BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for numbering plan area relief for 904 area code, by BellSouth Telecommunications, Inc.	DOCKET NO. 961153-TL ORDER NO. PSC-97-0637-FOF-TL ISSUED: June 3, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of Central Telephone Company of Florida, Inc., United Telephone Company of Florida, Inc., ALLTEL Florida, Inc., and Northeast Florida Telephone Company, Inc.

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On behalf of Quincy Telephone Company, Inc., Florala Telecommunications, Gulf Telecommunications, Inc., and St. Joseph Telecommunications, Inc.

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On behalf of the City of Jacksonville, Florida.

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On behalf of the Commission Staff.

ORDER ON RECONSIDERATION AND REVISING IMPLEMENTATION DATES

BY THE COMMISSION:

On September 20, 1996, BellSouth Telecommunications, Inc., (BellSouth) filed a petition with this Commission seeking approval of a plan to provide relief from the expected exhaustion of numbers available for assignment in the 904 Numbering Plan Area (NPA) code. The 904 NPA code includes the Pensacola, Panama City, Tallahassee, Jacksonville and Daytona Beach LATAs, as well as a part of the Orlando LATA.

In Order No. PSC-97-0138-FOF-TL, issued February 10, 1997, we decided, after hearing, that the most appropriate way to avoid the expected exhaustion of the 904 NPA code was a geographic split following LATA lines, assigning a new NPA code to the Jacksonville LATA and a second new NPA code to the Daytona Beach and 904 portion of the Orlando LATAs, with the Tallahassee, Panama City and Pensacola LATAs retaining the 904 NPA code. This was identified as Option 4.

On February 21, 1997, ALLTEL Florida, Inc., (ALLTEL) and Northeast Florida Telephone Company, Inc., (Northeast) filed a joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL. ALLTEL and Northeast attached two letters to their motion. The first letter, dated February 12, 1997, was from Ronald R. Conners, Bellcore, Director, North American Numbering Plan Administration (NANPA), to R. Stan Washer, NPA Code Administrator, BellSouth. The second letter, dated February 17, 1997, was from Alan C. Hasselwander, Chairman, North American Numbering Council (NANC), to PSC Chairman Julia L. Johnson. Both letters expressed concern with our decision in Order No. PSC-97-0138-FOF-TL. ALLTEL and Northeast asked that we consider the letters as new evidence in our reconsideration decision. On February 28, 1997, St. Joseph Telecommunications, Inc., (St. Joseph) and Quincy Telephone Company, Inc., (Quincy) filed a joint response in opposition to the motion, as did AT&T on March 10, 1997. The respondents all objected to consideration of the letters in our reconsideration deliberations on the grounds that the letter to Chairman Johnson

was an ex-parte communication, and neither letter was part of the record in the proceeding.

On February 25, 1997, the City of Jacksonville (Jacksonville) filed a petition in support of ALLTEL's and Northeast's joint motion and a motion for leave to participate in their motion. On March 4, 1997, St. Joseph, Quincy, Gulf Telecommunications, Inc., (Gulf) and Florala Telecommunications, Inc., (Florala) jointly filed a response objecting to Jacksonville's motion.

Our staff received copies of other letters from the NANC, Bellcore, and the Federal Communications Commission (FCC) concerning our decision. These letters were the following:

(1) Mr. Conners to Mr. Washer, January 29, 1997;

(2) Mr. Hasselwander to Regina M. Keeney, Common Carrier Bureau, FCC, February 24, 1997;

(3) Mr. Connors to Mr. Washer, February 27, 1997;

(4) Mr. Hasselwander to Josephine Gallagher, Industry Numbering Committee, February 28, 1997;

(5) Mr. Hasselwander to Ms. Keeney, March 4, 1997; and

(6) Ms. Keeney to Mr. Hasselwander, March 14, 1997.

