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REPLY TO TALLAHASSEE

February 25, 1997

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**Ms. Blanca Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850**

**RE: Petition for Numbering Plan Area Relief for 904 Area Code, by BellSouth
Telecommunications, Inc., Docket No. 961153-TL**

Dear Ms. Bayo:

Enclosed please find the original and fifteen (15) copies of the Petition in Support of Alltel Florida, Inc.'s and Northeast Florida Telephone Company's Joint Motion for Reconsideration and Motion for Leave to Participate in Alltel Florida, Inc.'s and Northeast Florida Telephone Company's Joint Motion for Reconsideration and the City of Jacksonville's Request for Oral Argument on Motion for Leave to Participate in Alltel Florida Inc.'s and Northeast Florida Telephone Company's Joint Motion For Reconsideration.

DOCUMENT NUMBER-DATE

02123 FEB 25 5

FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE

02122 FEB 25 5

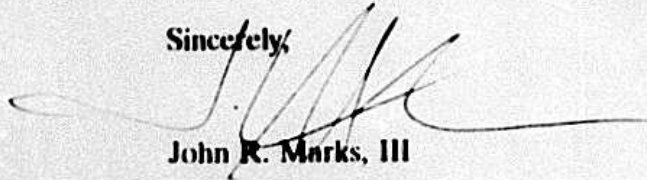
FPSC-RECORDS/REPORTING

KATZ, KUTTER, HAIGLER, ALDERMAN, MARKS, BRYANT & YON, P. A.

Ms. Blanca Bayo
February 25, 1997
Page 2

If additional information is needed, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Marks, III", with a long horizontal flourish extending to the right.

John R. Marks, III

JRM/lcg
Enclosures

cc: Ginny Myrick

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
Filed: February 25, 1997**

**PETITION IN SUPPORT OF ALLTEL FLORIDA, INC.'S
AND NORTHEAST FLORIDA TELEPHONE COMPANY'S
JOINT MOTION FOR RECONSIDERATION
AND
MOTION FOR LEAVE TO PARTICIPATE IN ALLTEL
FLORIDA, INC.'S AND NORTHEAST FLORIDA TELEPHONE
COMPANY'S JOINT MOTION FOR RECONSIDERATION**

The City of Jacksonville (Jacksonville or City) by and through its undersigned counsel and pursuant to Chapter 120, Fla. Stats., hereby files this Petition in Support of Alltel Florida, Inc.'s and Northeast Florida Telephone Company's Joint Motion for Reconsideration (Joint Motion) of Florida Public Service Commission (Commission) Order No. PSC-97-0138-FOF-TL, (Order) filed on February 21, 1997. Further, Jacksonville moves the Commission for leave to participate in the pending Joint Motion for Reconsideration including any oral argument or rehearing on the merits of the Order. In support thereof, Jacksonville states the following:

1. Jacksonville is a Florida municipal corporation, having its offices at 220 East Bay Street, Jacksonville, Florida 32202.
2. The name, address and telephone number of the person to receive notices, pleadings, orders, or other documents and communications in connection with this proceeding is:

DOCUMENT NUMBER-DATE
02122 FEB 25 97
FPSC-RECORDS/REPORTING

**John R. Marks, III
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Marks, Bryant & Yon, P.A.
106 East College Avenue
Suite 1200, Highpoint Center
Tallahassee, Florida 32301
Tel: (904) 224-9634
Fax: (904) 222-0103**

3. **Jacksonville is a unit of state government authorized by state statute to represent the interest of the citizens of the City of Jacksonville which encompasses all of Duval County. This proceeding before the Commission involves the substantial interest of the residents of Jacksonville and the City is authorized to represent their interests.**

4. **Jacksonville files this Petition and Motion as a "person" having a substantial interest in the subject matter of the Order. Jacksonville asserts its own interest as a telephone service subscriber, and the interests of those citizens and businesses of Jacksonville who are subscribers of telephone services.**

MOTION FOR RECONSIDERATION

5. **Without repeating the details of the Joint Motion for Reconsideration, the City of Jacksonville supports the Joint Motion in its entirety and would add the following:**

6. **The Order specifically refers to the NPA Relief Planning Guidelines (Guidelines) and acknowledges that they represent sound general principles of NPA Relief Planning. The staff's recommendation and the Order recognized that the selected area code plan, Option 4, was inconsistent with the Guidelines. It would appear that based on criteria absent from the record, the Commission decided on an option which**

was not adequately addressed at the hearing or supported by the evidence.

7. Jacksonville is significantly impacted by the Commission's decision because the Jacksonville LATA is the area with the highest customer density. According to the Guidelines, if a change is necessary it is preferable for an existing area code to serve the highest density area. By raising criteria other than those found in the guidelines, the Commission may cause the unintended result of adding total end user confusion and cost of implementation.

8. By selecting Option 4, the Commission did not fully consider the potential adverse impact of having a three-way split along LATA lines and imposing a third code which would not exhaust for more than 15 years. For instance, with the advent of local exchange competition, it may not be advantageous to have area codes that track LATA boundaries. Further, the impact of having contiguous areas with codes that do not exhaust at roughly the same time could adversely affect the conservation of area code number resources. The Commission appeared to be more concerned with the rapid exhaustion of codes and may have overlooked the potential adverse affects of extending codes beyond practical and preferred exhaustion periods.

THE COMMISSION'S AUTHORITY TO GRANT LEAVE TO PARTICIPATE IN THE JOINT MOTION FOR RECONSIDERATION

9. In the absence of any express provision to the contrary, the Commission is subject to the provisions of the Administrative Procedure Act, Chapter 120, Fla. Stat. as amended (the APA). Van Gorp Van Service, Inc. v. Mayo, 207 So. 2d 425 (Fla. 1968)

and ASI, Inc. v. Florida Public Service Commission, 334 So. 2d 594 (Fla. 1976). The APA contains no provisions excepting the instant proceedings.

