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March 14, 2008

Hon. Jaelyn A. Brillling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

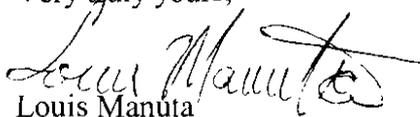
Re: Case 07-C-1486, *Proceeding to Investigate and Evaluate Options for Making Additional Central Office Codes Available in the 315 Area Code Region.*

Dear Secretary Brillling:

Enclosed please find the original and twenty five copies of **The Motion For Interlocutory Relief** by Public Utility Law Project of New York, Inc., in the above referenced proceeding.

Thank you for your consideration.

Very truly yours,


Louis Manuta

Enc.

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

_____)	
Proceeding to Investigate and)	
Evaluate Options for Making)	Case 07-C-1486
Additional Central Office Codes)	
Available in the 315 Area Code Region)	
_____)	

**MOTION FOR INTERLOCUTORY RELIEF
BY
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.**

On March 3, 2008, the New York State Public Service Commission (“Commission”) issued a Notice soliciting comments¹ on an Options Paper² drafted by Department of Public Service Staff (“Staff”) on February 27, 2008 regarding telephone numbering “relief” in the 315 Number Plan Area (“NPA”). The Options Paper outlines four alternatives for relieving a perceived numbering shortage in the 315 NPA, including three geographic splits and an overlay. Each proposed option will impose significant costs and inconvenience to telephone customers.

The Public Utility Law Project of New York, Inc. (“PULP”) hereby requests that the Commission cease consideration of the four numbering relief options presented in the

¹ *Notice Inviting Comments on Staff White Paper, Proceeding to Investigate and Evaluate Options for Making Additional Central Office Codes Available in the 315 Area Code Region, Case 07-C-1486* (Issued March 3, 2008).

² *Area Code Relief Options for Central New York -- A Description of Options, Case 07-C-1486* (Dated February 27, 2008). (“*Staff Options Paper*”)

Options Paper and, instead, forthwith commence an investigation, beginning with a technical conference to analyze the apparent waste, hoarding, or misuse of existing numbering resources which has led to the perceived shortage of telephone numbers. Based on that investigation and further analysis, the Commission should explore additional options that will reduce or eliminate customer inconvenience and cost without requiring area code relief, including reclamation of improperly allocated codes and assignment of numbering blocks from existing resources.

Summary of Arguments

PULP has serious concerns with the reasons offered in the Options Paper to justify the area code relief in the 315 NPA. Due to the costs and inconveniences to consumers and businesses tied to area code relief, it should be avoided unless absolutely necessary. It should not be commenced due to mistakes or due to gaming of the number allocation process, which results in an artificial “shortage.” Specifically, contained within the Options Paper is the following paragraph which provides “justification” for the relief options proposed:

Approximately 656 of the 792 central offices codes available for assignment in the 315 area code have already been assigned to telecommunications carriers, leaving only 136 NXX codes available for assignment as of October, 2007. Each NXX code contains approximately 10,000 assignable seven-digit telephone numbers. *Of the approximate 8 million assignable seven-digit telephone numbers in the 315 area code, approximately 2.7 million are currently in use.*³

³ *Id.*, at p. 2 (*emphasis added*).

The last sentence of the quoted language implies that only 34 percent of the available telephone numbers are actually in use. In an effort to explain this obvious anomaly, the Options Paper provides an accompanying footnote:

Many numbers assigned in low-growth rate centers are never used since they cannot be used outside of that rate center. This results in a large under-utilization rate of available numbers within the area code. Pooling telephone numbers in under-used exchanges has helped to alleviate some of this problem.⁴

What this footnote refers to is that numerous rate centers⁵ in rural parts of the 315 NPA have historically been served by a single central office or exchange code (also known as an NXX code, which is part of the telephone number, *i.e.*, 315-NXX-1234). (Necessarily there are somewhat fewer than 999 NXX code possibilities in each NPA due to restrictions on using certain NXX codes, such as 411-XXXX and 911-XXXX.)⁶ The Commission has authority over numbering resources and has issued an Order declaring how telephone numbering allocation should occur, including requirements that NXX codes must be filled to 75 percent capacity before additional resources can be requested, that new numbers be requested 1,000 at a time in “thousands blocks,” and regarding how numbers should be reclaimed.⁷

⁴ *Id.*, at p. 2, fn. 1.

