

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 00-06

CASE 99-C-0800 - In the Matter of an Investigation of the
Efficient Usage of Telephone Numbering
Resources and Evaluation of the Options for
Making Additional Central Office Codes and/or
Area Codes Available in New York State

OPINION AND ORDER DIRECTING A
GEOGRAPHIC SPLIT OF THE 716 NPA

Issued and Effective: May 22, 2000

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND PROCEDURAL HISTORY	1
THE STAFF PAPER	4
Need for Relief and Options Presented	4
1. The Overlay	4
2. Geographic Splits	5
Staff's Evaluation of the Geographic Splits vs. the Overlay	6
1. Geographic Split	6
a. Advantages	6
b. Disadvantages	6
2. Overlay	7
a. Advantages	7
b. Disadvantages	7
PARTIES' COMMENTS	7
Overview	7
Initial Comments	8
Reply Comments	17
PUBLIC INPUT	19
Staff's Educational Efforts	19
Public Statement Hearings	21
Other Public Input	23
DISCUSSION AND CONCLUSION	24
Need for Relief	24
Choice of Remedies	24

TABLE OF CONTENTS

	<u>Page</u>
1. Threshold Considerations	24
2. The Geographic Splits	25
3. The Overlay	26
4. Conclusion	27
ORDER	31
APPENDIX	

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

Maureen O. Helmer, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal Galvin

CASE 99-C-0800 - In the Matter of an Investigation of the
Efficient Usage of Telephone Numbering
Resources and Evaluation of the Options for
Making Additional Central Office Codes and/or
Area Codes Available in New York State.

OPINION NO. 00-06

OPINION AND ORDER DIRECTING A
GEOGRAPHIC SPLIT OF THE 716 NPA

(Issued and Effective May 22, 2000)

BY THE COMMISSION:

INTRODUCTION AND PROCEDURAL HISTORY

By order issued July 13, 1998 in Case 98-C-0689,¹ we instituted a proceeding to consider, among other things, how best to introduce new area codes when and where they proved necessary.² In a ruling issued in that case,³ Administrative Law Judge Joel A. Linsider noted that the need for specific area code relief was becoming more pressing; that jeopardy conditions had

¹ Case 98-C-0689, Omnibus Telephone Numbering Resources Proceeding, Order Instituting Proceeding (issued July 13, 1998).

² Although the FCC has jurisdiction over those portions of the North American Numbering Plan that pertain to the United States, it is permitted to delegate to the states all or any part of that jurisdiction (47 U.S.C. §251(e)(1)). Among the matters within the states' authority (subject to certain restrictions) is the manner in which a new area code, when needed, should be provided.

³ Case 98-C-0689, Ruling Concerning Future Course of Proceeding (issued December 2, 1998).

been declared in the 516 (Nassau and Suffolk counties), 914 (lower Hudson Valley and Catskills), and 716 (western New York) numbering plan areas (NPAs). Subsequently, the code administrator declared an "extraordinary jeopardy" for the 716 area code, reflecting a projected exhaust date of December 2000, earlier than the time in which a new area code can be implemented.¹ On April 29, 1999, and November 4, 1999, we geographically split the 516 and 914 NPAs, respectively.²

The instant opinion and order considers the 716 NPA, which, since the early 1950s, has served western New York, i.e., the counties of: Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Niagara, Orleans, Wyoming, and parts of Allegany, Monroe, Ontario, Steuben, and Yates, as shown in the appendix.

In order to give users of telecommunications services and the public at large an opportunity to be heard and to play an important part in shaping the decisions to be reached in this case, Staff undertook to prepare an options paper for the 716 region (the Staff Paper). In a process similar to that used in the 516 NPA and 914 NPA proceedings, the Staff Paper was issued October 19, 1999 for written comment and for consideration at informal public forums and formal public statement hearings in the 716 region.³ The public statement hearings and forums were convened at locations in the affected counties during the month of January, 2000. On the basis of all the information compiled through those processes, we have decided to use a geographic split to provide area code relief, when necessary.

¹ This case was instituted to address specific area code relief planning in certain NPAs (Case 99-C-0800, Opinion No. 99-11 (issued November 4, 1999)).

² Case 98-C-0689, supra, Opinion No. 99-6 (issued April 29, 1999), and Case 99-C-0800, Opinion No. 99-11 (issued November 4, 1999).

³ Case 99-C-0800, Ruling Inviting Comments on Staff Paper (issued October 19, 1999).

This opinion and order begins with an overview of the Staff Paper and reports on the written comments submitted by the parties and on the results of the public statement hearings and forums. Finally, it presents and explains our conclusions.

Throughout the nation, the demand for central office codes has increased drastically in recent years and NPAs have been added much more frequently than in the past. The increased demand stems in part from greater use of new telecommunications services such as cellular phones, facsimile machines, and internet connections. It also reflects the growth of competition in the local exchange market: there are more and more carriers that were assigned blocks containing 10,000 numbers according to guidelines promulgated by the Industry Numbering Committee (INC), a private organization representing all sectors of the telephone industry.

More specifically, the INC's Central Office Code Assignment Guidelines¹ had required that each competitive local exchange carrier (CLEC) be allowed at least one central office code, which contains 10,000 numbers, in each rate center.² Consequently, new CLECs with relatively few customers may have a claim on many phone numbers that cannot be otherwise assigned. Last year, the FCC granted, in part, our petition to implement number conservation measures, including thousand-block pooling trials.³ Our exercise of that authority was granted with the

¹ INC 95-0407-008.

² A rate center is a geographic area used to calculate distances between points of origin and termination for purposes of pricing calls.

³ 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; Order, rel. Sept. 15, 1999 (New York Order). More recently, the FCC mandated such measures be adopted on a nationwide basis. In the Matter of Numbering Resource Optimization, CC Docket No. 99-200, rel. March 31, 2000.

condition that we continue to proceed with area code relief planning, even if the need for future relief is forestalled.

THE STAFF PAPER

Need for Relief and Options Presented

The Staff Paper observes that approximately 720 of the 800 assignable central office codes (NXX codes) in the 716 NPA had already been allocated to carriers, leaving only 80 NXX codes available for assignment, as of September 30, 1999. The Staff Paper sets forth three options presented by the industry to relieve the shortage of NXX codes--a single overlay and two geographic splits. In addition, Staff proposed modifying the dividing lines of the geographic splits so that they would follow county boundaries.

1. The Overlay

An overlay would augment the numbering resources by adding a second area code throughout the geographic area of the 716 NPA. Central office codes from the new area code would then be assigned on a carrier-neutral, first-come, first-served basis. A single overlay for the 716 NPA, it is estimated, would provide relief until 2008.

If an overlay were adopted, current FCC rules would require ten-digit dialing within each NPA. The requirement is intended to limit the advantage incumbent local exchange carriers (LECs) are alleged to derive from their customers being more likely to receive a number in the existing area code and, therefore, being able to use seven-digit dialing for a greater percentage of their calling. We believe that other pro-competitive steps, including number portability and non-discriminatory number assignment rules, cancel any such advantage, and we are seeking reversal of that requirement. A decision rendered by the United States Court of Appeals for the

Second Circuit¹ has stayed enforcement of the requirement in New York until ten calendar months after the court's decision on the merits.

