In that Order, the Commission determined, among other things, that state commissions could continue to implement area code relief, in accordance with the Commission's numbering administration guidelines.³ In addition,

¹ *Florida Public Service Commission Petition for Expedited Declaratory Statement and/or Petition for Expedited Temporary Waiver of 47 C.F.R. § 52.19(c)(3)(ii) in the 954 NPA, CC Docket No. 96-98, filed June 29, 2001 (Florida Commission Petition).*

² *Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order).*

³ *Id.* at 19518, para. 281. The allowable forms of area code relief include: (1) geographic split; (2) area code (continued....)

the Commission adopted the ten-digit dialing rule for area code overlays in section 52.19(c)(3)(ii), which requires state commissions to introduce ten-digit dialing in the underlying area code as well as the area code overlay upon implementation of the overlay.⁴ The Commission reasoned that mandatory ten-digit dialing would help to ensure that competitors did not suffer any competitive disadvantages as a result of a local dialing disparity.⁵ According to the Commission, absent mandatory ten-digit dialing, customers may choose the local incumbent carrier instead of a competing carrier because the incumbent is more likely to provide customers with numbers in the underlying area code, allowing customers to dial seven-digits within that area code.⁶ Customers of competing carriers, however, are more likely to receive numbers from the overlay and, therefore, be required to dial ten-digits for most local calls.⁷

3. The Common Carrier Bureau (Bureau) has considered several prior requests for waiver of the ten-digit dialing requirement.⁸ The Bureau granted temporary waivers in all instances, but denied the requests of the New York and Pennsylvania Commissions for permanent waivers.⁹ In reviewing the waiver requests, the Bureau considered three factors: (1) whether service providers had insufficient time to adjust telecommunications networks for the change to ten-digit dialing; (2) whether (Continued from previous page) _____ realignment; and (3) area code overlay. *See id.* at 19513, para. 273. In the *Third Report and Order*, the Commission also reversed the previous ban on service-specific and technology-specific overlays, which are now available as area code relief options on a case-by-case basis to states that petition for, and receive, Commission approval. *See Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, FCC 01-362, at paras. 67-94 (rel. Dec. 28, 2001) (*Third Report and Order*).

⁴ 47 C.F.R. § 52.19(c)(3)(ii) (ten-digit dialing rule); *see also Local Competition Second Report and Order*, 11 FCC Rcd at 19518, paras. 286-87.

⁵ *Id.*

⁶ *See id.* at 19518-19, para. 287.

⁷ *See id.*

⁸ *See* Letter from Dorothy T. Attwood, FCC to Richard L. Mathias, Illinois Commerce Commission, dated April 6, 2001 (granting the Illinois Commerce Commission a temporary waiver of the ten-digit dialing rule for an additional nine months, until January 7, 2002) (*Second Illinois Waiver*); *Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)*, Order, 15 FCC Rcd 4632 (rel. Mar. 2, 2000) (granting a temporary waiver of mandatory ten-digit dialing until the last of four planned overlays was implemented, but no later than April 1, 2001) (*Illinois Waiver*); *see also Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, Memorandum Opinion and Order, 12 FCC Rcd 3783 (CCB 1997) (granting approximately a seven-month delay of mandatory ten-digit dialing after the area code overlay had been implemented); *New York Department of Public Service Commission Petition for Expedited Waiver of 47 C.F.R. 52.19(c)(3)(ii)*, Order, 13 FCC Rcd 13491 (CCB 1998) (granting approximately an eight-month delay of mandatory ten-digit dialing after the area code overlay had been implemented); *Public Utility Commission of Texas Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii) for Area Code Relief*, Memorandum Opinion and Order, 13 FCC Rcd 21798 (CCB 1998) (In granting a waiver, the Bureau reasoned that the Texas Commission did not finalize area code relief plans until shortly before exhaust, and consequently, only five months remained to prepare customers for the change in dialing patterns and to program alarm equipment).

⁹ *See Local Competition Second Report and Order*, 11 FCC Rcd at 19518-19, para. 287.

there was insufficient time to educate consumers about the change in dialing patterns; and (3) whether there were conditions relating to geographic uniformity in the areas affected that weighed in favor of a temporary delay.¹⁰

II. DISCUSSION

4. In its petition filed June 29, 2001, the Florida Commission explains that, on October 20, 2000, it adopted an Order approving an area code overlay to relieve the 954 NPA and the 754 NPA was subsequently assigned by the North American Numbering Plan Administrator (NANPA) for that purpose. In that Order, the Florida Commission also postponed implementation of area code relief pending the outcome of various number conservation measures, including a thousands-block number pooling trial in the 954 NPA commencing January 22, 2001.¹¹ In addition, the Florida Commission directed carriers to file jointly a notice by October 1, 2001 recommending dates for permissive and mandatory ten-digit dialing periods.¹² On March 22, 2001, however, the NANPA informed the Florida Commission that due to code conflicts in certain EAS routes between the 954 NPA and the 561 NPA, the 954 NPA only had 14 NXX codes available for assignment out of 119 unassigned NXX codes and the 561 NPA only had 6 NXX codes available out of 143 unassigned NXX codes.¹³

5. Affected service providers filed a petition with the Florida Commission on April 10, 2001, proposing two options for eliminating the code conflicts. Under Proposal One, EAS dialing would change from seven-digit to one-plus ten-digit dialing and then change back to seven-digit dialing after the 754 overlay was implemented.¹⁴ Under Proposal Two, the 754 overlay would be implemented immediately in two phases: in the first phase, once the 754 overlay was activated, ten-digit dialing would be mandatory in the 754 NPA and permissive in Broward County for the 954 NPA. In the second phase, consumers would be allowed to dial seven or ten-digits for the 954/754-561 EAS routes between Broward and Palm Beach Counties until mandatory ten-digit dialing took effect.¹⁵ The Florida Commission adopted Proposal Two on June 12, 2001.¹⁶ Based on the *954 Planning Letter*, the current implementation date for mandatory ten-digit dialing for the 954 NPA and for the 954/754-561 EAS routes would be April 1, 2002 and September 1, 2002, respectively.¹⁷

6. The Florida Commission argues that its actions are consistent with section 52.19(c)(3)(ii) of the Commission's rules because the intent of Proposal Two is not to hinder

¹⁰ *Illinois Waiver*, 15 FCC Rcd at 4634, para. 3.

¹¹ Florida Commission Petition at 2.

¹² *Id.* at 2-3.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *See id.* at 4-5.

¹⁶ *Id.* at 5.

¹⁷ *See NPA 754 to Overlay NPA 954 (Southeast Florida)*, PL-291 (Aug. 4, 2001) (*954 Planning Letter*). This document is available at <<http://www.nanpa.com>>.

competition, which the ten-digit dialing rule is designed to prevent, but rather, to provide needed numbering resources.¹⁸ Alternatively, the Florida Commission requests the Commission to grant it a temporary waiver of the ten-digit dialing rule until the dates set forth above, arguing that additional time is needed for the alarm industry to adjust their networks, for consumers to become well-informed about the new dialing pattern, and for carriers to receive needed numbering resources.¹⁹ The Florida Commission concludes that unforeseeable special circumstances have occurred in the 954 NPA, requiring immediate action.²⁰

A. Request for Declaratory Ruling

7. Pursuant to section 1.2 of the Commission's Rules, the Commission may make a declaratory ruling that eliminates an uncertainty or resolves a controversy.²¹ The uncertainty here involves the Florida Commission's actions related to section 52.19(c)(3)(ii) of the Commission's rules, which provides that "[n]o area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code."²² We find that the language of section 52.19(c)(3)(ii) is unequivocal in stating that mandatory ten-digit dialing must take place in all area codes, including the underlying area code, once the overlay is activated. We also find that the Florida Commission's intent not to harm competition does not affect this determination. Further, regardless of intent, postponing ten-digit dialing creates potential harm to competition. Thus, we conclude that the Florida Commission's decision to postpone ten-digit dialing in the 954 NPA and related EAS routes until sometime after the activation of the overlay is not consistent with section 52.19(c)(3)(ii). Consequently, we proceed with our analysis of the Florida Commission's petition to temporarily waive the ten-digit dialing requirement.