⁵ A rate center is a geographical area which determines boundaries for local calling.

⁶ In a recent article in the *Syracuse Post Standard* about numbering relief in the 315 NPA, John Manning, director of the North American Numbering Plan Administrator (“NANPA”) was quoted as stating that “it’s not unusual for an area code to approach ‘exhaustion’ even when the majority of phone numbers are unused.” *Syracuse Post Standard*, March 5, 2008. Available at: http://www.pulp.tc/html/psc_seeks_comment_on_315.html If this is true, then no one is investigating the basis for NXX code requests, which should not occur until the existing codes are 75 percent full. Drawing upon limited NXX code resources before existing ones approach saturation will greatly, and completely unnecessarily, hasten the demise of the numbering plan.

⁷ *Order Instituting State-Wide Number Pooling and Number Assignment and Reclamation Procedures*, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law, to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to

Even though “thousands block” pooling⁸ has been expanded into rural areas, the available blocks only benefit a carrier offering service in that rate center.⁹ Since these rate centers have low populations, additional carriers generally have not entered the markets and many blocks within the old NXX codes have remained unused. While this may explain why some of the otherwise available telephone numbers are “under-utilized,” analysis by PULP reveals that these situations are *not* the main cause of the purported shortage of telephone numbers in the 315 NPA.

Rather, the numbering assignment methodology permits a competitive local exchange carrier (“CLEC”) to receive a new, empty NXX code in what had been a single NXX code rate center that does not contain enough of a population to sustain even a fraction of the telephone numbers in the original NXX code assignment. While blocks from these NXX codes have been returned to the pool and many remain apparently unused, some CLECs have been able to secure an additional 10,000 telephone number NXX code for that identical rate center. These new codes, in many instances, are then shared in an arrangement with a “customer,” a Voice Over Internet Protocol (“VoIP”) provider, possibly a local cable television provider, which lacks a certificate to be a New

Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Case 98-C-0689 (Issued and Effective March 17, 2000). (“*Pooling Order*”) In this *Order* the Commission stated: “A fill rate of 75% represents a reasonable level when carriers need additional resources and has been generally agreed to by other states that have been given delegated authority by the FCC.” *Pooling Order*, at p. 9.

⁸ Thousands block pooling is the allocation of numbering resources to carriers one thousand numbers at a time. Under thousands block pooling, one carrier, for example, would receive all of the telephone numbers in the 315-NXX-1000 range and a different carrier would receive all of the telephone numbers in the 315-NXX-2000 range. As a result, 10 different carriers can share the resources of a single 10,000 telephone number NXX code. In the past, numbers were given out 10,000 at a time.

⁹ Numbering resources can only be used in their designated rate center. *See*: 47 USC §153(30). Accordingly, porting numbers out of the rate center, known as geographic or location number porting, is prohibited. Also, the Commission has recognized that “[o]nce an NXX code (10,000 numbers) is assigned to a rate center, it can not be used elsewhere, even though there might never be a need for the spare numbers freed up by pooling in that rate center.” *Pooling Order*, at p. 5.

York telephone company and, thus, is unable to otherwise obtain NXX codes and numbers on their own for their voice service.

PULP believes this wasteful practice may be the primary cause of the numbering situation in the 315 NPA which results in 83 percent of the potential NXX codes being assigned, but only 34 percent of the telephone numbers being in use.

Before the Commission should even begin to consider *how* to divide up the 315 NPA, it must first examine whether the Commission's numbering resource allocation orders have been followed, whether NXX codes should be reclaimed (or thousands blocks of numbers within them), and whether systemic changes could eliminate the need to take any of the four proposed actions at this time when the majority of available 315 numbers are not in use. By conducting an on-the-record technical conference, the Commission should be in a position to confirm PULP's findings as to the source of the apparent shortage, identify whether codes and blocks are returnable to the pool, and take other corrective actions, including penalizing any violators of prior Commission orders. Such an action could avoid the unnecessary inconvenience and costs to consumers and businesses of area code relief. PULP believes its request for such interlocutory relief is justified under 16 NYCRR §4.7 and that these matters are within the existing jurisdiction of the Commission to investigate under Public Service Law §96.1.