At the hearing on December 9, 1996, we heard testimony regarding the establishment of two new NPA codes to provide relief for the imminent exhaustion of the 904 NPA code. BellSouth witness Baeza was asked whether he was aware of any instance where the numbering plan administrator had rejected a state commission plan to provide area code relief. He replied that the administrator would review the plan to determine consistency with the industry guidelines and that he was aware that the administrator had rejected industry relief plans. He could not, however, think of a time when the administrator had rejected a plan approved by a state commission.

The same issue arose at the January 21, 1997, agenda conference when we made our decision to require two new NPA codes We discussed whether Bellcore would assign the codes, whether the NANC would object, and whether we should defer our decision until we heard definitively whether the administrator would assign the codes. We decided not to defer our decision, reasoning that it was appropriate that we should decide, and then the administrator and the NANC could respond.

The letters written by Bellcore, the NANC, and the FCC are their responses to our decision. They address the questions that arose at the hearing and at the agenda conference but could not be answered at the time.

At our agenda conference on April 1, 1997, we voted on our own motion to reopen the evidentiary record to consider what effect, if any, those letters, which constituted new evidence, should have on our decision in Order No. PSC-97-0138-FOF-TL. We decided to hold a limited hearing on April 16, 1997, to receive the letters and any related deposition testimony into evidence and to hear argument. These decisions are memorialized in Order No. PSC-97-0408-FOF-TL, issued on April 14, 1997.

Subsequently, Jacksonville filed a Petition for Leave for Limited Intervention on April 9, 1997. On April 11, 1997, St. Joseph, Gulf, Florala, and Quincy filed a response in opposition to the Jacksonville petition.

At the hearing on April 16, 1997, Jacksonville withdrew its motion for leave to participate in the motion for reconsideration. After hearing argument, we granted the City's petition for limited intervention. We admitted the letters into the evidentiary record, as well as the deposition testimony of both Mr. Hasselwander and Mr. Conners, given, respectively, on April 7 and April 11, 1997. We also heard argument from the parties on the letters and the related deposition testimony.

At the conclusion of the hearing, on our own motion, we voted to reconsider our decision in Order No. PSC-97-0138-FOF-TL. Before the issuance of our order memorializing our April 16, 1997, decision, BellSouth, on April 28, 1997, filed a Petition for Modification of Order No. PSC-97-0138-FOF-TL. In its petition,

BellSouth requested that we revise the permissive and mandatory dialing dates we approved in that order. We considered BellSouth's request at our agenda conference on May 6, 1997. Before the agenda conference, all the parties indicated that none of them intended to respond in opposition to the petition.

I. DECISION ON RECONSIDERATION

As noted above, at our agenda conference on April 1, 1997, we voted on our own motion to reopen the evidentiary record to consider what effect, if any, the letters written by Bellcore, the NANC, and the FCC, as well as any related deposition testimony, should have on our decision in Order No. PSC-97-0138-FOF-TL.

The Letters

In a letter dated January 29, 1997, to Mr. Washer, Mr. Conners writes that Bellcore cannot make the assignment of the two new NPA codes that BellSouth requested in order to implement the relief plan we approved in Order No. PSC-97-0138-FOF-TL. Mr. Conners states that to make the requested assignment would contradict Section 4.0(h) of the NPA Relief Planning Guidelines (Guidelines), which would avoid disparities in NPA lifetimes of more than 15 years. He proposes to bring this concern to the Industry Numbering Committee (INC). In a further letter dated February 12, 1997, to Mr. Washer, Mr. Conners reports that the INC advises that Section 2.10 of the Guidelines specifies that regulatory entities have the ultimate authority to approve or reject NPA relief plans, and that the NANPA may properly make the requested assignments. Mr. Conners states, however, that he would first seek guidance from the NANC, the entity charged with addressing conservation of numbering plan resources. In a letter of February 27, 1997, again to Mr. Washer, Mr. Conners reports further that, after meeting twice to discuss the issues raised by our decision, the NANC agreed to seek the advice of the FCC. Mr. Conners states a concern that the 904 NPA relief plan is precedent setting, and notes that Bellcore has received assignment requests from two other states that violate the same provision of the Guidelines.

Mr. Hasselwander, in a letter dated February 17, 1997, to Chairman Johnson, writes that "[t]here was significant concern

expressed at the [February 13, 1997,] meeting [of the NANC] about the potential assignment because of the ramifications of such a decision on conservation of number resources." Noting that the NANC is troubled that such an assignment would be viewed as precedential despite a growing scarcity of available NPA codes, Mr. Hasselwander urges Chairman Johnson to reconsider relief plans more consistent with Section 4.0 of the Guidelines.

In a letter dated February 28, 1997, to Ms. Gallagher, Mr. Hasselwander writes that the NANC decided to request that the INC review the Guidelines to identify ambiguities leading to difficulties in the administration and application of numbering resources.

In a letter dated February 24, 1997, to Ms. Keeney, Mr. Hasselwander writes that the "NANC has begun to consider its role in number conservation." He continues:

> It is our belief that there is a high level of urgency to conservation issues in general and those specifically raised by the Northern Florida situation. I am therefore requesting guidance about how we should proceed ... It is our strong belief that questions arising out of the Florida area relief plan need to be addressed quickly.

In a further letter to Ms. Keeney dated March 4, 1997, Mr. Hasselwander states that the NANC believes that the NPA assignments proposed for Florida, California, and Utah are "inconsistent with the need to conserve NPA codes." Additionally, he states that the NANC has "expressed serious concern about the precedent that will be established by these assignments and the potentially profound effect a continuation of similar practices will have in occasioning a premature depletion of the remaining NPA codes ...." He concludes, saying that this fall, following a review of the Guidelines, the NANC intends to "recommend to the FCC and other NANPA governments the adoption of the Guidelines to assure compliance with them."

On March 14, 1997, Ms. Keeney responded to Mr. Hasselwander's letters to her. In her letter, she states that she "share[s] the

NANC's concern that number administration lead to conservation and efficient use of numbering resources." She notes that in FCC 95-283, CC Docket No. 92-237, the FCC "affirmed its policy that administration of the [NANP] must facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to all service providers." She applauds the NANC's efforts "to help us ensure efficient assignment and conservation of numbers," and she offers her support for "the actions NANC has taken thus far to ensure that numbering resources are used in a manner consistent with the goal of number conservation."

In Mr. Hasselwander's deposition, when asked why it is important in the case of a geographic split that NPA codes exhaust at roughly the same time, he replies:

> There are roughly 600 NPAs that are still available for a lot of purposes, and if they are assigned so that they don't exhaust until substantially out into the future, it is our belief that that will lead to an exhaust ... closer in in time ... So it's really an issue of if I assign something that's going to exhaust substantially out in the future, I will use up these NPAs and their ability to be assigned elsewhere sooner than I need to. They won't be available ... if I assign them out to 2030, for example, [they] won't be available in 2010 if [needed] .... [I]n the course of one year the availability of NPAs in the future, how long they would last, that is, had diminished by ten years. So there's been a lot of concern about NPA exhaust.

Later in his deposition, Mr. Hasselwander explains what he meant by his statement in his February 24, 1997, letter to Ms. Keeney that "there is a high level of urgency to conservation issues:"

> [T]here had been previous discussions about the impact of a lot of things on NPAs, including competition, including entry of all

> kinds of new carriers, on how quickly the NPAs were being used, and there certainly was a high feeling of urgency in general about conservation issues. The northern Florida situation happened to be a situation that was first brought to the attention of NANC, and in the opinion of the NANC members, could establish a precedent ... [G]oing forward it was the belief of NANC that we needed to fairly quickly come to grips with conservation of NPAs in general ... for a number of reasons. One was clearly the cost, the estimate being that [if] we run out of NPAs, the cost to this nation is conservatively probably $50 billion, to say nothing about what it could do in terms of competitive entry and in perhaps preventing some competitive entry.