2. The Geographic Splits

The dividing line between NPAs has usually followed an easily recognized political or natural boundary. The Staff Paper sets forth two such geographic splits proposed by the industry. Geographic Split A, as shown in the appendix, would divide the area east from west with most of western Erie, Niagara, Cattaraugus, and Chautauqua on one side and the remainder of the current 716 NPA on the other. This split would provide area code relief until 2008 for both the eastern and western areas.

Staff favors a modification to this proposal, which would have the area code boundaries track county boundaries. Staff reasons that its split would represent a more readily recognizable division for the area codes, and would minimize the separation of local communities into two area codes.

Setting the area code split on county borders could affect 29 exchanges in the following rate centers: Alden, Akron, Arcade, Bliss, Chaffee, Cuba, East Aurora, Franklinville, Java, Lyndonville, Medina, Middleport, Olean, and Rushford. Moving the split to county borders would change the projected periods of relief for Geographic Split A such that the western area would be relieved until 2007 and the eastern area until 2009.

Geographic Split B, also shown in the appendix, would divide the existing 716 area code into three parts using exchange boundaries: (1) Erie and Niagara counties (greater Buffalo), (2) Genesee, Livingston, Monroe, Ontario, Orleans, Steuben, Wyoming, and Yates counties (greater Rochester), and (3) Allegany, Cattaraugus, and Chautauqua counties (Southwestern Tier).

¹ PSC v. FCC, Docket No. 99-3015, untitled order (2d Cir., January 18, 2000).

Current projections indicate that this plan would provide area code relief until 2011 for both greater Buffalo and greater Rochester and until 2035 for the Southwestern Tier.

Again, Staff proposes that this industry plan be modified so that the dividing lines for the area codes would follow county boundaries. This modification would affect the same rate centers listed for Geographic Split A plus exchanges in Gowanda, Silver Creek, and Springville. No revised exhaustion dates were submitted for the modification to Geographic Split B.

Staff's Evaluation of the Geographic Splits vs. the Overlay

As for both geographic splits vis a vis the single overlay, Staff notes that the advantages and disadvantages of each mirror those of the other. Briefly, they are as follows:

1. Geographic Split

a. Advantages

- retains familiar identification between an area code and a specified territory
- avoids any possible need for intra-NPA ten-digit dialing

b. Disadvantages

- requires more than two million numbers on one side of the line or the other to change their area code, including wireless customers who would have to have their equipment reprogrammed¹
- implies that future relief entails division into progressively smaller geographic units without readily recognized boundaries

¹ Staff noted that existing wireless customers could be grandfathered and thus keep their area code or change to the new code.

2. Overlay

a. Advantages

- avoids need for more than two million numbers to change their area code
- easily "replicable"; that is, further relief could be provided by additional overlays as needed
- may spare thousands of wireless customers of the need to return cellular telephones and/or pagers to their service providers for reprogramming to accept a new area code

b. Disadvantages

- may require intra-NPA ten-digit dialing (though a geographic split would itself increase ten-digit dialing for half of the numbers that were previously dialable on a seven-digit basis)
- creates confusion by having two area codes within the same locale or building

The Staff Paper does not suggest a preferred method of relief, i.e., split or overlay. However, if a geographic split is adopted, Staff urges that the dividing line be along existing county boundaries because they represent recognizable geographic lines. Staff recommended that comments be sought on the proposals. As noted above, a ruling inviting comments on the Staff Paper was issued.¹

PARTIES' COMMENTS

Overview

Twenty-one parties, including many governmental representatives and telecommunication companies, submitted written comments on the Staff Paper; three submitted reply comments.

¹ Case 99-C-0800, Ruling Inviting Comments on Staff Paper (issued October 19, 1999).

A few parties urge that all reasonable measures that might delay the need for a new area code be fully considered and implemented before adding a new area code.

Some parties (including New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-New York)) favor an overlay outright; others favor a geographic split. Several parties suggest that, if a split is approved, the telephone numbers of existing wireless customers be grandfathered.

A summary of the parties' comments follows.

Initial Comments

The State Consumer Protection Board (CPB) urges that the burdens of a new area code, however introduced, be imposed only after maximum use of available telephone numbers in the existing area code has been ensured. It cites our various efforts in this regard and urges that, before assessing whether a new area code is required for the 716 NPA, we conclude our examination of rate center consolidation and other efficiency measures such as thousand-block number pooling,¹ which it sees as potentially delaying the need for a new area code.

Noting that approximately 57% of available telephone numbers have been assigned in the 716 NPA, CPB suggests that this relatively low utilization rate results, in part, from the large number of rate centers (120) in the 716 area code. Since each local exchange carrier serving a rate center must have at least one NXX code in that rate center assigned to it, CPB claims the large number of rate centers leads to inefficient use of available telephone numbers. Consequently, it urges that rate center consolidation be undertaken.

¹ As noted above, the FCC in the New York Order granted, in part, our petition to implement number conservation measures, including thousand-block pooling trials. See also Case 98-C-0689, *supra*, Order Instituting Wide Area Rate Centers and Number Pooling (issued December 2, 1999), and Order Instituting State-Wide Pooling and Number Assignment and Reclamation Procedures (issued March 17, 2000).

CPB also sees great potential in thousand-block number pooling, noting that number pooling trials are underway in New York as well as other states.

In the event an additional area code were required, CPB would favor a geographic split. According to CPB, consumers outside of New York City strongly prefer that a new area code be provided through a geographic split because of their aversion to dialing ten digits to make a local call as would be required by the FCC rule previously noted. Finally, CPB recommends that existing wireless customers be grandfathered to avoid the need for reprogramming their cellular telephones and/or pagers.

The City of Buffalo¹ (Buffalo) strongly urges the deferral of any action creating a new area code at this time. It notes that the low utilization rate of existing numbers in the 716 NPA indicates that the numbers are not being efficiently utilized. Instead, Buffalo requests that we exercise our recently acquired authority to implement number conservation measures in the 716 NPA and that the effects of the new measures be evaluated before determining the need to create a new code for western New York. It believes this course of action should be undertaken because the negative impacts of creating a new code would only serve to slow the growth and development of telecommunications that is vital to the future of this region.

The Monroe County Executive, Monroe County Legislature, and two Monroe County legislators each supported a geographic split and requested that the greater Rochester area retain the 716 area code. They generally prefer Geographic Split B because it would provide the longest relief and its boundaries are consistent with the actual communities of interest in western New York.

