

State of Florida



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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DATE: JUNE 27, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (FORDHAM) *c. #7. JK*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (CASEY; *dk*  
ILERI) *ri* *RD*

RE: DOCKET NO. 010743-TL - PETITION FOR REVIEW OF PROPOSED  
NUMBERING PLAN RELIEF FOR THE 407/321 AREA CODES BY  
NEUSTAR, INC., AS NORTH AMERICAN NUMBERING PLAN  
ADMINISTRATOR (NANPA), ON BEHALF OF FLORIDA  
TELECOMMUNICATIONS INDUSTRY.

AGENDA: 07/09/02 - REGULAR AGENDA - MOTION FOR RECONSIDERATION -  
PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010743.RCM

CASE BACKGROUND

On May 15, 2001, NeuStar, Inc, in its role as the North American Numbering Plan Administrator (NANPA) and acting on behalf of the Florida telecommunications industry (Industry), petitioned this Commission for approval of the Industry's consensus decision to implement an all services distributed overlay relief plan for the 407/321 Numbering Plan Areas (NPA).

On February 20, 2002, the Commission held public hearings in Orlando and Melbourne to receive input from end-users in the affected areas, and on March 14, 2002, a technical hearing was conducted in Tallahassee. Alternative three, an all services distributed overlay, was the consensus recommendation, and that alternative was approved in Order No. PSC-02-0405-FOF-TL, issued

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March 15, 2002. The "Osteen exception," however, was reserved to be addressed at a later date, and was the subject of a recommendation filed on May 9, 2002. The Osteen exception area consists of the Sanford rate center subscribers who reside in Volusia County.

Subsequent to the issuance of Order No. PSC-02-0405-FOF-TL, on April 1, 2002, NeuStar, Inc., issued a news release stating that "689" will be the new NPA code. Additionally, based on new information recently obtained from NANPA, the estimated exhaust date of the 407/321 area code has significantly changed. The new estimated exhaust date, early in the year 2011, and the implementation date for the new 689 area code overlay were addressed in a recommendation also filed on May 9, 2002.

The "Osteen exception" and the changes in the estimated exhaust date of the 407/321 area code were discussed at the May 21, 2002 Agenda Conference. On May 31, 2002, Order No. PSC-02-0743-FOF-TL issued, delaying the implementation date of the new 689 area code overlay and denying the requested relief for the Osteen area. That Order, however, found that the Florida Public Service Commission had the authority to order the requested relief even though it declined to exercise such authority on this occasion.

On June 14, 2002, BellSouth Telecommunications, Inc. (BellSouth) filed its Motion for Reconsideration of Order No. PSC-02-0743-FOF-TL, challenging the finding that this Commission had the authority to grant the requested relief for the Osteen area. No responses to the Motion were filed. That Motion is the subject of this Recommendation.

### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant BellSouth's Motion for Reconsideration of Order No. PSC-02-0743-FOF-TL?

**RECOMMENDATION:** No. The Commission should deny BellSouth's Motion for Reconsideration of Order No. PSC-02-0743-FOF-TL.  
**(FORDHAM)**

**STAFF ANALYSIS:**

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In its Motion, BellSouth argues that the Commission overlooked several points of fact and law, as neither Florida law nor federal law provides the Commission with the authority to require carriers to implement the Volusia County proposal to resolve the Osteen issue. BellSouth points out that under the Telecommunications Act of 1996 (the Act) the Federal Communications Commission (FCC) has sole authority over numbering issues. Accordingly, the Commission's broad authority under Florida law to "protect the public welfare" does not allow the Commission to circumvent Congress' express intent that the FCC have "exclusive jurisdiction" over numbering issues. Therefore, BellSouth argues, "Under the Supremacy Clause of the United States a federal law preempts a state law where the two conflict." Morgan v. City of Lakeland, 694 So. 2d 886, 886 (Fla. 2<sup>nd</sup> DCA 1997) (citing Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988); Free v. Bland, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed.2d 180 (1962)). In this case, according to BellSouth, the Commission's finding that its general police powers under state law gives it authority over numbering issues conflicts with the Act, and thus, constitutes an error in the Commission's decision.