10. Apart from the Commission rules, §120.52(12) Fla. Stat. defines who may be parties and recognizes several distinct categories of persons who may be permitted to appear before an agency. It provides, in pertinent part, as follows:

(12) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or¹ participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties. (emphasis added)

The City of Jacksonville recognizes that under subsections (a) & (b) it may have

¹ The word *or* is ordinarily interpreted as disjunctive. See e.g. Pompano Horse Club v. State, 111 So. 801, 805 (Fla. 1927):

In its elementary sense the word "or" is a disjunctive particle that marks an alternative, generally corresponding to "either," as "either this or that"; a connective that marks an alternative. 29 Cyc. 1502. It often connects a series of words or propositions, presenting a choice of either. ...

Employed between two terms which describe different subjects of a power, the word "or" usually implies a discretion when it occurs in a directory provision, and a choice between two terms when it occurs in a permissive provision. (emphasis added)

foregone its ability to participate as an "intervenor" in this proceeding. However, §120.52(12)(c) Fla. Stats. clearly permits the Commission to allow a person who does not fall within the parameters of subsections (a) and (b) to participate in agency proceedings in a manner similar to *amicus curiae*. It further permits the Commission to limit the scope of such participation provided it does so by properly promulgated rule.

11. The Commission's rules governing Practice and Procedure, §§ 25-22.001, F.A.C. *et seq.*, are silent as to the Commission's jurisdiction to permit persons to participate in the Commission's proceedings pursuant to § 120.52(12)(c) Fla. Stats. or in the manner of *amicus curiae*. Clearly, the Commission's Rules do not prohibit such participation.

12. Jacksonville is a "person" whose interests are substantially affected by the Order and it represents the interests of its citizens whose substantial interests will be affected by the Commission's actions. Had Jacksonville intervened it would be a proper party to the instant Joint Motion and any reconsideration or rehearing on the merits of the Order. § 120.52(12)(b) Fla.Stats. Section 120.52(12)(c) Fla. Stats. would appear to allow the participation of a party whose substantial interest will not be affected by the agency action. As a person and representative of persons whose interests are substantially affected by the order, Jacksonville should be considered a proper entity to at least participate in the Joint Motion for Reconsideration and be allowed to participate in any future oral argument or rehearing on the merits of the Order.

13. Jacksonville is not requesting the Commission to rehear this matter, reopen the record or consider new evidence. It is Jacksonville's position that even if its substantial interest were not being determined the Commission could nevertheless grant leave for Jacksonville to participate in the manner of *amicus curiae*. § 120.52(12)(c) Fla.Stat.

14. Standing as *amicus curiae* is an alternative to intervention. Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1500-01 (S.D. Fla. 1991). A person may be permitted to appear as *amicus curiae*, for the first time, on appeal. Morin v. City of Stuart, 112 F. 2d 585, (5th Cir. (Fla.) 1939).

JACKSONVILLE'S CONSTITUTIONAL RIGHT TO PARTICIPATE IN THE JOINT MOTION FOR RECONSIDERATION

15. As a person substantially interested in the subject matter of these proceedings Jacksonville may have a right, apart from any discretionary standing the Commission may grant, to participate in the instant proceedings. This right to participate is not impaired by Jacksonville's absence from the initial hearing. All persons having a direct and substantial interest in an order sought to be reviewed (or in this case reconsidered) must be made parties to an administrative appeal of that order. The refusal or failure to do so could deny those parties due process of law. State ex rel. Investment Corporation of South Florida. v. Board of Business Regulation, 227 So. 2d 674, 677 (Fla. 1969), citing to Harrison v. Ocala Building and Loan Association, 42 So. 696 (Fla. 1906); Nichols and Johnson v. Frank, 52 So. 146 (Fla. 1910) and Headley v.

Lasseter, 147 So. 2d 154 (Fla. 3d DCA 1962).

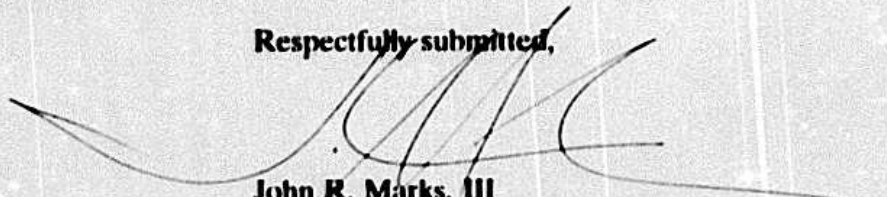
16. Where the tribunal disposes of the administrative appeal in the absence of such interested parties, its decision will be reversed as error upon judicial review. State ex rel. Investment Corporation of South Florida, supra.

RELIEF REQUESTED

BASED UPON THE FOREGOING the City of Jacksonville respectfully request the Florida Public Service Commission to issue an order granting the Joint Motion for Reconsideration and further granting leave to the City of Jacksonville to participate in the Joint Motion for Reconsideration, including any oral argument and any subsequent rehearing of the Commission's Order No. PSC-97-0138-FOF-TL.

Date this 25th day of February, 1997.

Respectfully submitted,



John R. Marks, III
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106 East College Avenue, Suite 1200
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(904) 224-9634

**CERTIFICATE OF SERVICE
DOCKET NO. 961153-TL**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by hand delivery to Ms. Blanca Bayo, Director, Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Mr. Charlie Pellegrini, Mr. Will Cox, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, Mr. Ralph Widell, Division of Communications, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and by U.S. Mail to the following individuals on this 25th day of February, 1997.

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