In order to minimize the impact of an area code change, they believe that Rochester should retain the 716 area code

¹ The City of Rochester, which did not request party status, submitted a letter that contained comments similar to Buffalo's.

because it is most sensitive to a change. It was claimed that Rochester has more worldwide businesses than any other upstate city, it has a higher level of exports per capita than any other city in the nation, and it has over 4,000 exporting companies. Inasmuch as approximately 90% of Rochester's export growth since 1989 has come from smaller (fewer than 200 employees) rather than larger companies, it was asserted that these businesses would be significantly burdened by the cost of conversion to a new area code.

Town of Greece supports a geographic split with Monroe County retaining the 716 NPA. According to Greece, an overlay would be particularly burdensome because it would incur the inconvenience of dialing 11 numbers to nearby locations and the cost of conversion.

The Town of Chili and the Monroe County Supervisors' Association also support a geographic split, with the Rochester area retaining the 716 NPA.

Chautauqua County would support a delay in assigning a new area code, if possible, until more of the existing numbers available for the 716 NPA are used. Alternatively, Chautauqua county supports Geographic Split A because this division would place it in the same area code as the City of Buffalo. Geographic Split B, which would separate Chautauqua County from the Buffalo area, it was claimed, does not recognize or serve existing patterns and connections between the two regions. (It believes Allegany County should be united with the Buffalo area for the same reasons). The least attractive alternative, Chautauqua states, would be an overlay, because of the frustration and confusion associated with ten-digit dialing.

Allegany County Board of Legislators (Allegany) does not regard any of the alternatives presented in the Staff Paper as satisfactory. It notes that it is served by telephone companies under both the 716 and 607 area codes. Allegany suggests that Geographic Split B best suits its needs but would modify the split so that the Southwestern Tier include Steuben

along with Cattaraugus, Chautauqua, and Allegany. More importantly, it supports Staff's proposal to divide the area code along county borders and requests that all of Allegany County be in the same area code. Removal of the existing area code barrier, it believes, would be a step toward bringing Allegany County to a level economic playing field with its neighboring counties.

Genesee County Chamber of Commerce, Inc. would also defer action until number conservation measures, such as thousand-block number pools, were implemented. It notes that we have recently received FCC approval to initiate such measures and urges that they be immediately implemented in the 716 NPA. Only after the impacts of the effects of the number conservation measures are evaluated, it contends, should a determination be made on the need to create a new area code.

The Town of Farmington is located in northern Ontario County and is currently served by the 716 and 315 area codes, which it believes creates the perception of a long distance charge for cross-town calls. Also, the Town of Farmington claims the residents are not listed in a single directory because the Town is served by multiple telephone companies. It requests that the situation not be further complicated by an overlay, but rather that the Town of Farmington be placed entirely in a single area code even if it is a new code.

Bell Atlantic-New York strongly favors the use of an overlay; it cites our recent use of an overlay to relieve each of New York City's NPAs and the importance of keeping disruption to a minimum. It alleges several problems with the use of each of the geographic splits set forth in the Staff Paper. With respect to Geographic Split A, it cites, first, the complexity of the technology needed to divide the NPA along the proposed county border. It regards the split as inefficient in that existing NXX codes would need to be duplicated for most carriers operating in the split rate centers. The net effect of splitting the rate centers proposed in Geographic Split A would be a reduction of

one year in the expected life of the relief period. Finally, it sees a county-line split as less effective in avoiding customer confusion than it was on Long Island, or in Westchester County, where in each case only one county border was employed. Bell Atlantic-New York foresees unknown impacts on customers who live along the border. For example, western New York has several large Native American communities, whose reservations overlap some of the proposed boundaries.¹

Regarding Geographic Split B, Bell Atlantic-New York asserts the three-way split should be rejected entirely because it would assign 16 million new numbers to western New York at a time when the North American Number Plan is under threat of exhaustion and thousand-block pooling is on the horizon.

AT&T Communications of New York, Inc. (AT&T) favors an overlay because it could be implemented faster and with less disruption to customers. Although it sees overlays as discriminatory to new entrants, AT&T would consider an overlay to be acceptable if four conditions were met: (1) ten-digit dialing for all calls, including intra-NPA, within the overlay area; (2) allocation of all remaining NXXs within the existing NPA in accordance with FCC rules; (3) implementation of permanent wire line local number portability (LNP); and (4) application of the overlay to all carriers and services. Inasmuch as conditions (2)-(4) appear to be met, AT&T stresses the importance of ten-digit dialing, maintaining that intra-NPA seven-digit dialing would favor the incumbent carrier because of its greater stock of such numbers.

If a geographic split were to be adopted, AT&T would not divide rate centers. It believes that splitting rate centers creates considerable implementation and administrative difficulty

¹ The Tonawanda Indian Reservation, Cattaraugus Indian Reservation, and the Oil Spring Indian Reservation overlap boundaries proposed for the geographic splits, as shown in the appendix. In addition, the Village of Gowanda also overlaps one of the boundaries.

for carriers. Also, if a geographic split were adopted, AT&T would request that carriers be given the option of grandfathering their wireless customers' existing telephone numbers.

Frontier Telephone of Rochester, Inc. (Frontier) opposes an area code overlay, supports a three-way geographic split along county boundaries, and requests that the Rochester area keep the 716 area code. Frontier reports that, at a recent meeting, representatives of large customers (including Kodak, Xerox, the University of Rochester, and Wegmans), small business, and individual consumers unanimously opposed an overlay area code except possibly one for wireless services only. The customers noted their dislike of ten-digit dialing for all local calls, believing, among other things, that there would be confusion if a business customer were to add telephone lines that could have two separate area codes serving the same retail store.

In addition, Frontier claims that several of its key operational systems, including its order flow and customer record systems, identify customers by seven-digit telephone numbers. An overlay would create the likelihood of two customers with the same final seven-digit numbers. To remedy the situation, Frontier estimates, it would have to spend approximately \$650,000.

Frontier further states that Geographic Split B would divide the 716 area code on the basis of a much stronger community identity than Geographic Split A, which would traverse Buffalo's suburbs. Moreover, Geographic Split A would still include large areas in the Rochester half of the proposed NPA that are well outside the Rochester community of interest and could lead to inadvertent toll calls.

Frontier submits that Rochester would suffer more severe negative economic effects by losing the 716 area code than would Buffalo, for Rochester is the second largest exporting community in New York State (behind New York City) and the leading per capita exporting city in the nation. Frontier points out that Rochester's big three employers (Eastman Kodak, Bausch &

Lomb, and Xerox) account for less than one-third of total exports of this community. Instead, it states, more than 2000 smaller businesses are responsible for the bulk of exports, and 90% of export growth over the last ten years has been generated by companies with 200 or fewer employees. Accordingly, Frontier concludes that Rochester businesses, which do substantially more international business than any other community within the 716 NPA, would be more adversely affected by having to absorb the costs of a new area code and the losses incurred when overseas companies can no longer locate their Rochester area suppliers. If Rochester were to lose the 716 NPA, Frontier anticipates spending \$100,000 to modify its computer-based applications.

