

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review of North American Plan Administration's (NANPA) denial of application for use of central office code numbering resources or NXX codes in Orlando Magnolia switch by BellSouth Telecommunications, Inc.

DOCKET NO. 010309-TL

In re: Petition for generic proceedings to establish expedited process for reviewing North American Numbering Plan Administration (NANPA) future denials of applications for use of additional NXX Codes by BellSouth Telecommunications, Inc.

DOCKET NO. 010782-TL

In re: Petition for review of pooling administrator's denial of request for additional numbering resources by NeuStar by BellSouth Telecommunications, Inc.

DOCKET NO. 010783-TL
ORDER NO. PSC-01-1894-FOF-TL
ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER DISMISSING PLEADING

DOCUMENT NUMBER-DATE

11931 SEP 24 01

FPSC-COMMISSION CLERK

BY THE COMMISSION:

I. Case Background

Pleading

On July 16, 2001, Emmanuel Arvanitas and Peggy Arvanitas (Arvanitas) filed a Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing. The filing referenced Docket Nos. 010309-TL, 010565-TL, 010782-TL, and 010783-TL. On August 14, 2001, we entered Order No. PSC-01-1657-FOF-TL, finding that we need not consider the July 16, 2001 pleading by Arvanitas in the disposition of Docket No. 010565-TL. This Order addresses Arvanitas' pleading regarding Docket Nos. 010309-TL, 010782-TL, and 010783-TL.

Docket 010309-TL

On January 24, 2001, BellSouth Telecommunications, Inc. (BellSouth) submitted an application to the North American Numbering Plan Administrator (NANPA) for a central office (NXX) code for the ORLFLMADS1 switch in the Orlando rate center. The code request was made to fulfill a request made by a specific customer who is in need of 2,500 consecutive Direct Inward Dialing (DID) numbers in an NXX with a four as the last digit (NX4). On February 6, 2001, NANPA denied BellSouth's request for a NXX code for the ORLFLMADS1 switch because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On March 9, 2001, BellSouth filed with us a Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration. By Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL, we directed the NANPA to provide BellSouth a growth code ORLFLMADS1 switch in the Orlando rate center.

On June 1, 2001, a Protest for Proposed Agency Action Order Directing NANPA to Provide BellSouth with a Growth Code for the ORLDFLMADS1 Switch, Petition for a Formal Proceeding Pursuant to Rule 25-22.029, Florida Administrative Code in FPSC Docket No.

010309-TL was filed. The petition was purportedly filed by a Mr. Jonathan W. Kylleskwy, III, and Mr. Thomas Enderson ("Kylleskwy"), allegedly on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)."

On June 6, 2001, BellSouth filed a Motion to Dismiss PAA Protest which was filed by Kylleskwy. The motion addressed the Proposed Agency Action (PAA) protest of Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL.

On June 12, 2001, Kylleskwy filed a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials in Docket 010309-TL. On June 27, 2001, BellSouth filed a Motion to Strike and/or Dismiss Pleading requesting the Commission strike or dismiss "Kylleskwy"'s Motion. On July 30, 2001, we entered Order No. PSC-01-1568-FOF-TL, dismissing all Kylleskwy's protests.

Docket No. 010782-TL

On May 25, 2001, BellSouth filed a Petition for Generic Proceedings to Establish Expedited Process for Reviewing NANPA's Denial of Applications for Use of Additional NXX Codes. On June 5, 2001, a Response and Protest to BellSouth Telecommunications' Petition for Generic Proceedings to Establish Expedited Process for Reviewing North American Numbering Plan Administration (NANPA) Future Denials of Applications for use of Additional NXX Codes by BellSouth Telecommunications, Inc. in Docket No. 010782-TL was filed by Kylleskwy. The request also requested a formal hearing proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On June 12, 2001, a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials was filed by Kylleskwy. On June 13, 2001, BellSouth filed a Motion to Dismiss Response and Protest filed by Kylleskwy.

On June 22, 2001, Emmanuel Arvanitas filed a Petition for Leave to Intervene in Docket No. 010782-TL, stating that he has a right to intervene as a consumer representing himself in proceedings which affect his area code. On June 28, 2001, BellSouth filed BellSouth Telecommunications, Inc. Opposition to

Emmanuel Arvanitas' Petition to Intervene stating Mr. Arvanitas does not have standing, no substantial interest, and will not suffer injury from this proceeding. On August 9, 2001, the prehearing officer entered Order No. PSC-01-1629-PCO-TL, denying Emmanuel Arvanitas' Petition for Leave to Intervene.

On June 12, 2001, Kylleskwy filed a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials in Docket 010309-TL. On June 27, 2001, BellSouth filed a Motion to Strike and/or Dismiss Pleading asking us to strike or dismiss Kylleskwy's Motion. On July 30, 2001, we entered Order No. PSC-01-1568-FOF-TL, dismissing all Kylleskwy protests.