Request for Interlocutory Relief

Under the Commission's rules, interlocutory relief can be granted when "extraordinary circumstances" are found to exist. Should a party make such a claim, it

has 15 days from the date of the Commission's ruling in question to submit its arguments explaining why interlocutory relief is warranted.¹⁰

In the instant case, the "extraordinary circumstance" is the need to investigate whether it is possible to prevent mandated area code relief, with its associated costs and inconveniences. The Commission itself has recognized the burdens and inconveniences associated with area code changes. In a Petition submitted to the Federal Communications Commission ("FCC") in 2005, the Commission wrote:

Most importantly, while 1,000 block pooling is not a major burden on carriers, failure to implement it will result in area code changes, which are a major burden on consumers. New area codes cause confusion to callers and potential safety issues when hospitals, ambulances, and public health and safety institutions are required to change their telephone numbers. The records for 911, which include telephone numbers, need to be changed when area codes change. Errors in record changes can result in serious health, safety and welfare concerns. The accuracy of telephone numbers is also a security issue. If contacts are not reachable because of outdated area codes on old contact lists, security may be compromised. Businesses suffer economic harm when their area codes are changed. They are required to advertise the new numbers, contact existing customers, and revise all stationery showing their new telephone number. They face the possibility of losing business during area code transition periods when customers use an old number.¹¹

Thus, the Commission has correctly recognized several costs and side effects from numbering relief, namely, caller confusion, public safety concerns, 911 database records errors, compromised security, businesses suffering economic harm, the burden of advertising new telephone numbers, and the inconvenience of revising stationery. Add to that the need to reprogram cell phones, to purchase new business cards, and to update information on commercial web pages. These are just some of the by-products which go

¹⁰ 16 NYCRR §4.7.

¹¹ *Petition Of New York State Department Of Public Service For Mandatory Number Pooling, In the Matter of Petition for Order Marking All Rate Centers in New York Mandatory for Number Pooling*, August 26, 2005, at p. iv.

hand-in-hand when any numbering relief is necessary. Obviously, it is more than just a new number or new dialing requirements when large numbers of customers are affected. Accordingly, what the Commission recognized in its Petition to the FCC is that numbering relief should not be taken lightly, that serious consequences such as these can and do occur. Therefore, area code relief should not be undertaken unless it is absolutely necessary.

When is area code relief absolutely necessary? PULP believes this occurs when there is an impending actual shortage of assignable telephone numbers, not when failure to follow existing rules, or gaming these rules, creates the illusion of a number shortage.

In this Motion, PULP demonstrates that these extraordinary circumstances do exist and that, until there is a full investigation by the Commission, no consideration of relief methods should occur. Unless the Commission grants the relief requested in this Petition, over one million people in central and northern New York State (and the people and businesses they call the most) will be subjected to unnecessary changes to their telephone service -- with the attendant costs and inconveniences -- not due to a true impending shortage of telephone numbers, but due to misapplication of current rules or gaming by certain companies to obtain NXX codes with unused numbers.

While requests for interlocutory relief are often fact-based, and therefore each situation is unique, the Commission has recently granted petitions for interlocutory relief in a variety of proceedings as a means to fully flesh out the record.¹² It must do the same

¹² See: *e.g.*, *Order Granting Appeal*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Case 07-G-0141 (Issued and Effective September 25, 2007) and *Ruling Granting Stay*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service, Case 04-G-1047 (Issued November 22, 2004).

here. Acting on PULP's Motion at this critical junction may result in avoiding area code relief in the 315 NPA altogether, benefiting millions of consumers.

Jurisdiction

The Commission has been granted the ability to address the issues raised in this Motion by the FCC. Under §52.9(b) of the FCC's Rules, the FCC has the authority to delegate "any telecommunications numbering administration functions to any State or other entity pursuant to 47 USC 251(e)(1) . . ." ¹³ This delegation was made official with regards to New York State by Order of the FCC in September 1999. ¹⁴

In the 1999 FCC Order, the New York Commission was granted:

the authority to institute thousands-block pooling trials; reclaim unused and reserved NXX codes, and portions of those codes; establish numbering allocation standards, including enforcement of those standards; and audit carriers' use of numbering resources. ¹⁵

For over eight years, the Commission, therefore, has had the authority to, among other things, "reclaim unused and reserved NXX codes, and portions of those codes." It can also establish and enforce "numbering allocation standards." On numerous occasions, this power has been exercised by the Commission to have unused numbering resources returned. ¹⁶ The Commission has also instituted "thousands block pooling"

¹³ 47 CFR §52.9.

