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April 17, 2008

Eddie Roberson, Chairman Tennessee Regulatory Authority 460 James Robertson Parkway Nashville, Tennessee 37243

Charles B. Welch, Ir.

cwelch@farrismathews.com

VIA HAND DELIVERY
08.000L

Re: Petition of US LEC of Tennessee Inc. for Expedited Review of Central Office Code Denial.

Dear Chairman Roberson:

Enclosed for filing are the original and thirteen (13) copies of the *Petition of US LEC* of Tennessee Inc. for Expedited Review of Central Office Code Denial.

A check in the amount of \$25.00 for the filing fee is attached hereto.

Accompanying this letter, and considered to be part of the filing, is an envelope marked confidential. This information is proprietary and is to be filed under seal as Exhibits D and E.

If I may be of any further assistance, please do not hesitate to contact me. I am

Very truly yours,

FARRIS MATHEWS BRANAN BOBANGO HELLEN AND DUNLAP, PLC

Charles B. Welch, Jr.

CBW/ajb Enclosures

Cc: Sumer Smith

#### BEFORE THE TENNESSEE REGULATORY AUTHORITY

## Nashville, Tennessee

)
) Docket No. 08.0006
)
)
)

# PETITION OF US LEC OF TENNESSEE INC. FOR EXPEDITED REVIEW OF CENTRAL OFFICE CODE DENIAL

US LEC of Tennessee Inc. ("US LEC"), pursuant to Federal Communication Commission ("FCC") Rule Section 52.9(b)<sup>1</sup>, petitions the Tennessee Regulatory Authority ("TRA") for an expedited review of the Number Pooling Administrator's ("NeuStar") denial of US LEC's request for use of central office code numbering resources in the 865 area code serving area. US LEC is submitting the safety valve request to the NCUC because it requires the grant of one (1) 1,000 block where the third digit of the central office code (NXX) is not 0, 1, or 9 so that it has the appropriate numbering resources to assign numbers to meet the specific requirements of a large US LEC business customer. NeuStar has determined that US LEC had not met the utilization threshold required to obtain the additional NXX 1,000 block in the Kingston Rate Center ("Rate Center"). Because of changes to its business plan, the customer's needs result in US LEC's request for one (1) NXX 1,000 number block in the Rate Center. In support of this Petition, US LEC states:

1. US LEC is a competitive local exchange carrier ("CLEC") providing telecommunications services in Tennessee under the jurisdiction of the TRA.

<sup>&</sup>lt;sup>1</sup> 47 C.F.R. §52.9(b).

- 2. NeuStar is an independent, non-governmental entity that is responsible for administering and managing numbering resources in pooling areas. See 47 C.F.R. §§52.13(a) and (b).
- 3. US LEC of Tennessee Inc. is affiliated with US LEC Corp. whose principal place of business is 600 Willowbrook Office Park, Fairport, New York, 14450. Pleadings, orders, notices and other papers filed in this matter should be served upon:

Sumer Smith
Regulatory Analyst
PAETEC
6801 Morrison Blvd.
Charlotte, NC 28211
(704) 319-6093 (Telephone)
(704) 402-6093 (Fax)
sumer.smith@paetec.com

Charles B. Welch, Jr., Esq.
FARRIS MATHEWS BRANAN BOBANGO
HELLEN & DUNLAP PLC
618 Church St., Suite 300
Nashville, TN 37219
(615) 726-1200 (Telephone)
(615) 726-1776 (Fax)
cwelch@farrismathews.com

- 4. Pursuant to a claim of confidentiality, US LEC is submitting a detailed justification from the customer's contractor (Exhibit E to this Petition) that is the basis for this request. Such detailed justification contains proprietary information that US LEC does not disclose publicly and customarily guards from its competitors. US LEC respectfully requests that the TRA consider the information in Exhibit E to this Petition a part of this Petition, but in doing so treat Exhibit E as confidential.
- 5. On March 31, 2000, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rule Making relating to numbering resource optimization ("FCC 00-104" or the "March Order"). On December 29, 2000, the FCC issued its Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200

("FCC 00-249" or the "December Order"). These FCC orders addressed issues and strategies relating to the efficient use of numbering resources.