B. Request for Temporary Waiver of the Ten-Digit Dialing Requirement

8. Pursuant to section 1.3 of the Commission's rules, the Commission may grant a waiver of its rules upon a showing of "good cause."²³ As determined by the U.S. Court of Appeals for the District of Columbia, section 1.3 allows the Commission to grant a waiver if special circumstances warrant a departure from the general rule and that departure serves the public interest.²⁴

9. The Bureau analyzes three factors when considering waiver requests of ten-digit

¹⁸ *Id.*

¹⁹ *See id.* at 6-7.

²⁰ *Id.* at 8.

²¹ 47 C.F.R. § 1.2.

²² 47 C.F.R. § 52.19(c)(3)(ii).

²³ 47 C.F.R. § 1.3.

²⁴ *See Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)); *see also Industrial Broadcasting, Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

dialing: (1) whether service providers had insufficient time to adjust telecommunications networks for the change to ten-digit dialing; (2) whether there was insufficient time to educate consumers about the change in dialing patterns; and (3) whether there were conditions relating to geographic uniformity in the areas affected that weighed in favor of a temporary delay.²⁵ Regarding the first two factors, we find that the code conflicts resulting from the EAS routes significantly shortened the projected life span of the 954 NPA. In fact, prior to learning of this problem, the Florida Commission had anticipated extending the life of the 954 NPA through thousands-block number pooling, which commenced in January 2001. Thus, given the sudden shortened life span of the 954 NPA and the limited options available, the Florida Commission had little time to educate consumers about ten-digit dialing and allow affected service providers time to adjust their networks.²⁶ Because the Florida Commission presented no arguments relating to geographic uniformity, we decline to address this factor.

10. We find that the Florida Commission has shown “good cause” for justifying a temporary waiver of the ten-digit dialing rule. We agree that a temporary waiver of the ten-digit dialing requirement would provide more time for service providers to adjust their networks and for consumers to be educated about the new dialing pattern. Accordingly, we grant the Florida Commission’s request to delay the implementation of mandatory ten-digit dialing until April 1, 2002 in the 954 NPA, and until September 1, 2002 in the 954/754-561 EAS routes, in accordance with the *954 Planning Letter*.

²⁵ *Illinois Waiver*, 15 FCC Rcd at 4634, para. 3.

²⁶ We agree that the Florida Commission’s predicament may be described as an unforeseeable special circumstance and we find that the Florida Commission’s actions did not indicate an attempt on their part, to unduly delay ten-digit dialing. Based on its Order directing carriers to file by October 1, 2001, a joint recommendation for permissive and mandatory dialing dates, it seems that the Florida Commission had planned to implement ten-digit dialing some time in 2002.

IV. CONCLUSION AND ORDERING CLAUSE

11. We find that the Florida Commission has shown sufficient cause to justify a grant of the temporary waiver of the ten-digit dialing rule. Thus, the Florida Commission may postpone mandatory ten-digit dialing in the 954 NPA until April 1, 2002, and until September 1, 2002 in the 954/754-561 EAS routes, as outlined in the *954 Planning Letter*.

12. IT IS THEREFORE ORDERED, pursuant to sections 1.2, 1.3, and 52.19 of the Commission's Rules, 47 C.F.R. §§ 1.2, 1.3, and 52.19 and section 251 of the Communications Act of 1934, as amended, 47 U.S.C. § 251, and pursuant to sections 0.91, 0.291, of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, IT IS ORDERED that the Florida Public Service Commission Petition for Expedited Declaratory Statement and/or Expedited Petition for Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii) in the 954 NPA is DENIED in part and GRANTED in part to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Bureau Chief,
Common Carrier Bureau