¹⁴ *Order*, In the Matter of New York State Department of Public Service Petition for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 96-98, NSD File No. L-99-21, FCC 99-247 (Released September 15, 1999).

¹⁵ *Id.* at p. 1.

¹⁶ *See, e.g., Order Directing Reclamation of a Central Office Code*, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law, to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When

statewide in an effort to conserve numbers and stave off area code relief.¹⁷ In fact, in the Commission's Petition to the FCC in which it addressed the costs and inconveniences of area code relief, it was seeking clarification that its thousands block pooling authorization includes those less populated areas beyond the top 100 Metropolitan Statistical Areas ("MSAs"), including the 315 NPA addressed in this Motion. In November 2006, the FCC stated that the Commission does, indeed, have thousands block pooling authority over the entire state, regardless of population.¹⁸

With this authorization over the state's numbering resources in place, it is incumbent on the Commission to investigate the serious concerns raised by PULP in this Motion. It has received sufficient delegation of power from the FCC to investigate and remedy the situation without need to forward the issue to the FCC or elsewhere for resolution.

and Where Needed, Case 98-C-0689 (Issued and Effective October 30, 2002) and *Order Directing Reclamation of a Thousand Number Block*, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law, to Institute an Omnibus Proceeding to Investigate the Efficiency of Usage of Telephone Numbering Resources and to Evaluate the Options for Making Additional Central Office Codes and/or Area Codes Available in Areas of New York State When and Where Needed, Case 98-C-0689 (Issued and Effective October 30, 2002).

¹⁷ See: *Pooling Order*.

¹⁸ *Order*, In the Matter of Numbering Resource Optimization, Petition for Delegated Authority by the Public Utilities Commission of Ohio, Petition of the New York State Department of Public Service for Mandatory Pooling, Petition of the Washington Utilities and Transportation Commission for Mandatory Number Pooling, The New Mexico Public Regulation Commission's Petition for Delegated Authority to Implement Additional Number Conservation Measures, CC Docket No. 99-200, DA 06-2299 (Released November 9, 2006).

The Numbering Resource “Shortage” in the 315 NPA

According to the Staff Options Paper, “[t]he 315 area code that has served central New York since the early 1950s is running out of assignable telephone numbers, and implementation of a new area code is required.”¹⁹ As a result of this perceived numbering resource “shortage,” the Staff Options Paper proposes only four options to ensure that central and northern New York State does not run out of telephone numbers. That is, three area code split scenarios²⁰ and an overlay option²¹ have been proposed. Interested parties are being asked to select which option they prefer, the Commission will consider the Staff Options Paper and comments, and an Order would be issued directing how the number shortage should be resolved. Comments are due on March 26th, with replies due April 4th.

Such a process has been employed several times in New York State by the Commission and PULP does not question its appropriateness, provided there actually is a *legitimate* numbering shortage in 315. PULP realizes that as expensive and inconvenient as it is for consumers and as difficult and expensive as it is for the telephone companies to implement numbering relief, running out of telephone numbers is not a viable option. And if there is a real problem, actions must begin to avoid it before numbers run out. On the other hand, the number of new area codes is mathematically limited, and they should not be unnecessarily committed. At the national level, dire economic consequences would result should the area codes in the North American Numbering Plan ever become

¹⁹ *Staff Options Paper*, at p. 1.

²⁰ A split takes the existing area code and breaks it into two areas with one keeping the original code.

²¹ In an overlay, current customers all keep their telephone number, but new customers would receive a telephone number from the new area code and everyone within the existing NPA would need to dial 11 digits in order to call anyone else.

exhausted. Therefore, it is in the public interest not to unnecessarily waste numbering resources, whether they be thousands blocks of numbers, NXX codes, or area codes.

However, the situation in the 315 NPA raises many issues not seen in the other more populous areas around the state that have faced numbering relief. Selecting a relief path (the aforementioned proposed splits or overlay) should not even be on the table if existing resources are sufficient and are wisely used. The consideration of splits or an overlay should be brought to a complete halt and a full investigation commenced because the costs and inconvenience to residential and business customers are real and are unnecessary, based on the information available.

