

⁵ *Id.* at 4639-40.

NPA had been extended into 2001.⁶ In the *Second Waiver Order* released April 6, 2001, the Bureau granted the Illinois Commission's request to extend the waiver for an additional nine months beginning April 6, 2001 and ending January 7, 2002.⁷ The Bureau did not find that carriers needed additional time to update their networks, but did conclude that customers still needed to be educated about dialing patterns.⁸

4. On October 4, 2001, the CUB filed a petition with the FCC requesting a permanent waiver of the ten-digit dialing rule in the geographic area covered by the 847 and 224 area codes.⁹ At the same time CUB filed its Petition for Stay.¹⁰ CUB requests that the Commission issue a stay of section 52.19(c)(3)(ii)¹¹ of the Commission's rules with respect to the 847 and 224 Number Planning Areas (NPAs) until the Commission rules on CUB's Petition for Expedited Permanent Waiver of section 52.19(c)(3)(ii) of the Commission's rules.¹²

II. DISCUSSION

5. In determining whether to stay the effectiveness of one of its orders, the Commission applies a four part test.¹³ Under this test, a stay is warranted if the moving party can demonstrate that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) interested parties will not be harmed if the stay is granted; and (4) the public interest would favor a grant of the stay. Upon examination of the motion for stay, we find that the CUB fails to meet all four prongs of the test.

6. The CUB believes that failure to grant the requested relief would severely prejudice the citizens of Illinois.¹⁴ The CUB states that telephone customers in the 847 and new 224 area codes will

⁶ *Expedited Petition of the Illinois Commerce Commission To Reset The Mandatory Expiration Date of its Temporary Waiver of 47 C.F.R. Section 52.19(c)(3)(ii) to Reflect the Exhaust of the 847 NPA, the First of the Five Area Codes in the Chicago Metropolitan Area to Reach Exhaust* (filed Jan. 31, 2001).

⁷ *Expedited Petition of the Illinois Commerce Commission to Reset the Mandatory Expiration Date of Its Temporary Waiver of 47 CFR Section 52.19(c)(3)(ii) to Reflect the Exhaust of the 847 NPA, the First of Five Area Codes in the Chicago Metropolitan Area to Reach Exhaust*, Order, 16 FCC Rcd 7511 (2001).

⁸ *Id.* at 7512-13.

⁹ *Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 CFR § 52.19(c)(3)(ii)* (dated Oct. 1, 2001, filed Oct. 4, 2001) (CUB Petition). The petition was placed on Public Notice on December 13, 2001, with comments due on December 28, 2001 and reply comments due on January 7, 2001. See *Common Carrier Bureau Seeks Comment on the Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii)*, CC Docket No. 96-98, Public Notice (rel. Dec. 13, 2001). This petition will be addressed in a separate order.

¹⁰ See CUB Motion for Stay. Both the CUB Petition and the CUB motion for stay were initially filed on September 27, 2001. On October 4, 2001, the CUB filed amended versions of both documents correcting several dates which were inadvertently mistyped.

¹¹ See 47 C.F.R. § 52.19(c)(3)(ii). The Commission's rules state that a new area code may be introduced through the use of an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code, and that no 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 code.

¹² CUB Motion for Stay at 1.

¹³ See *Loral Orion Services Inc.*, Order, 14 FCC Rcd 18,878, 18,879 (1999), citing *Virginia Petroleum Jobbers Associations v. FPC*, 259 F.2d 921, 935 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir 1977).