- 6. In FCC 00-104 and FCC 00-249, the FCC announced rules and sought comments in an effort to implement uniform standards governing requests for telephone numbering resources in order to increase efficiency in the use of existing telephone numbers and to slow further exhaustion of existing numbers under the North American Numbering Plan.
- 7. Among other things, FCC 00-104 adopted a revised standard for assessing a carrier's need for numbering resources by requiring carriers to report rate center based utilization data to NeuStar. The FCC further required that to qualify for access to new numbering resources, applicants must establish that existing inventory within the applicant's rate center will be exhausted within six months of the application.
- 8. In addition to the months-to-exhaust ("MTE") requirement described above, the FCC's rules also require carriers to meet a rate center utilization threshold of 75 percent to receive additional numbering resources in a given rate center. FCC 00-249 at ¶22; FCC 01-362 ¶¶50-52. Based on the FCC's orders, carriers must meet both the six-month MTE requirement and the utilization threshold on a rate center basis to obtain additional number resources. Id. ¶29.
- 9. On March 4, 2008, US LEC submitted Central Office Code (NXX) Assignment Requests to NeuStar for the assignment of the 1,000 number blocks of NXX resources in the Rate Center necessary to meet the telephone number needs of one of US LEC's large business customers. A copy of this application is attached hereto as Exhibits A (4 pages).
- 10. The request, made on behalf of the US LEC customer, was for one group of 1,000 telephone numbers in the Kingston Rate Center. US LEC does not presently have blocks of numbers containing the thousand blocks in the Rate Center as requested by, and required by, the

US LEC customer. This customer requires the NPA-NXX resources to support its network of telephone numbers and requires the use of a certain range of number blocks to augment its current numbering arrangement.

- 11. Based on the individual Rate Center data that NeuStar used to calculate US LEC's MTE, US LEC's numbering resources exhaust date was 5.604 months. A copy of the application is attached hereto as Exhibits B (Page 2 of 2).
- 12. While US LEC's MTE is 5.604 months, NeuStar calculates US LEC is currently operating at a utilization rate of 6.6 percent. A copy of the application is attached hereto as Exhibits B, (Page 2 of 2).
- 13. NeuStar denied US LEC's requests on the grounds that US LEC did not meet the utilization rate requirements. A copy of the decision is attached hereto as Exhibits C, (Page 1 of 2).
- 14. As a result of the denial of US LEC's requests for additional numbering resources, US LEC is unable to provide the telecommunications services requested by its customer in the State of Tennessee.
- 15. The FCC delegated authority to state commissions to address safety valve claims when NeuStar denies a specific request for numbering resources
- 16. Under previous procedures used by the North American Numbering Plan Administration ("NANPA"), waivers or exceptions were typically granted in any case where customer hardships could be demonstrated or where the service provider's inventory did not have a block of numbers large enough to meet the customer's specific request. Under existing procedures, however, NeuStar looks at the MTE criteria and utilization threshold for the entire rate center and allows no exceptions. By refusing to consider the circumstances of each case,

NeuStar's procedure may result in decisions contrary to the public interest and decisions that do not necessarily preserve the efficient use of telephone numbers or postpone dates of exhaust.

- 17. US LEC's inability to provide this large business customer with the requested numbers prevents US LEC from providing the quality of service this customer desires and expects. A copy of the relevant correspondence from the customer has previously been introduced as Exhibit E (confidentiality requested).
- 18. Both the FCC Order and NeuStar's Central Office Code (NXX) Guidelines provide that state regulatory authorities have the power and authority to review NeuStar's decision to deny a request for numbering resources. *See* FCC 01-362, Appendix A, Final Rules, 47 C.F.R. § 15.15 (g)(4).
- 19. In reviewing previous petitions of this type, many PSC staffs have requested that Petitioners provide additional information concerning the Petitioners' number utilization for the specific central office involved in the request. The current US LEC number utilization calculation information for the Rate Center is attached hereto as Exhibit D. Such detailed justification contains proprietary information that US LEC does not disclose publicly and customarily guards from its competitors. US LEC respectfully requests that the TRA consider the information in Exhibit D to this Petition a part of this Petition, but in doing so treat Exhibit D as confidential.
- 20. US LEC seeks the TRA's review of NeuStar's decision to withhold numbering resources from it on the grounds that the Central Office Code Administration decision (1) violates the rules and orders of the FCC which grant carriers access to numbering resources to meet specific customer demands upon a sufficient showing of need and (2) interferes with US LEC's ability to serve its customers within the state of Tennessee. As the FCC has stated,

"[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources." FCC 00-429 at ¶ 61. By refusing to grant numbering resources sufficient to meet the new large customer's needs, NeuStar's decision is preventing the customer from obtaining the service of its choice from its carrier of choice, US LEC.

For these reasons, US LEC requests that the TRA review the decision of NeuStar to deny US LEC's request for additional numbering resources and direct NeuStar to provide numbers to meet the specific requirements of US LEC's business customer in the exchange of Kingston, Tennessee.