BellSouth next asserts that though the FCC delegated the authority to implement new area codes to the state commissions, it retained broad authority over numbering. The state's

delegated authority to implement area code relief is found in Rule 52.19, which provides as follows:

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes.

(b) State commissions may perform any or all functions related to initiation and development of area code relief plans, so long as they act consistently with the guidelines enumerated in this part, . . . .

Thus, BellSouth argues, this Commission only has authority to implement area code relief, and misinterpreted its power to implement area code relief to mean that it has the authority to require carriers to implement the Volusia County proposal.

BellSouth notes that, according to the record, the Volusia County Proposal would have no effect on extending the life of either the 407 or 386 codes. Thus, it cannot meet the definition of "area code relief." Additionally, it cannot be considered "area code boundary realignment" as defined by the FCC.

Finally, BellSouth argues, even if the Volusia County proposal somehow constituted area code relief, the Commission would be prohibited from ordering it because it would violate the FCC's numbering policy objectives. The second policy objective states that numbering actions should ". . . (2) not unduly favor or disadvantage any particular industry segment of group of consumers; . . ." Under the Volusia County Plan, only BellSouth would be able to provide Osteen customers with 386 numbers. For other carriers to provide 386 numbers a subpooling arrangement would be required, and this Commission could not

order subpooling. Accordingly, BellSouth would be treated differently than other competitive carriers, in violation of the policy. As such, BellSouth asks that the Commission reconsider its decision.

Though BellSouth has provided in its Motion for Reconsideration some authority different from that found in earlier pleadings, such authority contains no fact or law which is inconsistent with that considered by this Commission in reaching its findings in the Order in question. Therefore, staff recommends that BellSouth's Motion for Reconsideration of Order No. PSC-02-0743-FOF-TL fails to meet the standard for a motion for reconsideration. BellSouth's arguments regarding the Commission's authority to approve the Volusia County proposal were thoroughly considered and addressed in the Commission's Order. Staff believes the argument put forth by this Commission in Order No. PSC-02-0743-FOF-TL was clear and well reasoned. The Commission should stand by that reasoning and the finding.

Staff believes that all authority cited by the Commission in Order No. PSC-02-0743-FOF-TL supports the ultimate finding. Of particular importance, however, is the delegated authority from 47 C.F.R. §§ 52.19, referenced on page 11 of the Order:

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes.

Staff notes that the FCC specifically stated in the rule that the list of enumerated actions contained therein is not exclusive. The statement "State commissions may resolve matters involving the introduction of new area codes within their states" confers very broad powers upon this Commission. Additionally, BellSouth has failed to establish that the Commission's interpretation of that delegated authority is, in any way, erroneous.

BellSouth, in large part, merely reargues that which it argued in earlier proceedings in this Docket. Reargument is improper in the context of a motion for reconsideration. Sherwood v. State, 111 So. 2d 96 (Fla. 3<sup>rd</sup> DCA 1959). In addition, however, BellSouth raises new issues in its Motion, which were not addressed at any point in the record. One such new argument alleges the Commission's decision would violate the FCC's numbering policy objectives. Staff not only believes that the new argument should not be considered, but that, even if considered, it fails on the merits. Furthermore, the information does not "identify factual matters set forth in the record and susceptible to review," but instead requires much inference in order to reach BellSouth's conclusions, which does not provide a proper basis for reconsideration. Steward Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974)

Accordingly, staff believes that BellSouth has failed to demonstrate that the Commission made a mistake of fact or law in rendering its decision. Staff, therefore, recommends that BellSouth's Motion for reconsideration be denied.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, there would be no remaining issues and the docket should be closed.  
**(FORDHAM)**

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, there would be no remaining issues and the docket should be closed.