¹⁴ *Id.* at 2.

suffer a significant burden if forced to dial eleven digits for each call, both within and between area codes.¹⁵ The CUB also believes that granting the requested relief is in the public interest, explaining that the dialing of one-plus-ten-digits is confusing and burdensome, particularly for the elderly, the disabled and school-age children.¹⁶

7. The CUB also believes that the harm, if any, to carriers serving the 847 and 224 NPA will be slight. Specifically, the CUB states that “dialing disparity” does not and will not exist any time soon in the 847 and 224 area codes because, as a result of the successful implementation of number pooling and conservation measures in Illinois, all carriers will have equal and plentiful access to blocks of numbers in the 847 NPA. Therefore, the CUB believes that there will be no competitive harm if CUB’s stay is granted. Finally, the CUB notes that it is also requesting an expedited permanent waiver of the ten-digit dialing requirement from the Commission.¹⁷

8. We find that the CUB has not demonstrated that a stay is warranted in this instance, and deny the motion accordingly. First, the CUB has not set forth new or novel arguments in support of its request for stay that are different from those already presented to, considered by, and rejected by the Commission.¹⁸ It has therefore failed to demonstrate a likelihood of success on the merits of its related waiver petition, given that it has not provided any explanation or justification as to why we should now reverse our earlier determinations.¹⁹ Second, the CUB has failed to show that consumers would suffer irreparable harm if the stay is not granted. In this respect, we note that the Illinois Commerce Commission has twice acted to extend the deadline for ten-digit dialing to protect the public interest by ensuring that the public received adequate notice and education. The Illinois Commerce Commission has not, however, filed for any additional extension. Third, we find that the CUB has not demonstrated that carriers with numbers from the 224 overlay NPA would not be harmed if the stay is granted because, absent mandatory ten-digit dialing, their customers would be required to dial ten digits for most local calls (since most local numbers in use would be in the established underlying 847 NPA) while customers of carriers with numbers in the 847 NPA would place most local calls by dialing seven digits.²⁰ Finally, the Commission has repeatedly stated that area code overlays without ten-digit dialing are anticompetitive because they create local dialing disparity,²¹ which we find to be against the public interest. Accordingly, the CUB has failed to meet the requirements for a grant of a stay.

¹⁵ *Id.* The CUB also states that this burden is neither technologically required, nor is it required to prevent any anticompetitive impacts of the new area code.

¹⁶ *Id.*

¹⁷ See CUB Petition.

¹⁸ For example, the Common Carrier Bureau has rejected arguments that an overlay implemented without ten-digit dialing would not impede competition. See, e.g., *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)*, Order, 13 FCC Rcd 13,491, 13,494-98 (1998); see also *First Waiver Order*, 15 FCC Rcd at 4636 (stating that the purpose of requiring ten-digit dialing with overlays is to ensure that competition is not deterred as a result of local dialing disparity).

¹⁹ The Commission’s ability to require ten-digit dialing with area code overlays was confirmed by a recent Circuit Court decision. See *People of the State of New York & Public Service Commission of the State of New York v. FCC*, 267 F.3d 91, 103-06, 109 (2nd Cir. 2001).

²⁰ We note that, despite the CUB’s contention that numbers in the 847 NPA are plentiful, the North American Numbering Plan Administrator indicates that the first numbers in the 224 NPA were assigned on September 14, 2001 and were scheduled to be effective on December 13, 2001. CUB Motion for Stay at 2.

²¹ In the *Local Competition Second Report and Order*, for example, 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. *Local Competition Second Report and Order*, 11 FCC Rcd at 19518-19.

III. CONCLUSION AND ORDERING CLAUSE

9. We find that the Illinois Citizens Utility Board has not shown sufficient cause to justify a stay of the ten-digit dialing rule with respect to the 847 and 224 NPAs. The second request for waiver filed by the Illinois Commission will expire on January 7, 2002. Accordingly, ten-digit dialing must be implemented in these NPAs no later than January 8, 2002.

10. IT IS THEREFORE ORDERED, pursuant to sections 1.3, and 52.19 of the Commission's Rules, 47 C.F.R. §§ 1.3, 52.19, and the authority delegated in to sections 0.91 and 0.291, of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, IT IS ORDERED that the Illinois Citizens Utility Board Motion for Stay of 47 C.F.R. Section 52.19(c)(3)(ii) in the 847 and 224 NPAs is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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