Sprint Spectrum, LP, d/b/a Sprint PCS (Sprint) maintains that we must implement area code relief before an area code exhausts in order to protect the public interest in obtaining needed services and to prevent incumbent carriers from gaining an artificial competitive advantage by reason of their supplies of unused numbers. Because incumbents have a greater number of NXX codes assigned to them, they have more numbers available for customers (on the premise that the utilization rate of each of these NXX codes is roughly constant among all carriers). Sprint therefore urges us to act as soon as possible to establish the new area code to maintain a level playing field.

With regard to the relief mechanism, Sprint prefers Geographic Split A. According to Sprint, the 716 NPA is large in area and contains two major cities approximately 75 miles apart, which Sprint maintains supports an east-west geographic split. Sprint notes that Geographic Split A, unlike Geographic Split B, provides balanced relief periods in accordance with the INC's Area Code Relief Planning Guidelines. Because Buffalo and its surrounding area are more densely populated than Rochester and its surrounding areas, Sprint urges that 716 be retained by the greater Buffalo area so that fewer numbers are changed.

With respect to the boundary, Sprint points out that the North American Numbering Council and the INC modified the

Guidelines to require NPA boundaries to follow rate center boundaries to mitigate future number usage inefficiencies. If rate centers are split, existing carriers must duplicate central office codes in each NPA in order to preserve customers' existing seven-digit telephone numbers.

Finally, Sprint urges that if a geographic split is adopted, it not be required to grandfather numbers assigned to existing wireless customers.

MCI WorldCom, Inc. (MCI) endorses a geographic split because it would leave intact the association between an area code and a geographic area and permit retention of seven-digit intra-NPA dialing. MCI does not agree with Staff's proposal to follow county lines for the boundary of the split, which would bisect existing rate centers. Instead, MCI would follow the county boundaries only roughly, not cutting through existing rate centers, thereby avoiding an inefficient use of numbering resources and forced ten-digit telephone number changes¹ for some customers along the boundary.

Time Warner Telecom, Inc. (TW Telecom) generally favors a geographic split, with the Rochester area retaining the 716 area code. If Rochester were to be assigned a new area code, TW Telecom would favor the overlay option. Geographic splits, TW Telecom notes, retain the familiar association of a particular community with a specific area code.

Inasmuch as the implementation of a geographic split requires substantial technical resources and ample customer education, TW Telecom believes that Bell Atlantic-New York's experience and success in implementing area code geographic

¹ Inasmuch as a carrier must have a unique NXX code for each rate center in which it provides facilities-based service, it would need a unique NXX on each side of the boundary that bisects a rate center. Unless carriers are assigned NXX codes on the non-716 side of the boundary that are identical to the NXX codes that they currently hold in the bisected rate centers, customers on the non-716 side will be forced to change their entire ten-digit phone numbers.

splits in other sections of the State, and elsewhere, makes it best able to perform the thorough consumer education and facilities changes necessary to implement a new area code. Therefore, if a geographic split is selected, TW Telecom contends, the locations where Bell Atlantic-New York is the dominant carrier (i.e., the greater Buffalo area), should be assigned the new area code. According to TW Telecom, the locations where Bell Atlantic is not the dominant carrier (i.e., the greater Rochester area) should retain the existing 716 area code to minimize inconvenience to consumers and lessen customer confusion and the possibility of needless disruptions in service.

Choice One of New York, Inc. (Choice One), which serves the greater Buffalo area and will initiate service in the Rochester area soon, believes a geographic split would be the more efficient way of addressing the shortage. It prefers Geographic Split A because it recognizes that Buffalo and Rochester are separate Metropolitan Statistical Areas; it does not have a preference as to which area retains the historical code.

According to Choice One, the existing stay, which precludes ten-digit intra-code dialing, would impede the development of competitive local exchange service and result in consumer confusion if an overlay were implemented. From Choice One's perspective as a new entrant, its service may be deemed inferior because its prospective customers may be required to dial ten digits while other competitors would still offer seven-digit dialing service.

The Southern Tier West Regional Planning and Development Board (Southern Tire West) serves Chautauqua, Cattaraugus, and Allegany counties and supports Geographic Split B, provided the split is made along county boundaries. As a fourth alternative, it suggests that we combine the three counties it represents with Niagara, Erie, and Wyoming, which Southern Tier West believes would enhance the economic development opportunities of its constituency. Finally, it calls

for inclusion in one area code of all of Allegany County, even the area currently served by the 607 NPA.

Reply Comments

Bell Atlantic-New York reemphasizes the need for area code relief in the form of an overlay even when combined with area code conservation methods, such as thousand-block number pooling. It maintains that the initiation of thousand-block number pooling in the 716 NPA will change the entire dynamic in favor of an overlay. Once pooling is in place, Bell Atlantic-New York notes, many carriers will be able to meet their numbering needs from existing under-utilized NXX codes with the 716 NPA. However, if a geographic split were ordered, it continues, half of the customers in western New York would be forced to change their phone numbers even if only a few new NXX codes are needed initially from the new NPA to meet numbering demands. According to Bell Atlantic-New York, the concerns related to overlays are not significant enough to justify exposing over half the customers throughout western New York to the costs and burdens of changing their phone numbers.

Bell Atlantic-New York asserts that there is no acceptable boundary for dividing western New York and there is absolutely no evidence that aligning area codes with county boundaries would reduce customer confusion. Bell Atlantic-New York contends that customers are more familiar with the traditional approach of splitting area codes along rate center boundaries and that there would be negative impacts relating to number portability and code conservation that are expected to result from aligning area code boundaries with county borders instead of rate center borders.¹ Consequently, if a geographic

¹ The INC's NPA Relief Planning and Notification Guidelines require geographic NPA boundaries to follow rate center boundaries. See §2.11 of the Guidelines, reissued August 30, 1999.

split were ordered, Bell Atlantic-New York would continue to urge rejection of the county border proposal.

AT&T calls for expeditious implementation of a relief plan for the 716 NPA even in light of our recent efforts to initiate number conservation measures in western New York.¹ According to AT&T, number pooling and expanded rate centers cannot provide carriers with the resources they need to serve customers because there are only 39 unallocated NXX codes remaining in the 716 NPA, of which 30 have been set aside for new entrants. AT&T observes that even the Staff Paper recognizes that number conservation measures are not expected to significantly forestall the need for relief.

AT&T points out that thousand-block pooling would discriminate against non-LNP-capable carriers such as wireless providers that need whole NXX codes. Inasmuch as the FCC has long held that numbering administration cannot "unduly favor or disfavor any particular telecommunications industry segment,"² AT&T argues that non-LNP-capable carriers must have the same access to numbers after thousand-block pooling is implemented as before.

AT&T suggests that a "back-up" NPA relief plan be adopted for 716 area code in accordance with FCC requirements³ to ensure that numbering resources are available to all carriers and consumers as needed.

Bell Atlantic Mobile (BAM) supports an overlay on the grounds that it would obviate changing the area code for over two million numbers, as required by a geographic split, and the expense of dealing with that change. It notes in particular the burdens on wireless customers, whose equipment would have to be reprogrammed at a cost of between \$30 and \$50 apiece, and it

¹ New York Order.