The first question PULP considered upon reading the Staff Options Paper was this: How can an area -- the 315 area code to be specific -- with 1.4 million people have run through 6.5 million telephone numbers? Put differently, why have more than 650 NXX codes, each with 10,000 numbers, been allocated in the 315 NPA?

The underlying, preliminary question that needs to be answered before the expense, difficulty, and inconvenience of area code relief begins is this: Where did the all the numbers go?

Let's start with some facts and figures about the 315 NPA. It consists of all of Onondaga, Wayne, Madison, Oswego, Herkimer, Lewis, Jefferson, and Oneida Counties, most of St. Lawrence and Cayuga, about half of Yates and Seneca, and pieces of Cortland, Chenango, Hamilton, Fulton, Ontario, and Otsego Counties. Beautiful country, yes, but with the exception of Syracuse, Utica, and Watertown, not known as a major

population center. In fact, the 2000 U.S. Census states that there are only about 1.4 million people living in the area, with about 620,000 households.²²

According to the North American Numbering Plan Administrator (“NANPA”), there are nearly *seven million telephone numbers* designated for the 315 NPA. There are 697 central office codes, or NXX codes, in 315, of which 671 have been assigned to carriers to distribute the telephone numbers to customers.

The numbers presented in the Staff Options Paper are somewhat different, but even more revealing. According to the Staff Options Paper, there are 792 central office codes in 315, a count which appears to include codes that have not yet even been identified by NANPA as available for usage. Of these 792 central office codes, the Options Paper states that approximately 656 of these have already been assigned, leaving only 136 codes left. With 10,000 numbers per central office code (NXX-0000 through NXX-9999), that’s at least 1,360,000 telephone numbers remaining.

Based on the number of unused, available NXX codes, it would ordinarily be the proper time to consider area code relief. That is, it would be time to declare the 315 area code in jeopardy if these numbers told the whole story. By using the Staff’s math to this point, the assumption is that the 1.4 million residents (including infants and children too young to have their own cell phone number), businesses, and the 620,000 households have taken 6,560,000 telephone numbers. PULP strongly believes that they have not. Most, if not all, of these 656 NXX codes have not been exhausted, with most of the underlying telephone numbers remaining available.

²² See: http://factfinder.census.gov/servlet/GCTTable?_bm=v&-geo_id=04000US36&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-lang=en&-format=ST-2&-sse=on. It is expected that the 2010 U.S. Census will show the population has remained steady or has slightly declined.

PULP began to question the shortage claim when it read the following quote from the Staff Options Paper: “Of the approximate 8 million assignable seven-digit telephone numbers in the 315 area code, approximately 2.7 million are currently in use.”²³

According to the Staff’s own calculations, the Commission is proposing to disrupt everyone’s life in the 315 NPA when only 34 percent of the numbers are in use and 66 percent are still available. But, how can 83 percent (656 of 792) of the central office codes in the 315 NPA be assigned, yet only 34 percent (2.7 million of eight million) of the telephone numbers contained in those codes be in use? Without further investigation, we are being asked by the Commission to believe that an area with enough telephone numbers to give every man, woman, and child nearly six telephone numbers each should require area code relief.

Of course, each one thousands block or central office code can only be used in its designated rate center, so it is possible that heavy use in some parts of an NPA could signal exhaustion through the entire area. But, this is not the case in the 315 NPA.

For example, in a city such as Syracuse, multiple central office codes can be used throughout the city (which is its own rate center), but its suburbs have their own rate centers with their own central office code or codes. A small town like Georgetown, on the other hand, also is its own rate center, so the single code assigned there can only be used in Georgetown, even though there are less than 1,000 people living there and they have 10,000 telephone numbers available to them.

