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**March 4, 1997**

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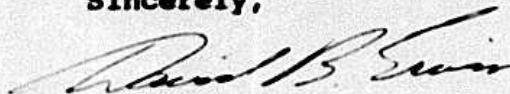
**Ms. Blanco Bayo  
Director, Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850**

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

**Dear Ms. Bayo:**

Enclosed are the original and 15 copies of Response to Motion of City of Jacksonville for Leave to Participate and for Oral Argument on behalf of St. Joseph Telecommunications, Gulf Telecommunications, Florida Telecommunications and Quincy Telephone Company. Copies have been provided to parties of record.

Sincerely,



David B. Erwin

DBE:akh  
Enclosures

DOCUMENT NUMBER-DATE

02317 MAR-45

FPSC-RECORDS/REPORTING

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FILE COPY

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for )  
Numbering Plan Area )  
Relief for 904 Area )  
Code, by BellSouth )  
Telecommunications, Inc. )

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Docket No. 961153-TL

Filed: March 4, 1997

**RESPONSE TO MOTION OF CITY OF JACKSONVILLE  
FOR LEAVE TO PARTICIPATE AND FOR ORAL ARGUMENT**

St. Joseph Telecommunications, Gulf Telecommunications, Florida Telecommunications and Quincy Telephone Company file this Response to the Motion of the City of Jacksonville for Leave to Participate in Alltel Florida, Inc.'s and Northeast Florida Telephone Company's Joint Motion for Reconsideration and state as follows:

1. There is no basis in law for the Florida Public Service Commission to grant the request of the City of Jacksonville (City). The City failed to participate in the hearing process and now wishes to challenge an order that is not to the City's liking. In order to urge the Commission to grant its request, the City has cited §120.52(12)(c), F. S., which states as follows:

(c) Any other person, including an agency staff member, allowed by the agency to intervene or 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 supplied)

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02317 MAR-4 6

FPSC-RECORDS/REPORTING



Clearly, if there were a basis under subsection (c) to grant the City's request, it would be because the City was not eligible to become a party and because the Commission has a rule that prescribes limited forms of participation, such as that sought by the City. Of course, the City could have become a party, but chose not to, and the Commission has no rule. That fact is even admitted by the City. (Page 5, paragraph 11 of City's Motion) The City can only say that the Commission has no rule that would prohibit participation. Section 120.52(12)(c), F.S., requires the existence of a rule, however, not the absence of one.

The City has cited §120.52(12)(c), F.S., as its authority to participate, because the City admits that it has foregone its ability to participate as an intervenor, pursuant to §120.52(12)(a) and (b), F.S. (Pages 4 & 5, paragraph 10 of City's Motion.)

2. If the Commission allows participation by the City of Jacksonville, it should invite participation by Tallahassee, Pensacola, Panama City and all the other cities, counties or individuals whose interests might be adversely affected if the City of Jacksonville gets its way. In other words, if the Commission allows participation by Jacksonville at this late stage, it will be opening a can of worms. The fact of the matter is that the City of Jacksonville chose not to participate based upon whatever perceptions it may have had which dictated its course of action. It is now too late to complain.

3. The City of Jacksonville states that it does not request that the Commission rehear the matter, reopen the record or

consider new evidence. (Page 6, paragraph 13 of City's Motion)  
The best way to insure that the listed things do not occur is to deny the Motion to Participate and deny the Request for Oral Argument.

4. The cases cited to support the City's claim of a constitutional right to participate are readily distinguishable from the instant matter.

In State ex rel. Investment Corporation of South Florida v. Board of Business Regulation, 227 So. 2d 674 (Fla. 1969), appeals were taken by parties from an action in which all parties participated at the hearing, but where one of the interested parties was denied the opportunity to participate on appeal. That is not the case in this proceeding, even if this matter were an appeal, rather than an attempt to prolong the proceedings at the agency level. In this case, there was no participation at the hearing stage by the now allegedly aggrieved entity which was never a "party" by its own choice. If the City's interpretation of the Investment Corporation of South Florida case, supra, is correct, then the Commission must make everyone who might be affected by a reversal of the Commission's order a party on appeal. If the City of Jacksonville is an "indispensable appellee," then so is every other city in the panhandle. In addition to the City of Jacksonville, the Commission should hear from all the other cities, counties, government agencies and others who would be affected by any adherence to or reversal of position by the Commission.

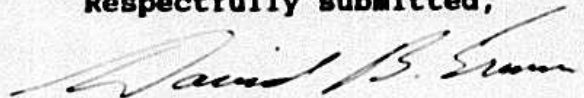


In Headley v. Lasseter, 147 So. 2d 154 (3rd DCA 1962), the proposition seems to be that anyone who might have been an indispensable party below must be a party on appeal. There is no allegation in this case that the City of Jacksonville was an indispensable party before the Commission at hearing or that any other of the many cities which could be affected were likewise indispensable, then or now.

The case of Harison et al. v. Ocala Building and Loan Association, 42 Southern 696 (Fla. 1906), occurred in an era where administrative law was probably quite different, but even in that case, the problem was that active parties below were omitted from the appeal. That is not the case here.

In Nichols & Johnson et al. v. Frank (Fla. 1910), the factual nature of a decree setting aside a conveyance of land and subjecting the land to the debts of a partnership of which the grantor was a member is a far cry from the facts of this 904 area code administrative proceeding, and any general language from a civil suit almost a century ago should not be relied upon to allow the City of Jacksonville to participate in a limited fashion before the Commission in a new era of administrative law.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**  
**Docket No. 961153-TL**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail or hand delivery this 4th day of March, 1997, to the following:

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