² Local Competition Second Report and Order, 11 FCC Rcd 19392 at ¶285 (1996).

³ New York Order at ¶14.

urges grandfathering of those customers if a geographic split is adopted.

BAM asserts as well that the longevity of an overlay is more assured than that of a split; that an overlay would be easily replicable; and that an overlay would allow greater flexibility in number assignment.

Generally, BAM sees a national trend to overlays, and it ascribes little significance to the prospect of ten-digit dialing, noting that it already is required in some areas including Manhattan and the other boroughs. To the extent that some customers find ten-digit dialing burdensome, BAM states, speed and automatic dialing can ease the transition. BAM regards the overlay as competitively fair to customers, who would be treated alike without regard to their locations, and to CLECs because of the FCC's ten-digit dialing requirement.

According to BAM, an overlay would have much greater longevity than a geographic split because once number conservation measures were adopted, newly available 716 numbers could be assigned anywhere throughout the region. Inasmuch as projections of area code longevity can be wide of the mark, BAM considers this an important advantage. For example, it notes that on April 29, 1999 we ordered a split of the 516 NPA on Long Island and created a new area code (631), which was expected to extend the life of the 516 NPA until 2005; but in November 1999, jeopardy was declared in both the 516 and 631 NPAs, even before the new area code had been implemented fully.

PUBLIC INPUT

Staff's Educational Efforts

Staff from the Office of Consumer Education and Advocacy conducted a comprehensive outreach and education campaign for people in western New York. The goal was to provide information about the need for another area code in that part of the State, the options proposed by Staff, the measures to

conserve numbers, the guidelines to be met, and the ways in which people could comment on the issue.

Staff compiled a Fact Sheet, and our Information Services Section created maps of the region that showed the different geographic splits proposed. These, along with the Staff Paper, were sent to all the public libraries in western New York and were mailed to more than 600 government officials and consumer and business leaders in the 716 region. Both the Staff Paper and the Fact Sheet were available on our website with a link between the two. The material was also made available at the educational forums held prior to the public statement hearings and to people who requested information. In addition, Staff spoke with members of the Buffalo Niagara Partnership and with the Greater Rochester Metro Chamber of Commerce.

In a further effort to educate customers, Staff worked with the companies providing local telephone service in the region, including Bell Atlantic-New York, Frontier, Citizens Telecommunications (Citizens), Dunkirk & Fredonia Telephone Company (DFT), Chautauqua & Erie Telephone Corporation (C&E), Choice One Communications (Choice One), ALLTEL New York, Inc. (ALLTEL), PAETEC, Empire Telephone Corporation (Empire), and Timely Information Corporation (Timely).

Bell Atlantic-New York, Frontier, Citizens, DFT, and C&E included a message on customer bills, used a special insert or mailed a separate letter to their customers informing them of the proposed changes. Frontier also created a website (716.Rochester.com) that had direct links to our website. For various reasons, the other companies did not notify their customers.

Staff held educational forums prior to each of the thirteen public statement hearings. The goal of the forums was to educate consumers about the issue, the options, the measures to conserve numbers, the guidelines which must be met, and the process. Also, Staff clarified our responsibilities vis-a-vis the federal government's and answered questions from consumers,

elected officials, and business representatives. The media interviewed Staff at each forum/hearing.

Public Statement Hearings

Thirteen formal public statement hearings were held, attracting a total of 72 speakers. The hearings were held in Warsaw, Wyoming County; Geneseo, Livingston County; Belmont, Allegany County; Olean, Cattaraugus County; Jamestown, Chautauqua County; Buffalo and Williamsville, Erie County; Lockport, Niagara County; Albion, Orleans County; Batavia, Genesee County; Henrietta and Rochester, Monroe County; and Canandaigua, Ontario County. The speakers, who represented a broad spectrum of residential, business, and governmental interests, overwhelmingly supported a geographic split. In addition, at the Rochester hearing, a petition containing over 1000 signatures was submitted. It supports a geographic split with Rochester retaining the 716 area code.

Much of the support for the split grew out of concern about ten-digit dialing, which many speakers saw as a long-term inconvenience, more onerous than the short-term dislocation that would accompany a change in existing area codes for customers in the region whose code would be changed.

Advocates of a split also stressed the link between a code and an area, alleging inconvenience in having to dial an area code in order to call a neighbor, and safety concerns especially for senior citizens and small children. Some believed that use of an overlay would have a disruptive effect on 911 emergency services.

Although most speakers favored a geographic split, there was far from universal agreement on the use of Geographic Split A or B, or on which area should retain the 716 area code. Many speakers favored Geographic Split B because it would provide longer periods of relief.

Generally, each speaker supported retention of the 716 NPA for his or her county, citing the disruptive effects a new

code would have on residential and business customers. Speakers from the Rochester area noted it would be severely affected by a change in area code because Rochester has the highest level of export business per capita in the United States. They noted that 90% of Rochesters' export growth has come from smaller companies with fewer than 200 employees, and that these companies would be most vulnerable to the cost of conversion to a new area code. The speakers also pointed out that the area's largest industrial companies i.e., Kodak, Bausch and Lomb, and Xerox, account for less than one-third of the total exports of the community.

Speakers from the Buffalo area believed that the 716 code should remain with them because there are approximately 400,000 more people and more business in total on their side of the split boundary. They also argued that since tourism is a key element of their economy, an area code change would be devastating.

Speakers representing large businesses, including local utilities, financial institutions and manufacturing companies, favored a geographic split. The utilities noted that emergency calls are automatically routed by the caller's area code to the appropriate office. This enables the utility to act quickly and ensure customer safety. The financial institutions feared that customers might avoid dialing a new area code assigned as part of an overlay plan because they would view the company with that number as being newer and less well established. The manufacturing association stressed that a split will minimize the adverse impacts of area code relief.

Some speakers urged use of all possible means to forestall the need for area code relief. They suggested changing the 10,000 block allocation of numbers to CLECs to a much smaller block, reducing the number of rate centers, and employing more technically advanced systems that would simultaneously use one number for several purposes.

Finally, a few speakers requested that the scope of the hearing be expanded to permit a redrawing of the existing 716

area code boundaries to match county lines so that communities would have one area code instead of the existing two. For example, there was support to including the counties of Allegany, Steuben, Ontario and Wayne, and the towns of West Almond and Farmington, in a single area code.

Other Public Input

In addition to participating at the public statement hearings, the public commented through our Opinion Line, our website, and in written correspondence. By a three-to-one margin the comments expressed a preference for a geographic split. In general, the comments included suggestions for assigning 716 NPA to one region or the other; reasons for keeping counties within a single area code; and concerns about the associated costs of changing printed material and notifying clients, family and friends of the new area code.