In a footnote in the Staff Options Paper, Staff states its belief that low-growth rate centers (*i.e.*, rural areas like Georgetown) under-utilize their codes, which has led to the shortage. Since there are 54 single central office code rate centers like Georgetown in the

²³ *Staff Options Paper*, at p. 2. (*emphasis added*)

315 NPA,²⁴ even if each of them “wasted” 90 percent of their telephone numbers, this would only account for 486,000 of the “lost” telephone numbers. Staff does go on in its Options Paper to recognize that thousands block pooling “has helped to alleviate some of this problem,”²⁵ but there is only so much pooling can accomplish in a rural community with only one service provider and when the numbers can only be used in that rate center. That said, mathematically, rural areas can not be the main culprit in this mystery. Any competitor wishing to enter such a rate center can avail itself of the ample supply of unused thousands blocks within the existing NXX code without seeking a new one. And, a new NXX code should not be used until the existing one has used most of its numbers, *i.e.*, 75 percent.

Since the comparatively few unused numbers in rural areas can not be the basis for this purported shortage, PULP examined whether the numbering problem must be attached to the cities. Even though it is true that a central office code or thousands block in Georgetown, New York can not be used in the potential growth areas of 315, such as the city of Syracuse, Syracuse has 146 active codes of its own according to NANPA (1,460,000 telephone numbers) for a city of 147,306 people.²⁶ That’s nearly 10 telephone numbers for every man, woman, and child in Syracuse. In contrast, the 1.4 million residents of 315 (plus businesses) currently use only 2.7 million lines, roughly *two* telephone numbers per person. Utica has 48 of its own codes (480,000 telephone

²⁴ This total does not include those rate centers which had only a single exchange prior to the actions by CLECs which have led to this Motion.

²⁵ *Id.*, at p. 2, fn. 1.

²⁶ 2000 U.S. Census.

numbers) and has a population of 60,651.²⁷ Additional “unassigned” codes, with 10,000 unused numbers in each, are still available in each city as well.

Accordingly, the problem is not that the “lost” or unfilled rural codes are needed in the cities and can not be used. On top of that, the cities have numerous untapped numbering resources within unfilled and unused NXX codes.

Something strange is going on with the telephone numbers in the 315 NPA which has not been seen in any of the other area code relief projects around the state. Before the Commission goes down the road to determine how the residents and businesses in 315 should be severely inconvenienced, we need to go back to step one: investigate *whether any area code relief is really necessary*. A full investigation must be launched to find the cause of this seemingly artificial shortage and resolve it before a split or overlay is ordered in 315 (the only topics the Commission is seeking comments on) and before this mystery has an opportunity to expand to other regions of the state, inconveniencing millions more people.

PULP’s Investigation Into the 315 NPA Numbering “Shortage”

Other than cities such as Syracuse, Utica, and Watertown, the 315 NPA contains numerous small towns and villages, many of which have been served for many years by a single NXX code. Since each NXX code contains 10,000 numbers (*i.e.*, NXX-1000 through NXX-9999), there have been numerous telephone numbers which have not been used in these small rate centers. However, in the past few years, 78 of these formerly single exchange rate centers in the 315 NPA have received a second full NXX code, in some cases, several new NXX codes, each containing 10,000 numbers. This is

²⁷ *Id.*

surprising, especially considering that numerous thousands blocks in the original NXX code have not been used. Presumably, these are available to a competitor which needs its own telephone numbers to serve customers. Under existing numbering mechanisms, the existing numbers within an NXX code should be pooled and used as needed until it is 75 percent full before allocating another NXX code to the rate center.

Instead, what PULP has found by examining the NANPA web page is that nine CLECs certified to operate in New York State have obtained 78 NXX codes in these single exchange rural rate centers since 2005, led by Sprint Communications (“Sprint”) (OCN 8937).²⁸ While the vast majority of these new codes were obtained by Sprint, the other CLECs obtaining these codes were:

ACC National Telecom Corporation -- NY (OCN 7197)

Choice One Communications (OCN 4107)

Level 3 Communications, LLC --NY (OCN 4006)

PaeTec Communications (OCN 4152)

USD CLEC, Inc. -- NY (OCN 4079)

Northland Networks (OCN 7556)

Telcove Atlantic (OCN 7130)

Broadview Networks, Inc. -- NY (OCN 4593)

For example, Sprint obtained an NXX code in tiny Adams (population 4782) on December 18, 2006, Adams Center (population 1500) on March 14, 2007, and Belleville (a hamlet in the town of Ellisburg, which has a population of 3541) on May 22, 2007.²⁹

²⁸ Sprint Communications is not Sprint PCS (Sprint Spectrum, LP -- NY), the wireless company with the OCN 8455.