Respectfully submitted,

FARRIS MATHEWS BRANAN BOBANGO HELLEN & DUNLAP, PLC

By:

Charles B. Welch, Jr., No. 005593

618 Church Street, Suite 300

Nashville, Tennessee 37219

Telephone: 615-726-1200 Facsimile: 615-726-1776

Email: cwelch@farrismathews.com Attorney for US LEC of Tennessee Inc.

## TBPAG Attachment 1 - March 19, 2007

## Thousands-Block Application Form - Part 1A

Tracking

865-KINGSTON-TN-202537

Number:

Individual Block

Request

Type of

Application:

√ New

**U** Change ¹

Disconnect

## GENERAL APPLICATION INFORMATION

## 1.1 Contact Information:

**Block Applicant:** 

Company Name:

**US LEC OF TN** 

Headquarters

Address:

600 Willowbrook Office Park

City, State,

Fairport, NY, 14450

Zip:

Contact

**Beatrice McKoy** 

Name:

Contact

6801 Morrison Boulevard

Address:

City, State, Zip: Charlotte , NC , 28211

Phone: 704-319-1351

FAX: \_

E-mail: beatrice.mckoy@paetec.com

Pooling Administrator: ii

Contact

Genevieve Bettiga

Name:

Contact

1800 Sutter St

Address:

City, State, Zip: Concord, CA, 94520

Phone:

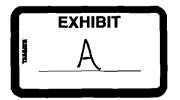
925-363-7652

FAX: <u>925-363-7683</u>

E-mail: genevieve.bettiga@neustar.biz

#### 1.2 General Information:

Check one: No LRN needed \_\_X \_\_ LRN needed iii\_



Part1A Page 2 of 4

NPA	A: <u>865</u> LATA: <u>474</u> OCN: iv <u>8356</u> Parent Company's OCN <u>8354</u>
Nun	nber of Thousands-Blocks Requested:1_
Swi	tching Identification(Switch Entity/POI):
<b>v</b>	KNVLTN02DS1
City	or Wire Center Name: Rate Center: vi KINGSTON
Rate	e Center Sub Zone:
1.3	Dates:
Date 03/0	e of Application: Vii Requested Block Effective Date: Viii 05/01/2008
Req	uest Expedited Treatment? (See Section 8.6) YesNoX
1.4	Type of Service Provider Requesting the Thousands-Block:
a)	Type of Service Provider: <u>CAP OR CLEC</u> (LEC, IXC, CMRS, Other)
b)	Primary type of service Blocks to be used for: Wireline
c) 865	Thousands-Block(s) (NXX-X) assignment Preference (Optional)
	Thousands-Block(s) (NXX-X) that are undesirable for this assignment, if any
	If requesting a code for LRN purposes, indicate which block(s) you will be keeping(the tainder of the blocks will be given to the pool)
1.5	Гуре of Request:
	al block for rate center: YesIf Yes, attach evidence of authorization and proof apability to provide service within 60 days.
Gro	wth block for rate center: Yes If Yes, attach months to exhaust worksheet
Тур	be of change(Mark all that apply)
	OCN:Intra-company <sup>ix</sup> Switching Id Part 1B
	OCN:Inter-company <sup>x</sup>   Effective Date
Cha	nge block: YesIf Yes, list NPA-NXX-X
<b>1.6</b> ]	Block Return :
a)	Is this block Contaminated Yes No
b)	If Yes how many TNs are NOT available for assignment:
c)	Have all new Intra SP ports been completed in the NPAC Yes No

d)	Has this block been protected	ed from further assignment Yes No
Dis	connect block : Yes	_If Yes, list NPA-NXX-X

Remarks: 1 block needed for customer where the 3rd digit of the NXX is not 0, 1, or 9

I hereby certify that the above information requesting an NXX-X block is true and accurate to the best of my knowledge and that this application has been prepared in accordance with the Thousands-Block (NXX-X) Pooling Administration Guidelines(ATIS-0300066) available on the ATIS web site (http://www.atis.org/inc) or by contacting inc@atis.org as of the date of this application.

Beatrice McKoyCode<br/>Administrator03/04/2008Signature of Block ApplicantTitleDate

### Instructions for filling out each Section of the Part 1A form:

Section 1.1 Contact information requires that Service Providers supply under "Block Applicant" the company name, company headquarters address, a contact within the company, an address where the contact person may be reached, in addition to the correct phone, fax, and e-mail address. The Pooling Administrator section also requires the Service Provider to fill in the Pooling Administrator s name, address, phone, fax and e-mail.

