

DT 00-001

**IMPLEMENTATION OF NUMBER CONSERVATION METHODS
AUTHORIZED BY THE FCC**

**Order Denying Motion of Nextel Communications, Inc.
for Rehearing of Implementation Orders**

O R D E R N O. 23,409

February 17, 2000

On February 3, 2000, Nextel Communications, Inc. (Nextel) filed a Motion for Rehearing (Motion) of the requirements contained in two orders issued by the New Hampshire Public Utilities Commission (Commission). Order No. 23,385 mandates a thousands-block number pooling (TNP) trial in accord with the authority delegated to the Commission by the Federal Communications Commission (FCC)'s Order *In the Matter of New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code* (FCC Order). Order No. 23,392 provides details about the TNP trial, including the Pool Administrator and a proposed schedule for implementing the TNP trial.

In its Motion, Nextel states that the imposition of a TNP trial is (1) illegal because the Commission has not yet issued an area code relief plan, and (2) is not in the public interest. Nextel also claims that the Commission has not

complied with conditional language in the FCC's order delegating number conservation authority which requires the Commission to take "all necessary steps to prepare an NPA relief plan." Although the Commission deliberated area code relief in DT 99-603 on August 9, 1999, it has not issued its written order setting forth its area code relief plan. Hence, Nextel argues that the Commission is precluded from ordering a TNP trial. Further, Nextel claims the Commission's actions fail to maintain numbering resources for carriers that cannot implement local number portability (LNP). Because of time constraints, according to Nextel, only by implementing the area code relief plan now can the Commission serve the public interest and avoid exhaust of the 603 area code.

Nextel also argues that the Commission violated its constitutional rights to due process protections by issuing Orders No. 23,385 and No. 23,392 without a hearing or comment period.

On February 11, 2000, the Staff of the Commission (Staff) filed a motion in opposition to Nextel's Motion for Rehearing. Staff argues that Nextel's reading of the FCC Order is incorrect; the Commission's obligation to take all necessary steps to prepare an area code relief plan is an ongoing obligation, not a condition precedent. The TNP trial

will provide needed number conservation which is but one of a number of efforts to insure, as required by the FCC Order, that consumers can obtain telecommunications services from their chosen service provider, according to Staff.

In response to Nextel's procedural due process claim, Staff argues that numbering resources are not constitutionally protected property to which the parties have rights, but are rather public resources to be husbanded by public agencies. For support Staff cites the FCC's June 2, 1999, Notice of Proposed Rulemaking, *In the Matter of Numbering Resource Optimization, (Optimization NPRM)* FCC 99-122, CC Docket No 99-200, which characterized numbering resources as similar to radio spectrum and public lands that cannot be privately owned. Staff argues that the FCC has plenary authority over numbering resources, which it delegated to the Commission for disposition under the public interest standard, subject to certain conditions.

After consideration of the motions, our orders, the FCC Order, and current circumstances regarding the 603 area code, we will deny Nextel's Motion for Rehearing. We find that the FCC's grant of authority is not conditioned upon our implementing an area code relief plan but upon our being "prepared to implement a 'back-up' NPA relief plan prior to the exhaustion of numbering resources in the 603 NPA." FCC Order at ¶30. We deliberated a relief plan in August and will

be issuing our order in DT 99-603 in a due course. The TNP trial is expected to lengthen the life-span of the 603 NPA, although that is not assured. In order to honor our obligation to implement timely area code relief when necessary, which we specifically noted in footnote 2 of Order No. 23,382, we will carefully monitor the existing number resources of the 603 NPA as the TNP trial moves forward. We are convinced that a TNP trial is in the best interests of New Hampshire consumers and carriers but do not view TNP or any other specific conservation measure as a substitute for timely area code relief.

We agree with the FCC's statement in its *Optimization NPRM* that numbering resources are public resources. Therefore, we agree with Staff that Nextel does not have a property right which is affected by our exercise of the conservation authority properly delegated by the FCC.

Based upon the foregoing, it is hereby

ORDERED, that Nextel's Motion for Rehearing is DENIED.

By order of the Public Utilities Commission of New
Hampshire this seventeenth day of February, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary