BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.	DOCKET NO. 010743-TL ORDER NO. PSC-02-0956-FOF-TL ISSUED: July 15, 2002

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. 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, we 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 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, we issued Order No. PSC-02-0743-FOF-TL, 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 that Motion were filed.

II. JURISDICTION

This Commission has jurisdiction to address this matter pursuant to Section 364.01, Florida Statutes, and has been specifically authorized to address numbering issues pursuant to 47 U.S.C. §151 et. Seq., 47 C.F.R. §§ 52.3 and 52.19, FCC Order 99-249, FCC Order 00-104, and FCC Order 00-429. In accordance with 47 C.F.R. §§ 52.3:

> The Commission (FCC) shall have exclusive authority over those portions of the North American Numbering Plan (NANP) that pertain to the United States. The Commission may delegate to the States or other entities any portion of such jurisdiction.

Furthermore, 47 C.F.R. § 52.19 provides, in part, that:

> (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 and notification 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, and subject to paragraph (b)(2) of this section. For the purposes of this paragraph, initiation and development of area code relief planning encompasses all functions related to the implementation of new area codes that were performed by central office code administrators prior to February 8, 1996. Such functions may include: declaring that the area code relief planning process should begin; convening and conducting meetings to which the telecommunications industry and the public are invited on area code relief for a particular area code; and developing the details of a proposed area code relief plan or plans.

III. DISCUSSION

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"d 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, this 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 we reconsider our 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 us in reaching our findings in the Order in question. Therefore, 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 our authority to approve the Volusia County proposal were thoroughly considered and addressed in our Order. The argument put forth by us in Order No. PSC-02-0743-FOF-TL was clear and well reasoned. We stand by that reasoning and the finding.

All authority cited by us 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.

We note 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 our 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. 3rd 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. That new argument will not be considered, but, even if considered, 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. That does not provide a proper basis for reconsideration. Steward Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974)

Accordingly, BellSouth has failed to demonstrate that we made a mistake of fact or law in rendering our decision. BellSouth's Motion for reconsideration will, therefore, be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Reconsideration is hereby denied. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 15th Day of July, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
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.