²⁹ Unless otherwise indicated, all populations listed are from the 2000 U.S. Census.

Prior to Sprint's request, these had all been single exchange rate centers.³⁰ Sprint has done this 37 times in the 315 NPA alone. In addition, other CLECs have accomplished this feat in eight additional, formerly single exchange rate centers in 315. There are also 11 rate centers in rural areas where the incumbent only has one NXX code, but multiple CLECs (including Sprint) have taken a total of 33 NXX codes in those exchanges.³¹ All of this adds up to 78 NXX codes with 10,000 numbers each that should have never been assigned until the existing NXX code was 75 percent full. As a consequence, 780,000 telephone numbers have been misallocated, hoarded, or wasted in a manner contrary to the standards for opening new NXX codes.

It is incumbent upon the Commission to learn how these CLECs obtained full NXX codes in rural, single exchange rate centers where the incumbent did not even come close to using up all of the available telephone numbers. These unused codes have been pooled and have been available in blocks of 1,000 at least as far back as 2006 when the Commission sought clarification of its numbering resource conservation authority with the FCC.³² The carriers that claimed new NXX codes with 10,000 numbers should have just obtained thousands blocks, as needed, from the existing NXX code if they had customers to serve in those areas.

³⁰ A complete list of previously single exchange rate centers in which a CLEC has obtained a second NXX code is contained in Attachment A. PULP recognizes that the actual population of an exchange like Adams includes some surrounding areas, but should not significantly alter PULP's conclusion that the telephone numbers in the original NXX code assigned to any of these exchanges are more than sufficient to meet demand.

³¹ A complete list of previously single exchange rate centers in which multiple CLECs have obtained additional NXX codes is contained in Attachment B.

³² See footnote 16.

The investigation that PULP seeks would also shed light on the CLECs' use of these codes. Based upon Commission proceedings³³ and a federal court case in the Western District of New York from October 2006 upholding those decisions,³⁴ it appears that Sprint was obtaining NXX codes on behalf of Time Warner Cable, an entity which offers local telephone service in the state but, because it lacks state certification as a telephone company, can not obtain numbering resources on its own. Is it possible that Sprint is claiming that it is meeting the 75 percent usage requirement needed before requesting additional codes by assigning *all* of its telephone numbers to a single client -- perhaps Time Warner Cable? If so, how is Time Warner Cable using 10,000 telephone numbers in an exchange with less than 1,000 residents (and where there are unused telephone numbers available within the existing 10,000 number NXX code)? Are other cable television companies or VoIP providers obtaining and reserving unused numbers in this manner? Are numbers being used outside the rate centers, in violation of the law?³⁵ These are serious questions requiring a serious investigation and serious answers.

All of the residents and businesses in the 315 NPA and all those who call them from other areas should not be forced to undergo the expense and inconvenience of

³³ *Order Resolving Arbitration Issues*, Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies and Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Armstrong Telephone Company of New York, Cases 05-C-0170 and 05-C-0183 (Issued and Effective May 24, 2005) and *Order Denying Rehearing* Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies and Petition of Sprint Communications Company L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Armstrong Telephone Company of New York, Cases 05-C-0170 and 05-C-0183 (Issued and Effective August 24, 2005).

³⁴ *Berkshire Telephone Corporation v. Sprint Communications Company, L.P.*, No. 05-CV-6502, 2006 U.S. Dist. LEXIS 78924 (W.D.N.Y. Oct. 27, 2006).

³⁵ *See*: footnote 9.

changing their area code without a complete investigation as to why the numbering resources are vanishing. As stated, the Commission, under its delegated authority from the FCC, has full jurisdiction to conduct this vital investigation and adopt solutions that will reclaim unused numbers. Otherwise, this plague of wasting numbers will no doubt spread around the state, to other NPAs that would otherwise not be close to exhaustion, as had been the case in the 315 NPA.