In his deposition, Mr. Hasselwander also states his belief that the FCC has ultimate authority over numbering issues and that the FCC has delegated to state commissions the authority to implement NPA code relief plans that are consistent with the FCC policy objectives for numbering. He states that the NANC is focused on getting into place as quickly as possible enforceable measures that will enable numbering resources to be conserved.

Mr. Conners, in his deposition, explains that disparate code lifetimes are a concern:

> [W]hen we ... do splits, we try to draw boundaries in such a way that the lifetimes of [the] two NPAs are essentially equal. We do that in order to try to get the most mileage we can out of each of the NPA codes.
>
> Now, you can't always do that exactly ... But the industry struggled and discussed and tried to figure out what would be a reasonable maximum difference in the lifetimes. [S]o they came up with 15 years.

In his February 12, 1997, letter to Mr. Washer, Mr. Conners states that "INC participants expressed concerns that such assignments [as contradict the guidelines] would be in direct conflict with accepted number conservation practices and contrary to the spirit and intent of the guidelines." In his deposition, he explains that:

> [F]or purposes of conservation of area codes, it appeared to the industry to be unwise for split plans to have disparities in them of more than 15 years ... The issue here is that the participants in the [INC] were also concerned about the disparate lifetimes ... What we are talking about ... is a finite number of area codes that need to last for as long as we can make them last. And we want to use that pool as effectively as we can because the cost of expanding is going to be very high.

Later, in his deposition, when asked if the remaining NPA codes are projected to become exhausted, Mr. Conners replies:

> [B]ased on the 1996 [Central Office Code Utilization Survey], the straight-line projection that was made indicated the supply would exhaust about 2025. However ... we, as well as most of the industry, are skeptical. We expect that it's going to exhaust significantly sooner than that .... When it exhausts we will have to expand the telephone number beyond its current ten-digit size.

Mr. Conners states that the Guidelines have worked well in the past, but cautions that if they are to continue to work well, "[j]ust like any voluntary standard, group conformance to them is really essential." He also states that if we were to adopt an option that does meet the Guidelines, "[t]hat would certainly ... do a lot to alleviate my concerns about conservation of area codes."

Argument

ALLTEL and Northeast Florida argue that number administration in the United States is based upon industry guidelines that work well only if they are followed without significant exception. They point out that the FCC has concluded that the industry model for numbering administration will permit fair and efficient overall administration of numbering resources and best serves the public interest. They contend that, if the evidence in the letters and deposition testimony concerning the nature of the guidelines and the importance of following them had been before us, we would not have approved Option 4.

ALLTEL and Northeast Florida argue further that the letters express a remarkable concern that our decision worsens the rapidly diminishing supply of NPA codes. They point to Mr. Conners' testimony that the expected exhaustion of NPA codes was advanced from 2035 in 1995 to 2025 in 1996. They contend that the new evidence shows that we should take every reasonable step to conserve numbers.

ALLTEL and Northeast Florida observe that the FCC has authorized the states to resolve matters involving the implementation of new area codes, subject to the FCC's policy objectives for numbering administration. One of these objectives is that administration must facilitate competitive entry by making numbering resources available on an efficient, timely basis to communications services providers. The companies contend that the letters and deposition testimony call into question whether Option 4 is an efficient use of numbering resources.

ALLTEL and Northeast Florida argue, moreover, that as a result of our decision, and similar decisions recently in Utah and California, the NANC has resolved to recommend to the FCC that it adopt the Guidelines as agency rules. They contend that we did not contemplate this result and, that, if we had, we would not have decided as we did.

In sum, ALLTEL and Northeast Florida contend that the letters and deposition testimony make clear the importance of an effective industry-led, continent-wide number administration system and the critical state of numbering resources. They urge that if we had

been advised of the nature of the industry's responsibility to administer numbering resources and the need for conservation of numbering resources at the time of our decision, we would have decided differently.