Docket No. 010783-TL

On May 8, 2001, BellSouth submitted an application to NeuStar for two thousand consecutive DID numbers for the Cypress (FTLDFLCYDS0) switch in the Ft. Lauderdale rate center. On May 10, 2001, BellSouth submitted an application to NeuStar for a one thousand block of consecutive DID numbers with a five as the fourth digit for the Sawgrass FTLDFLSGDS0 switch which is also in the Ft. Lauderdale rate center. Also on May 10, 2001, BellSouth submitted an application to NeuStar for twelve hundred consecutive DID numbers for the Clay Street (JCVLFLCLDS0) switch in the Jacksonville rate center. Each code request was made to fulfill a specific customer request.

On May 10, 2001, NeuStar denied BellSouth's request for the Ft. Lauderdale Cypress and Sawgrass switches. On May 11, 2001, NeuStar denied BellSouth's request for the Jacksonville Clay Street switch. All denials were made because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On May 25, 2001, BellSouth filed BellSouth's Petition for review of Pooling Administrator's Denial of Request for Additional Numbering Resources requesting that we overturn NeuStar's decision denying numbering resources. On June 5, 2001, a Response and Protest to BellSouth Telecommunications' Petition for Review of Pooling Administrator's Denial for Additional Numbering Resources by NeuStar in Docket No. 010783-TL was filed by Kylleskwy. The

request also requested a formal hearing proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On June 12, 2001, a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials was filed purportedly by Kylleskwy. On June 13, 2001, BellSouth filed a Motion to Dismiss Response and Protest filed by Kylleskwy. On July 30, 2001, we entered Order No. PSC-01-1568-FOF-TL, dismissing all Kylleskwy protests.

On July 3, 2001, BellSouth filed an amended petition to withdraw its request to overturn NANPA's denial of 1,000 numbers, with a five as the fourth digit for the Sawgrass (FTLDFLSGDS0) switch in the Ft. Lauderdale rate center. BellSouth stated in its amended petition, that its customer requesting 1,000 numbers obtained service from an ALEC solely because BellSouth was unable to fulfill the customer's numbering requests.

II. Arguments

The first reason why the "Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing" filed on July 16, 2001, by Arvanitas should be dismissed is one of standing. Rule 28-106-201(2)(b), Florida Administrative Code, requires:

. . . an explanation of how the petitioner's substantial interests will be affected by the agency determination. . . .

Also, the Notice of Further Proceedings or Judicial Review attached to the Orders issued by this Commission in these Dockets provide:

Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding in the form provided by Rule 28-106.201, Florida Administrative Code.

We find that Arvanitas has failed to properly demonstrate standing to protest any of the Orders. In order to have standing, they must demonstrate that their substantial interests have been

affected. It is appropriate, therefore, to apply the two-pronged test for "substantial interest" set forth in Agrico Chemical Co. V Dept. Of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), rev. denied 415 So. 2nd 1359 (Fla. 1982). According to the Agrico test, a party must show: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. At 482. Arvanitas has not alleged facts demonstrating that they have met this test. Moreover, these Dockets deal with numbering issues and numbering resources in area codes where the Arvanitas' do not even live. Therefore, Arvanitas' substantial interests have not been affected.

Even if standing was established, the pleading in question seems to be just a "shotgun" type approach to expressing unhappiness with each of the Dockets which are the subject of this Order. The pleading does not, however, cite any rule of procedure which would provide a basis for its filing. It is so ambiguous and incomprehensible that it is not possible to divine any legitimate relief that it is seeking. It does not comport with any rule of law. Although great effort was made to interpret this pleading as being responsive to various other pleadings in these Dockets, the contents did not relate to the legitimate filings in any of them. Based on our analysis of this pleading, it appears that this document was filed for the purpose of frustrating and impeding the important work of this Commission.

III. Decision

Upon consideration, the "Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing" filed on July 16, 2001 by Emmanuel Arvanitas and Peggy Arvanitas, shall be dismissed because the Arvanitas' have failed to establish standing in these Dockets. Furthermore, the pleadings do not comply with any known rule of procedure, and do not state a cause of action upon which relief can be granted. We find it unnecessary to address the merits of the Arvanitas filing.

Based on the foregoing, it is

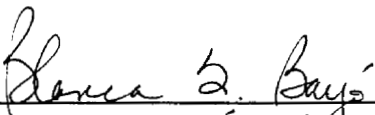
ORDER NO. PSC-01-1894-FOF-TL
DOCKETS NOS. 010309-TL, 010782-TL, 010783-TL
PAGE 7

ORDERED by the Florida Public Service Commission that the July 16, 2001, Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing filed by Emmanuel Arvanitas and Peggy Arvanitas is hereby dismissed. It is further

ORDERED that the Proposed Agency Action Orders issued in Docket Nos. 010309-TL and 010783-TL shall be made final and the Dockets shall be closed. It is further

ORDERED that Docket No. 010782-TL shall remain open at this time pending resolution of the issues therein.

By ORDER of the Florida Public Service Commission this 24th Day of September, 2001.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

CLF

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.