Approximately 65% of those who offered comments on the split option preferred that Rochester retain the 716 area code,¹ 11% favored allowing Buffalo to retain it, and 24% did not give a preference. Those who favored splitting the current 716 area code felt that each region would benefit by continuing to be defined by an area code, that it would be more convenient and less confusing to dial only seven digits within their home area code, and that it was a one-time change that people could easily accept. Generally, advocates of an overlay overwhelmingly stated that, under this option, businesses would be able to keep their 716 area code and their seven digit telephone number, and that they would be able to avoid having to pay to reprint business material.

¹ The large showing for Rochester may have been influenced by a Monroe County legislator and a radio personality who actively advocated that people contact us either by e-mail or via the Opinion Line to recommend that "the region be split and Rochester keep the 716 area code." As a result, we received hundreds of comments with that exact message.

Other comments suggested assigning a new area code to cell phones, faxes, pagers, and/or beepers; expressed confusion about the effect a new area code will have on the cost of local calls and regional calling plans; and proposed assigning those portions of counties presently served by other area codes (315 and 607) to the area code having the larger presence in the county. Numerous people stated that, prior to any decision, number conservation measures should be implemented. Some people suggested changing the dialing patterns, for example adding another digit, to increase the supply of telephone numbers available in an area code.

Finally, many people expressed appreciation for the opportunity to comment on this issue.

DISCUSSION AND CONCLUSION

Need for Relief

As noted above, the need for relief was recently found even more critical than previously thought, causing the code administrator to revise its declaration from a "jeopardy" to an "extraordinary jeopardy" situation for the 716 NPA. This finding was reached prior to our order instituting numbering resource measures,¹ which could forestall the need for a new area code. However, as noted above, we are required by FCC order to proceed for contingency purposes with the establishment of a "back-up" plan for the assignment of a new area code for the 716 NPA.

Choice of Remedies

1. Threshold Considerations

The available alternatives are two geographic splits and a single overlay. As they did in Long Island, the comparative merits of the remedies differ in two divergent ways

¹ Case 98-C-0689, supra, Order Instituting Wide Area Rate Centers and Number Pooling (issued December 2, 1999).

from what they were in the 1996-1997 New York City Proceeding¹: on the one hand, the overlay, long since announced in New York City and soon to be implemented there, is no longer a radical innovation inasmuch as it has been introduced in New York City and in various other states; on the other hand, public sentiment in New York City tended to support the overlay, while public sentiment in this case overwhelmingly favors the geographic split. Much of the support for the geographic split rests on two assumptions: that it would obviate intra-NPA ten-digit dialing and that it would be less costly for business and residents to implement, at least in the area retaining the existing code.

2. The Geographic Splits

The obvious drawback to a geographic split would be the need for all customers in one of the two regions to change their area code. This would inconvenience all such customers to a greater or lesser degree and impose some costs on business customers. (The special inconvenience to wireless carriers, which would have to reprogram their equipment, is great enough to warrant adopting a three-year permissive dialing period for existing wireless carriers if a geographic split should be adopted.² Flowing directly from any decision in favor of a split, of course, would be the need to decide the hotly disputed issue of which area would retain the 716 NPA.

Not all parties favored a geographic split; some objected to it because of its lesser replicability. The next time more numbers are needed in the region whose area code had changed, half its telephone subscribers would have to endure a second change. Sooner or later, therefore, overlays will almost

¹ Case 96-C-1158, New York City Area Code, Opinion No. 97-18 (issued December 10, 1997).

² The grandfathering of existing wireless carriers will not be adopted because the area code is being divided to match two distant communities of interest: Rochester and Buffalo.

certainly have to be introduced (unless code conservation can radically reduce the need for additional numbering resources). That assessment of the future, however accurate, does not require abandoning the split now in situations where it appears appropriate, especially where, as here, the use of a split would not preclude adoption of an overlay later, if needed.

3. The Overlay

The overlay overcomes many of the drawbacks of the split: customers are spared any number changes; difficult choices between areas are avoided; replicability and maximum longevity are ensured. The overlay has its own set of problems, however.

First, there is the asserted novelty of the mechanism and the confusion said to result from customers in proximity, perhaps within the same building, having different area codes. This concern was widely voiced by the public.

The question of intra-NPA ten-digit dialing was addressed in the New York City Proceeding, where we agreed that such dialing:

would constitute a considerable inconvenience, even though mitigated by the use of tone rather than rotary dialing and, for some customers, by various forms of abbreviated dialing equipment. The Staff Paper [in that proceeding] may be right that some day, 11-digit dialing will be universal, but that day is not yet here. Even though a geographic split also would cause increased 11-digit dialing, a universal need to dial 11 digits on calls within Manhattan would have to be seen as a drawback to an overlay.¹

We went on to note our efforts at the FCC to retain seven-digit intra-NPA dialing. Those on-going efforts recently resulted in a one-year stay of the ten-digit dialing requirement,

¹ Case 96-C-1158, supra, Opinion No. 97-18, mimeo p. 32.

but their ultimate outcome remains to be seen. In the meantime, mandatory ten-digit dialing for intra-NPA calls would remain a serious drawback to the overlay option.¹

4. Conclusion

We conclude that a geographic split should be employed in the circumstances presented here. For one thing, the litigation over ten-digit dialing remains pending, and the potential reinstatement of that requirement, which would be a serious drawback to the overlay, cannot be ignored. In addition, there may be room for implementation of number resource conservation measures, such as rate center consolidation and thousand-block number pooling.² As noted supra, however, we must move ahead to establish a plan for the introduction of a new area code.

Moreover, there is strong public opposition to the overlay and much less public support for it; and there are clear political boundaries that readily lend themselves to use in defining new area codes. We caution that our action in the instant case does not imply that overlays would not be used in the future; it simply means that this case is well-suited to a geographic split. On that basis, the geographic split is adopted.

The Staff Paper sets forth two geographic splits: Geographic Split A, which would divide the 716 NPA in two, and Geographic Split B, which would divide it in three. Allegany, Frontier, and Southern Tier West favor Geographic Split B but there are serious objections to its adoption. First, as Bell Atlantic-New York notes, the three-way split would assign twice as many new exchanges to western New York than would Geographic

¹ Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order, FCC 99-243 (October 21, 1999).

² Case 98-C-0689, supra, Order Instituting Wide Area Rate Centers and Number Pooling (issued December 2, 1999).

Split A, at a time when the North American Number Plan is under threat of exhaustion and thousand-block pooling is on the horizon. Next, the period of relief for one of the three areas would extend to 2035 while the other two regions would reach exhaustion in 2011. These periods may be extended by the adoption of numbering conservation measures, but the disparity would not be reduced enough to satisfy the Industry Numbering Committee's Area Code Relief Planning Guidelines, which call for roughly equal periods of relief in the newly created NPAs. On the other hand, Geographic Split A provides roughly equal relief periods on each side. Accordingly, Geographic Split B is unacceptable and Geographic Split A will be adopted.

