BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for generic proceedings to establish expedited process for reviewing North American Plan Administration (NANPA) future denials of applications for use of additional NXX Codes by BellSouth Telecommunications, Inc.	DOCKET NO. 010782-TL ORDER NO. PSC-01-1629-PCO-TL ISSUED: August 9, 2001

ORDER DENYING INTERVENTION

On June 22, 2001, Emmanuel Arvanitas filed a Petition for Leave to Intervene in this Docket. In support of his Petition, Mr. Arvanitas states that he is a former BellSouth Telecommunications, Inc. (BellSouth) customer. He contends that he has experienced BellSouth's inefficient ability to provide services by virtue of porting his number from BellSouth to MediaOne. He adds that pursuant to Rule 25-22.039, Florida Administrative Code, as a resident of Jacksonville, Florida, he has a right to intervene in this proceeding as a consumer representing himself in matters which affect his area code. He emphasizes that this Docket will address the North American Numbering Plan Administration's (NANPA) denial of NXX codes to BellSouth in the region in which he lives, which he contends could effect the exhaust date for the area code. Thus, he argues that he will be affected by the "continual nature and exhaust of area code practices." He adds that as a MediaOne employee for over 17 years, he has valuable information regarding provisioning and infrastructure that would be beneficial to this Commission in rendering its decision in this matter. As such, he asks that he be granted intervention in this Docket.

On June 28, 2001, BellSouth filed an Opposition to Mr. Arvanitas' Petition to Intervene. Therein, BellSouth contends that Mr. Arvanitas's Petition should be denied because his substantial interests will not be affected by this proceeding and as such, he does not have standing to intervene. BellSouth argues that a person seeking to intervene must demonstrate that he is entitled to intervene as a matter of constitutional or statutory right, pursuant to Commission rule, or that his substantial interests will be affected by the proceeding, in accordance with Rule 25-22.039,

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Florida Administrative Code. BellSouth explains that Mr. Arvanitas has no constitutional or statutory right to intervene; therefore, he must demonstrate that his substantial interests will be affected. In order to do so, BellSouth contends that he must show: 1) that he will suffer an injury in fact that is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and 2) that his injury is of a type or nature which the proceeding is designed to protect. *Citing* Agrico Chem. Co. v. Dept. of Environmental Regulation, 406, So. 2d 478, 482 (Fla. 2nd DCA 1981). BellSouth argues that Mr. Arvanitas has not met the Agrico test, because he has failed to show how NANPA's denial of numbering resources to BellSouth would cause him an actual or immediate injury. BellSouth contends that such denials would not directly affect any Florida citizen, other than BellSouth and the customer for whom it is trying to obtain numbers. BellSouth adds that in order to establish standing, the petitioner must demonstrate more than a speculative or abstract possibility of injury. *Citing* Order No. PSC-95-1346-S-EG, issued November 1, 1995, in Docket No. 941173-EG, 1995 WL 670147 at p. 2; and Order No. PSC-99-0535-FOF-EM, issued March 22, 1999, in Docket No. 981042-EM, 1999 WL 359728 at pp. 22-23.

Upon consideration, I find that Mr. Arvanitas has failed to establish standing to intervene in this proceeding. Mr. Arvanitas has identified no constitutional or statutory basis conferring upon him the right to intervene in this proceeding as a matter of law. While Mr. Arvanitas indicates that Rule 25-22.039, Florida Administrative Code, authorizes him to intervene as a consumer, the rule clearly provides that the petitioner must demonstrate that he:

> is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

The rule does not, in and of itself, authorize a petitioner's intervention in a proceeding, unless that petitioner can make the proper demonstration of his basis for intervention. Mr. Arvanitas has identified no other rule or statute that would authorize him to

intervene; therefore, because his petition has been contested, he must demonstrate that he does, in fact, have standing to participate in the case. Department of Health and Rehabilitative Services v. Alice P., 367 So. 2d 1045, 1052 (Fla. 1st DCA 1979).

To prove standing, the petitioner must demonstrate that he will suffer an injury in fact, which is of sufficient immediacy to entitle him to a section 120.57 hearing, and that his substantial injury is of a type or nature that the proceeding is designed to protect. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981). Mr. Arvanitas's allegations, however, fail to demonstrate that he will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Speculation as to the effect that a process for reviewing NANPA denials of applications for additional NXX codes would have on area code exhaust amounts to conjecture about future detriment. Such conjecture is too remote to establish standing. See Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997) (threatened viability of plant and possible relocation do not constitute injury in fact of sufficient immediacy to warrant a Section 120.57, Florida Statutes hearing); citing Florida Society of Ophthalmology v. State Board of Optometry, 532 So. 2d 1279, 1285 (Fla. 1st DCA 1988) (some degree of loss due to economic competition is not of sufficient immediacy to establish standing). See also Order No. PSC-96-0755-FOF-EU; citing Order No. PSC-95-0348-FOF-GU, March 13, 1995; International Jai-Alai Players Assoc. v. Florida Pari-Mutuel Commission, 561 So. 2d 1224, at 1225-1226 (Fla. 3rd DCA 1990); and Village Park Mobile Home Association, Inc. v. State, Dept. of Business Regulation, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), rev. denied, 513 So. 2d 1063 (Fla. 1987) (speculations on the possible occurrence of injurious events are too remote to warrant inclusion in the administrative review process). This standard is equally applicable to Mr. Arvanitas's petition to intervene as a customer representing himself. See Ameristeel, 691 So. 2d 473 (Fla. 1997). Therefore, Mr. Arvanitas has failed to meet the first prong of the Agrico test, and as such, cannot establish standing in this proceeding.

Although Mr. Arvanitas's petition may be denied because he has failed to demonstrate that he will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57, Florida Statutes, hearing, it also appears that he has not satisfied the

second prong of the Agrico test. This scope of this proceeding is to consider an expedited process for reviewing future denials by NANPA of carriers' requests for additional numbering resources, not to address number conservation and area code exhaust. Mr. Arvanitas has, therefore, failed to demonstrate that the injuries he has alleged are a substantial injury of a type or nature which this proceeding is designed to protect. Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981). Accordingly, Mr. Arvanitas's Petition for Leave to Intervene is denied.

It is therefore

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that the Petition For Leave to Intervene filed by Emmanuel Arvanitas is hereby denied.

By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 9th Day of August, 2001.

FOR BAEZ

BRAULIO L. BAEZ
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.