Jacksonville argues that the letters and related deposition testimony indicate that we should reconsider our earlier decision and approve a plan consistent with the Guidelines. The City asserts that Option 1 is consistent with the Guidelines, and Option 4 is not.

BellSouth Mobility argues that, while we were aware at the time that our decision was contrary to the Guidelines, the evidence of record then did not show the importance that should be attached to the Guidelines. It urges that the letters and related evidence now make the importance of the Guidelines clear and require that we reach a different decision, one consistent with the Guidelines.

BellSouth points out that it did not advocate any one of the options before us at the time of our decision. It believes, however, that the letters and related deposition testimony reinforce the importance and the necessity of applying the Guidelines in conserving NPA codes.

AT&T asserts that nothing in the letters and deposition testimony warrants a change of our decision; the letters are merely the reactions of the writers to our decision.

St. Joseph, Gulf, Florala, and Quincy, casting the letters as mere expressions of interest, argue that neither the letters nor the deposition testimony suggest that we labored under any jurisdictional impediment in making our decision. To the contrary, these companies argue, the letters and testimony recognize that the decision was ours to make. They argue that, while we did not follow the guideline in question, we did consider it in arriving at our decision. Thus, they conclude nothing in the letters and related deposition testimony should cause us to recede from our decision.

Standard of Review

The standard of review for a motion for reconsideration is whether there was some point of fact or law that we overlooked or that we failed to consider in rendering our order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 Fla. 1st DCA 1981).

Conclusion

We find that in reaching our decision in Order No. PSC-97-0138-FOF-TL to implement Option 4 as the relief plan best serving all the customers in the present 904 NPA code, we proceeded in a manner consistent with our authority. Upon consideration, however, we find it appropriate to reconsider that decision on our own motion. We find that the letters and related deposition testimony present substantial pertinent information that was not in the record originally. In approving Option 4, we were focused on what was best for affected Floridians. We misapprehended, however, certain national ramifications of our decision.

Under the NANP, the number of NPA codes available for assignment is a finite and rapidly exhausting resource. In 1995, the industry projected that NPA codes would be exhausted in 2035. In 1996, that projection was advanced to 2025. Bellcore cautions that exhaustion could occur still earlier.

The FCC adopted the industry model for overall administration of the NANP. The FCC reasoned that the industry model would foster an integrated approach to numbering administration across NANP member countries and leverage the expertise and innovation of the industry. At the same time, the FCC rejected the suggestion that it adopt a regulatory model by which it would assume all numbering functions. The industry-led NANP administration relies upon the NPA Code Relief Planning Guidelines. The Guidelines are designed to facilitate the conservation of numbering resources. In deviating from Section 4.0(h) of the Guidelines, we have caused Bellcore and the NANC to express concern that this will establish a precedent with the effect of accelerating the exhaustion of NPA codes still more.

On the basis of this new information, we conclude that we did not consider the gravity of the matter of numbering resources conservation. We have become aware of the potential effect on competitive entry into the telecommunications marketplace if the present pool of NPA codes is not made to last as long as possible. We now understand the relationship of the industry guidelines to the stability of the number administration system. The guidelines are voluntary. Because they are voluntary, their continued effectiveness depends upon the continued cooperation of all those charged with the administration of the NANP. We have been apprised that the day of the ultimate exhaustion of NPA codes is all too imminent. It is now apparent to us that we must consider not only the effect of our decision in Florida, but also in the United States and, indeed, in North America. We find that our decision in Order No. PSC-97-1038-FOF-TL is not in harmony with the national policy to avoid whenever possible the use of NPA codes that are not absolutely necessary.

Therefore, on reconsideration, we approve the relief plan for the 904 NPA code identified as Option 1 in Order No. PSC-97-0138-FOF-TL. This plan assigns a new NPA code to the Pensacola, Panama City and Tallahassee LATAs, while retaining the 904 NPA code in the Jacksonville, Daytona Beach and 904 portion of the Orlando LATAs. We find that this plan best serves the interests of both Florida and the nation.