A starting point for the requested investigation would be to assign an Administrative Law Judge to conduct an on-the-record technical conference to:

- (1) Review the existing numbering resource allocation methodology employed by the Commission.
- (2) Examine whether certain CLECs have obtained full NXX codes in previously single exchange rate centers which have available numbering resources.
- (3) Inquire into any contract relationships between these CLECs and their VoIP “customers” (including cable television companies) regarding numbering resources, including whether and how these numbers are being used, where they are being used (whether inside, or unlawfully outside, the designated rate center), and whether the telephone numbers are being sold to the VoIP “customers.”
- (4) Discuss methods for reclaiming possibly large amounts of telephone numbers back into the pool, reallocating existing resources (*i.e.*, thousands blocks) to meet demand, and penalizing any companies that have gamed the system, creating the artificial numbering shortage by unnecessarily requesting new NXX codes before existing codes have become filled to at least 75 percent of capacity.
- (5) Consider staying implementation of requests for full NXX codes in the 315 NPA pending the outcome of the requested investigation.

Holders of existing numbering resources in the 315 area code should be notified of the technical conference and those entities which have recently claimed new NXX codes in areas with low populations and existing unused numbers should be required to explain their need for the additional codes. It would also be helpful if NANPA were

invited or required to attend the technical conference to explain its understanding of the proper procedures for allocating numbering resources and whether NANPA has allowed new NXX codes without proof that existing codes are insufficient.

Conclusion

It is incumbent on the Commission to not take any of the actions proposed in its Notice if they are unnecessary or can be avoided by enforcement or modification of the mechanism for allocating new telephone numbers to prevent waste or hoarding. The Commission should grant PULP's request for interlocutory relief and commence an investigation, beginning with an on-the-record technical conference to investigate whether there is an artificial numbering shortage in the 315 NPA.

Respectfully Submitted,



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ATTACHMENT A

Attachment A

NPA	NXX	Company Name	Rate Center	Exchange Population	Assigned Date
[REDACTED]					
315	908	LEVEL 3 COMMUNICATIONS, LLC - NY	MEXICO	5181	03/02/2006
315	519	PAETEC COMMUNICATIONS, INC. - NY	CARTHAGE	3721	01/24/2002
315	510	PAETEC COMMUNICATIONS, INC. - NY	CHITTENGO	4855	

Notes:

All exchange populations are from the 2000 U.S. Census, except:

Branchport <http://golf-courses.local-data.com/city/new-york-ny/yates/branchport/5152/227/>

Eagle Bay <http://www.usbeacon.com/New-York/Eagle-Bay.html>

Nicholville http://www.bestplaces.net/city/Nicholville_NY-71296500000.aspx

Poplar Ridge http://www.greatschools.net/city/Poplar_Ridge/NY

Westernville <http://www.usbeacon.com/New-York/Westernville.html>

Winthrop <http://www.city-data.com/city/Brasher-Falls-Winthrop-New-York.html>

* Belleville is a hamlet in the town of Ellisburg, which has a population of 3541.

Assignment dates are included when available on www.NANPA.com.

ATTACHMENT B

Attachment B

Rate Center	NPA	NXX	OCN	Company Name	Exchange Population
ALEXNDRIBY	315	482	9104	VERIZON NEW YORK, INC.	4097
[REDACTED]					
CAMILLUS	315	672	9104	VERIZON NEW YORK, INC.	23152
[REDACTED]					
CLAYTON	315	686	9104	VERIZON NEW YORK, INC.	4817
[REDACTED]					
DOLGEVILLE	315	429	9104	VERIZON NEW YORK, INC.	2166
[REDACTED]					
GOUVERNEUR	315	287	9104	VERIZON NEW YORK, INC.	7418
GOUVERNEUR	315	535	7197	ACC NATIONAL TELECOM CORPORATION - NY	
GOUVERNEUR	315	522	7556	NORTHLAND NETWORKS	
GOUVERNEUR	315	582	4079	USD CLEC, INC. - NY	
HARRISVL	315	543	9104	VERIZON NEW YORK, INC.	653
[REDACTED]					
LITTLE FLS	315	823	9104	VERIZON NEW YORK, INC.	5188
[REDACTED]					
SODUS	315	483	9104	VERIZON NEW YORK, INC.	8949
[REDACTED]					
STAR LAKE	315	848	9104	VERIZON NEW YORK, INC.	860
[REDACTED]					
TULLY	315	696	9104	VERIZON NEW YORK, INC.	2709
[REDACTED]					
WOLCOTT	315	594	9104	VERIZON NEW YORK, INC.	4692
[REDACTED]					

Note:
All exchange populations are from the 2000 U.S. Census.