Section 1.2 Service Providers who need a thousands-block assignment or for an Location Routing Number (LRN) are required to fill in this section. If needed for an LRN, a CO Code Application needs to also be submitted to the PA. The Service Provider should supply the Numbering Plan Area (NPA); the Local Access Transport Area (LATA), which is a three-digit number that can be found in the Telcordia TM LERG TM Routing Guide. The Operating Company Number (OCN) assigned to the service provider and the OCN its parent company. An OCN is a four-character alphanumeric assigned by Telcordia TM Routing Administration (TRA). In addition, the number of thousands-blocks requested should be supplied. The Switch Identification as well as the city or wire center name, rate center, rate center sub zone, homing tandem and CLLI tandem of the facilities based provider xi. Explanations of these terms may be found in the footnotes.

Section 1.3 The date the Service Provider completes the application should be entered in this section, as well as the Effective Date of the requested thousands-block.

Section 1.4 Service Providers should indicate their type, e.g., local exchange carrier, competitive local exchange carrier, interexchange carrier, CMRS. The also indicate the primary type of business in which the numbering resource is to be used. Service Providers also may indicate their preference for a particular thousands-block, e.g., 321-9XXX, or indicate any thousands-blocks that may be undesirable, e.g., 321-6XXX.

Section 1.5 Service Providers indicate the type of request. Initial requests are for first applications for thousands-blocks in a rate center, growth for additional thousands-blocks in a rate center in which the applicant already has numbering resources, and provide the required evidence as ordered by the FCC.

Section 1.6 Service Providers must indicate the updated/current information in regards to contaminated TNs on the block they are returning to the pool. Blocks with over 10% contamination (101 TNs or more) shall not be returned to the pool unless they meet criteria outlined in section 9.1.2 of these Guidelines. If the block being returned is over 10% contaminated the PA shall seek a new block holder. If question c and/or d have a response of No, the request for return shall be denied. The thousands-block applicant certifies veracity of this form by signing their name, and providing their title and date.

#### Foot Notes:

<sup>i</sup>Identify the type of change(s) in Section 1.5.

iiThe Pool Administrator is available to assist in completing these forms.

iii A CO Code application will also need to be submitted to the PA.

ivOperating Company Number (OCN) assignments must uniquely identify the applicant. Relative to CO Code assignments, NECA-assigned Company Codes may be used as OCNs. Companies with no prior CO Code or Company Code assignments should contact NECA (800 524-1020) to be assigned a Company Code(s). Since multiple OCNs and/or Company Codes may be associated with a given company, companies with prior assignments should direct questions regarding appropriate OCN usage to (TRA) (732-699-6700).

<sup>v</sup>This is an eleven-character descriptor of the switch provided by the owning entity for the purpose of routing calls. This is the 11 character CLLI<sup>TM</sup> code of the switch /POI.

viRate Center name must be a tariffed Rate Center.

viiAcknowledgment and indication of disposition of this application will be provided to applicant within seven calendar days from the date of receipt of this application. An incomplete form may result in delays in processing this request.

viii Please ensure that the NPA-NXX of the LRN to be associated with this block(s) is/will be active in the network prior to the effective date of the block(s).

ix Select if you are the current Block Holder.

x Select if you are not the current Block Holder

xi Telcordia, LERG Routing Guide, and CLLI are trademarks of Telcordia Technologies, Inc.

Appendix 3 August 6, 2001

MONTHS TO EXHAUST and UTILIZATION CERTIFICATION WORK SHEET - TN Level<sup>1</sup> (Thousands-Block Number Pooling Growth Block Request)

Tracking Number: 865-KINGSTON-TN-202537

Date: <u>03/04/2008</u> OCN: <u>8356</u> Company Name: <u>US LEC OF TN</u>

Rate Center: KINGSTON

List all Codes NPA(s)-NXX(s) and Blocks NPA(s)-NXX-X(s):865-270-1

Name of Block Applicant: **Beatrice McKoy** Signature: **Beatrice McKoy** 

Title: Code Administrator Telephone No.: 704-319-1351 FAX No.:

E-mail: beatrice.mckoy@paetec.com

- A. Available Numbers: 934
- B. Assigned Numbers: 66
- C. Total Numbering Resources: 1000
- D. Quantity of numbers activated in the past 90 days and excluded from the Utilization calculation:0

List Excluded Code(s) or Block(s):