II. DECISION REVISING IMPLEMENTATION DATES

As noted above, following our decision on reconsideration, but prior to our memorializing that decision in an order, BellSouth, as central office code administrator, filed a petition in which it asked us to revise the dates we approved in Order No. PSC-97-0138-FOF-TL for permissive and mandatory dialing. In Order No. PSC-97-0138-FOF-TL, we established that permissive dialing would begin by June 30, 1997, and mandatory dialing, by June 30, 1998. BellSouth requested that we revise the implementation dates to require permissive dialing beginning on June 23, 1997, and mandatory dialing beginning on March 23, 1998. Our staff polled the counsel for each of the parties of record in this proceeding and was informed that none of them would file a response in opposition to BellSouth's petition.

In its petition, BellSouth pointed out that customers assigned a new NPA code need time to make the necessary changes to their telecommunications equipment and to advise business associates, family, and friends of the change. They need time also to change printed materials and to advertise the new number. BellSouth pointed out that at the same time current code holders, including personal communications services (PCS) providers, are expected to request all of the 90 NXX codes still available for assignment in the 904 NPA code to meet service needs in the next twelve months. BellSouth indicated that it expects that code requests may increase even more because of the recent PCS auctions. Furthermore, noting that Jacksonville is a prime location for local competition in the Southeast, BellSouth stated it could not be certain how many codes alternative local exchange carriers will request in this period of time.

BellSouth stated that the North Florida code holders have agreed to ensure that appropriate announcements will be made to minimize customer confusion and dialing errors that may occur as a result of the shortened permissive dialing period. In addition, it stated that the 15 NXX codes presently dedicated for state government use will be designated "assign in new area only upon request" codes. BellSouth also stated that it intends to remind cellular service providers that existing code assignment guidelines allow them to request that the 904 NPA NXXs assigned to them in the areas served by the new 850 NPA code may be reserved from assignment in the 904 NPA code for twelve months, thereby affording additional time to change customer equipment.

We share BellSouth's concern with the acceleration of code usage in the Jacksonville LATA. Usage has risen from 6 codes a month at the time of the December 9, 1996, hearing in this proceeding to approximately 10 codes per month now. Unless a jeopardy condition is declared, the approximately 90 NXXs still available for assignment will be assigned in the next nine months. When a jeopardy condition is declared, the industry rations the number of codes assigned in order to sustain the mandatory dialing date. We do not favor the prospect of rationing codes. We are concerned that with rationing, telecommunications carriers may not receive NXXs necessary to provide competitive local exchange service or to provide service due to normal growth.

We find that it is important to provide a permissive dialing period that is as long as possible so that customers can handle the details necessary to implement a new area code. We conclude that a nine month permissive dialing period in the circumstances of this case is sufficient. Therefore, we find it appropriate to revise Order No. PSC-97-0138-FOF-TL, to establish June 23, 1997, as the date for the start of permissive dialing and March 23, 1998, as the date for the start of mandatory dialing.

In addition, to minimize problems in dialing a telephone number changed from the 904 NPA code to the 850 NPA code, we shall require that all telecommunications carriers provide an intercept message indicating that the NPA code has changed from 904 to 850. The intercept message shall be placed on all 904 NPA code NXXs currently assigned in the new 850 NPA code. The intercept message shall continue for one year after mandatory dialing begins, or until the NXX in the 850 NPA code is reassigned to the 904 NPA code, whichever occurs first. Furthermore, BellSouth, as the code administrator, shall to the extent possible, reassign the 904 NPA code NXXs that are in the new 850 NPA code by density of business customers, with the NXXs having the lowest density of business customers assigned first and the NXXs having the highest density of business customers assigned last.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that each and all of the specific findings set forth in the body of this Order are approved in every respect. It is further