Generally, the new NPA boundary should track the north to south county lines for Geographic Split A as the Staff Paper proposes. The reasons cited to depart from that clear county boundary line would be to avoid duplicating NXXs along the border so that customers in the border exchanges would retain their seven-digit numbers. As the Staff Paper observes, however, appropriate technology can obviate changes in customers' seven-digit numbers. Although it is estimated here that duplicate NXX's would be employed, the retention of the existing seven-digits numbers would eliminate a source of confusion.

We recognize that the use of county rather than rate center boundaries violates the industry's numbering assignment guidelines.¹ But, the FCC found in the 914 NPA proceeding that a departure from this guideline is warranted when the number of duplicate central office codes is small, the area code relief plan has been developed based on extensive input from the industry and from consumers affected by the decision, and steps are being taken to conserve numbers.²

¹ See NPA Code Relief Planning and Notification Guidelines, INC 97-0404-016, §§Z.11 and G.1, August 30, 1999.

² See letter from Lawrence E. Strickling, Chief, Common Carrier Bureau to Lawrence G. Malone, General Counsel, dated December 3, 1999.

In the instant case, we estimate that 14 rate centers will be split and no more than 29 duplicate central office codes will be needed; we have received extensive input from the industry and consumers; and we have implemented numbering conservation measures. Consequently, we find there is no need to forgo the benefit of a clear, county-line NPA boundary except in two instance, i.e., where the county lines cut through the Tonawanda Indian Reservation and the Oil Spring Indian Reservation. Here the area code boundary should follow the boundaries of the reservations. Staff should consult with the leaders of these communities to determine which area code is appropriate for them.

To mitigate the high cost of reprogramming, a three-year permissive dialing period will be adopted for wireless carriers in the new area code. To mitigate the inconvenience and cost effects of the split, we direct that the 716 NPA remain with Erie, Niagara, Cattaraugus, and Chautauqua counties. Recent census data show that these counties have a greater overall population, more business, and more wireless customers than the remainder of the 716 NPA. For example, the 1998 census statistics show that these four counties have a population of 1,375,730 while the remainder has approximately 1,081,952 residents. The four counties also have 32,383 business establishments, which exceed the estimated 23,941 establishments for the remainder of the 716 NPA. In addition, in each of the size categories based on the number of employees (i.e., 1-19, 20-99, 100-499, and greater than 499) the four counties have more business establishments than the other area. Finally, the four counties have 55 active wireless codes while the remainder of the 716 NPA has 50.

The new area code should be introduced as soon as needed, but precisely when the new code will be needed is uncertain. Pooling has just begun and we need time to evaluate more completely its effect. However, we are aware that the preliminary results of pooling indicate we can expect at least a

two year period before we need a new code. We will use this information in establishing our plan.

When the new code is introduced, it should be preceded by a comprehensive outreach and education program, conducted by Frontier, Bell Atlantic-New York, the other LECs, and the CLECs in consultation with Staff, and by an adequate permissive dialing period. Among other things, the duration of the permissive dialing period and intercept message period should each be extended to a minimum of nine months¹ to take account of the availability of new telephone directories reflecting the area code change and to give customers, especially businesses, a greater opportunity to make the necessary adjustment to a new area code with the least amount of practical disruption. Carriers that provide telephone directories to their customers should include, in their outreach and education plans, provisions for ensuring that directories provide newly needed area code information, especially with respect to telephones in border exchanges.

We are aware that there are communities that are split by the existing area code boundaries and wish to be united in one NPA. However, the Telecommunications Act of 1996 granted the FCC exclusive jurisdiction over the North American Numbering Plan as it pertains to the United States. The statute authorizes the FCC to delegate portions of such jurisdiction to the state commissions. So far, the FCC has not delegated to the state commissions authority² to implement new area codes outside the

¹ Case 99-C-0689, Omnibus Proceeding, Order Directing Retention of Overlay Set-aside NXX Codes in 716 NPA (issued February 7, 2000), p.3. In this order, we stated: "At a minimum, such efficiency measures will allow the implementation of our relief plan to proceed in a more orderly fashion. Pooling will make available more resources to allow for a longer permissive dialing period than would otherwise be possible..."

² Second Report and Order, Docket No. 96-98, rel. August 8, 1996.

the context of area code relief. Thus, we have no authority to independently modify area code boundaries.

The Commission orders:

1. Consistent with the conditions and requirements set forth in the foregoing opinion including the results of Staff's findings with respect to the two reservations, Frontier Telephone of Rochester, Inc. (Frontier), New York Telephone Company d/b/a Bell Atlantic-New York (Bell Atlantic-New York), and all other carriers providing local exchange service in the 716 NPA, acting in cooperation with the North American Numbering Plan Administrator, shall submit a joint plan outlining the steps necessary to activate a new area code as soon as it is needed for the existing 716 NPA exclusive of Niagara, Erie, Chautauqua, and Cattaraugus counties. The plan shall contain, at a minimum, a nine-month period for permissive dialing and a separate nine-month period for an intercept message. Within 30 days of the date of this opinion and order, Frontier, Bell Atlantic-New York and other affected carriers shall submit to the Secretary, for Staff's review, five copies of a joint plan for doing so.

2. Within 30 days of the date of this opinion and order, every carrier providing local exchange service in the existing 716 NPA shall submit to the Secretary, for review by Staff, five copies of its plan for an outreach and education program to acquaint its customers with the new area code and its operation.