Month Month

E. Growth History - Previous 6  $\mathbf{0}$   $\mathbf{0}$   $\mathbf{0}$   $\mathbf{0}$   $\mathbf{0}$   $\mathbf{0}$ 



MTE Block Page 2 of 2

F. Forecast - Next 12 months <sup>3</sup>	1000	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>Q</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	0	<u>0</u>
G. Average	Monthly	Forec	ast (Sui	n of mo	onths 1-	6 (Part I	abov	e) divid	ed by 6	5): <u>1<b>66.6</b></u>	<u>667</u>	
H. Months to Exhaust <sup>4</sup>			Custom	ners(A)	signmer ecast(G)	at to						
		Bloc	k Requ 1	ested		Availal	ole Nu 934	ımbers		Month	ns To Ex 5.604	<u>haust</u>
I. Utilization <sup>5</sup> Assigned Numbers(B) - Excluded Numbers X 100 = 6.6  (D)												
Total Numbering Resources(C)-Excluded Numbers(D)												
Explanation:												

<sup>&</sup>lt;sup>1</sup>A copy of this worksheet is required to be submitted to the Pooling Administrator when requesting additional numbering resources in a rate center. For auditing purposes, the applicant must retain a copy of this document.

<sup>&</sup>lt;sup>2</sup>Net change in TNs no longer available for assignment in each previous month, starting with the most distant month as Month #1, and Month #6 as the current month.

<sup>&</sup>lt;sup>3</sup>Forecast of TNs needed in each following month, starting with the most recent month as Month #1.

<sup>&</sup>lt;sup>4</sup>To be assigned an additional thousands-block (NXX-X) for growth, "Months to Exhaust" must be less than or equal to 6 months. (FCC 00-104, section 52.15 (g) (3) (iii)).

<sup>&</sup>lt;sup>5</sup>Newly acquired numbers may be excluded from the Utilization calculation (FCC 00104, section 52.15 (g)(3)(ii))

November 21, 2003 ATIS-0300066.at3 Attachment 3

## Pooling Administrator's Response/Confirmation TBPAG Part 3

Tracking Number :	865-KINGSTON- TN-202537		
Date of Application:	03/04/2008	Effective Date:	
Date of Receipt:	03/04/2008	Date of Response:	03/31/2008
Service Provider Name:	US LEC OF TN		
(Telcordia TM LERG TM Routing Guide ) OCN:	8356		
NPAC SOA SPID :			
Pooling Administrator Co	Phone:		925-363-7652
Signature of Pooling Admir Genevieve Bettiga	nistrator Fax:		925-363-7683
Name (print)	Fax.		925-363-7663
Email:	geneviev	e.bettiga@neustar.bi	z
NPA-NXX or NPA-NXX-X :  Block Contaminated()		Block Assigned Block Reserved Block Reservation Expiration Date: Block/Code Mod Block/Code Disconnected:	:
If Yes, enter the numb	er of TNs contaminate	d:	
Switch Identification(S	witch Entity/POI): 1	KNVLTN02DS1	<u> </u>
Rate Center:		KINGSTON	
X Form Complete, requ			
Explanation:			
block is denied. You appropriate state cor disagreement with th	eet the MTE requiremmay proceed with remmission using this for disposition of this limber (NXX-X) Poolin	questing a State Waiv Part 3 denial. If you ar request, please refer	ver from the re in to the
Request withdrawn.		EXHIB	IT

	Explanation:
	Assignment activity suspended by the administrator.
	Explanation:
	<u> </u>
ten	narks:

<sup>&</sup>lt;sup>1</sup> This is an eleven-character descriptor provided by the owning entity for the purpose of routing calls. This must be the CLLI <sup>TM</sup> Location Identification code of the switching entity/POI shown on the Part 1A form (Telcordia, LERG ROUTING Guide and CLLI are trademarks of Telcordia Technologies, Inc.)

Pooling Administration System							
beatrice.mckoy@pa	beatrice.mckoy@paetec.com (SP)  • Sign Out						
	Time: 03/31/2008 04:18:06 PM EDT						
☐ ☐ Individual Block Requests	Months to Exhaust and Utilization Certification Worksheet - TN Level(Continued) <sup>1</sup>						
New Block Request New Block Reservation	Your Utilization calculates to 6.600%. The FCC required the utilization of 75.000%.						
Assign/Cancel Reservation Block Modification	Select One Option and Submit						
Block Disconnect	<ul> <li>Return to the Months To Exhaust Form</li> </ul>						
Saved Block	Need to request a State Waiver						
Requests  Modify Pending	Received a State Waiver						
Request  CO/NXX Code Requests  Confirm Resources In Service  Submit Forecast  Search Forms  List Forms  Company Reports  Company Company Reports  Company Company Reports  Company Company Reports	Submit Cancel						
	Question? E <b>mai</b> l us © 1997-2012 NeuStar, Inc. Legal Notice						