ORDERED that, on our own motion, we reconsider our decision in Order No. PSC-96-0138-FOF-TL and approve Option 1, as described in the body of this Order, as the relief to be implemented for the 904 NPA code. It is further

ORDERED that we hereby revise Order No. PSC-97-0138-FOF-TL, to establish June 23, 1997, as the date for the start of permissive dialing and March 23, 1998, as the date for the start of mandatory dialing. It is further

ORDERED that all telecommunications carriers shall provide an intercept message indicating that the NPA code has changed from 904 to 850 on all 904 NPA code NXXs currently assigned in the new 850 NPA code. The intercept message shall be continued for one year after mandatory dialing begins or until the NXX in the 850 NPA code is reassigned to the 904 NPA code, whichever occurs first. It is further

ORDERED that BellSouth Telecommunications, Inc., shall to the extent possible reassign the 904 NPA code NXXs that are in the new 850 NPA code by density of business customers, with the NXXs having the lowest density of business customers assigned first and the NXXs having the highest density of business customers assigned last. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 3rd day of June, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn

Kay Flynn, Chief of Records

(S E A L)

CJP

DISSENTS

Commissioner Kiesling dissents with written comments and concurs with Commissioner Deason's dissenting comments.

I respectfully dissent. The letters on which rehearing was based do not constitute newly discovered evidence and do not

establish that we erred or overlooked a fact or point of law in our previous decision. At best, I believe the letters to be cumulative or auxiliary evidence.

At the January 21, 1997, Agenda Conference, after a full and complete Chapter 120 formal hearing, we voted for an area code plan that gave the state two new area codes rather than the one sought by the utility. At that Agenda Conference, we specifically discussed the policies and authority of the North American Numbering Council. This issue was also addressed during hearing and in pre-filed testimony.

At the April 1, 1997, Agenda Conference, staff brought to our attention several letters written in response to our January 21st decision and Order No. PSC-97-0138-FOF-TL, issued February 10, 1997. Since these letters were written post hearing, their content could not constitute newly discovered evidence; they simply did not exist until the hearing was concluded. Further, their content addresses matters raised and discussed at hearing and the first Agenda Conference.

The standard for admitting evidence after a hearing is concluded requires four elements:

1) The evidence will probably change the result;
2) the evidence was discovered after hearing;
3) the evidence could not have been discovered until after the hearing by exercise of due diligence; and
4) the evidence is material, not merely cumulative.

See, Dade National Bank v. Kay, 131 So.2d 24 (3rd DCA 1961).

In this instance the letters could not have been discovered until after the hearing because they were not in existence until after the hearing and our decision. Further, the information in these letters is not material; it is merely cumulative and auxiliary, adding nothing new to the evidence on which we based our initial decision.

Even if it were appropriate to reopen the record and consider the letters and the supporting depositions, the depositions contain

nothing probative. The testimony of the North American Numbering Plan Administrator, Mr. Ronald Conners, yields no information not already available to this Commission in the record from the full, formal hearing. For example, at page 16 of Exhibit C, Mr. Conners agrees that the Federal Communications Commission has delegated to the states the authority to determine which area codes should be implemented since the states are in the best position to determine the circumstances associated with a specific relief need at the regional level. Mr. Conners testifies that the numbering plan sets goals and is not mandatory. [Ex.C, p.36] He further testifies that when every guideline cannot be complied with, the Commission is to exercise its judgment [Ex.C, p.36], and that there are circumstances where it might be appropriate to deviate from the guidelines. [Ex.C, p.23] He also reiterates that the numbering plan is a voluntary standard. [Ex.C, p.40]

At page 42 of Exhibit B, Alan Hasselwander, Chairman of the Federal Advisory Council, NANC, testifies that the NANC would not have any intention to direct or to advise Bellcore not to issue Florida the two new area codes. He also opines that in theory there could be other plans that were not proposed which could be more optimal, but he states that he does not know that as a fact. [Ex.B, p.31] Witness Hasselwander also testifies that the PSC decision on Florida area codes does not violate any guidelines. [Ex.B, p.52] Further, Mr. Hasselwander's testimony on whether our decision of January 21,, 1997, could set a nationwide precedent is merely speculative, by his own admission. [Ex.B, p.43]

Further, it is clear from Mr. Hasselwander's testimony that the purpose of his letter to Chairman Johnson was to request reconsideration of our decision. [Ex.B, p.55] Such a letter cannot be deemed evidence.