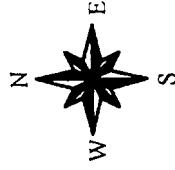
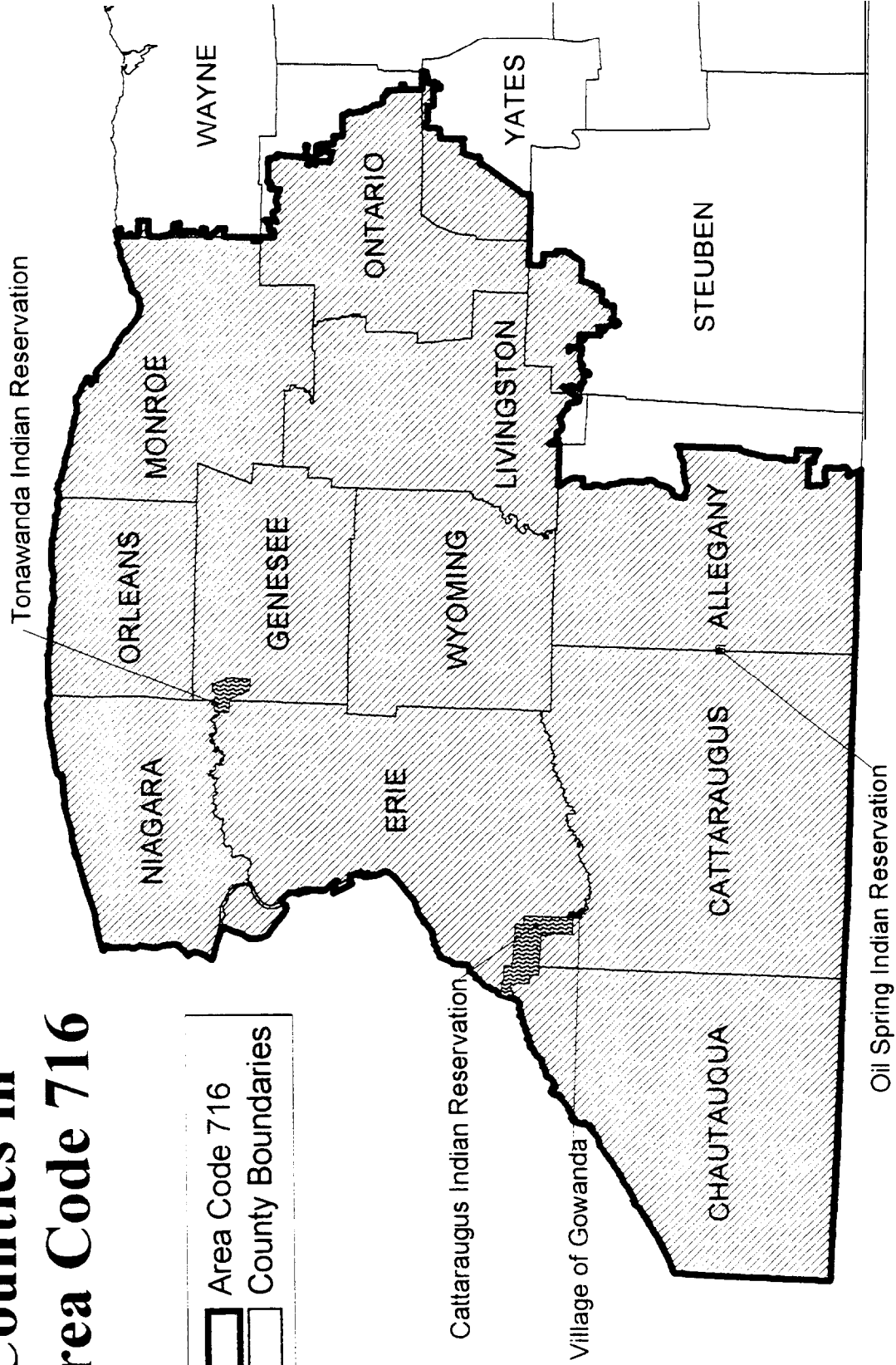
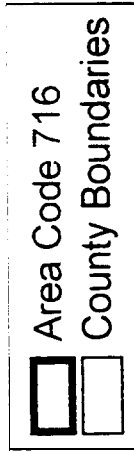
3. This proceeding is continued.

By the Commission,

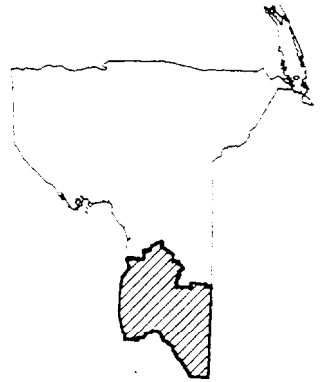
(SIGNED)

JANET HAND DEIXLER
Secretary

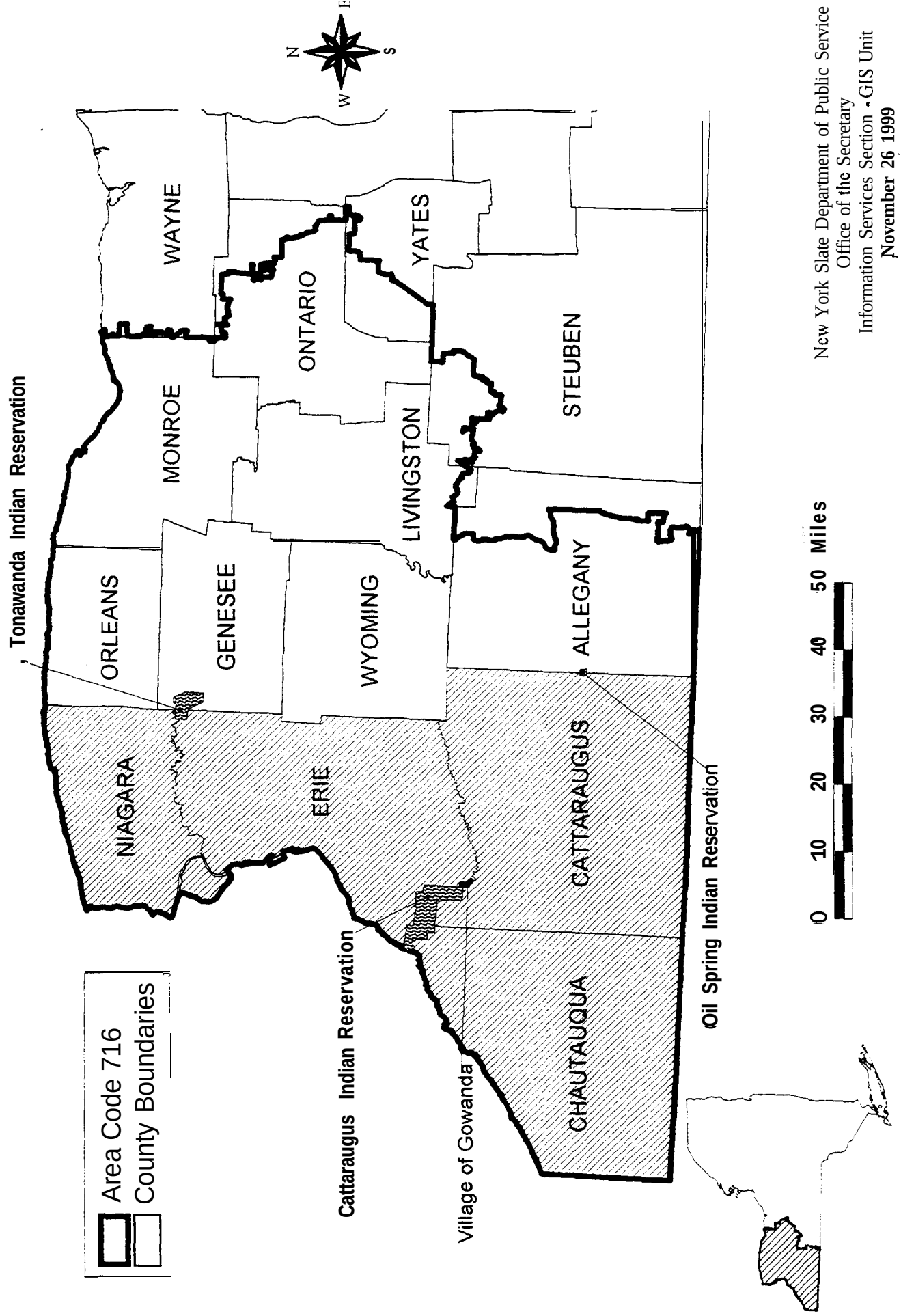
Counties in Area Code 716



0 10 20 30 40 50 Miles



Geographic Split A



Geographic Split B