Clearly the testimony of Witnesses Hasselwander and Conners is cumulative, is of no probative value, and does not support rehearing. Further, neither the letters nor the supporting depositions establish any error in our first decision. Such a finding of error or the overlooking of a material fact or point of law are required to grant rehearing. See, Diamond Cab Co. of Miami v. King, 146 So. 2d 889 (Fla. 1962).

Based on the forgoing, I believe the majority's decision to reopen the record and to reconsider its decision departs from the essential requirements of law.

Commissioner Deason dissents with written comments.

I respectfully dissent from the majority's decision. I concur with the comments put forth by Commission Kiesling and would like to express several additional concerns.

My first concern relates to the assertion that our original decision did not adequately consider area code conservation. The order is clear that this Commission was aware that implementation of Option 4 would be in conflict with one of the industry guidelines. It was also clear, however, that if Options 1, 1a, or 2 were implemented, a new NPA code would have to be assigned to the Daytona Beach or Jacksonville LATA not later than 2002 and possibly earlier. As such, there was little opportunity for the Commission to "conserve" or avoid utilizing the third code. Consequently, the Commission chose to implement Option 4 because it provided the longest period of relief throughout the entire area and avoided the need for us to implement additional relief in a just a few years, as would be necessary with all of the other options. I found nothing in the additional evidence taken that suggests that the Commission's original logic was flawed and not in the best interest of all Florida's citizens.

In addition, I am concerned about the emphasis that was placed on the national precedent we would be setting by implementing Option 4. The decision to implement Option 4 was based on the evidentiary record developed in this proceeding. In making its decision, the Commission considered the issues and circumstances, most likely unique, faced in North Florida today and decided how to best meet the needs of its citizens. We adequately considered all of the industry guidelines and simply exercised our discretion as contemplated under prescribed procedure. I find it difficult to believe that there would be a flood of state commissions faced with a record sufficiently similar to ours to justify a wide spread "grabbing" of available area codes.

Finally, I am concerned with the procedures that have been followed in this case. The majority voted to re-open the record to consider a number of letters that were exchanged between outside parties. I voted against this action. I believe the concerns expressed in the letters were adequately considered in the original record. But perhaps more importantly, I believe that the decision to re-open the record sets an ill-advised precedent because it creates, in my opinion, uncertainty as to when the Commission will and will not re-open the record.

Following the Commission's decision to re-open the record, but prior to issuing this order, the Commission received a copy of a letter and a petition from BellSouth. The petition requested that the Commission shorten the established permissive dialing period because code usage in the Jacksonville LATA has accelerated since the hearing. Apparently, code usage has risen from 6 codes a month at the time of the December 9, 1996, hearing to approximately 10 codes per month now. This new information was not admitted into the record. As such, I am concerned with the majority's decision to utilize information not in the record to change the length of the permissive dialing period. It is particularly troubling when such information, were it in the record, would be relevant to the basic question of whether a two-way or-three-way split is appropriate. Instead, the information was simply used to shorten the permissive dialing period because it was deemed "procedural."

Given the procedures followed in this case, I believe that the Commission now needs to clarify when it is and is not appropriate to re-open the record of a proceeding. Until such clarification is made, I fear there will be uncertainty as to how the Commission will handle the letters and protests we will invariably receive after we make unpopular decisions.

NOTICE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice

should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.