

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Transfer)
of N11 Codes by 311 Direct, Inc.)

Docket No. 970604-TL

MOTION TO DISMISS

Respondent National Telephone Enterprises, Inc. ("NTE" or "Respondent"), by its attorneys, submits this Motion to Dismiss the Petition for Transfer of N11 Codes ("Petition") filed by 311 Direct, Inc. ("Petitioner"). NTE hereby files the following responses to allegations contained in the Petition:

1. NTE admits Paragraph I.A. of the Petition except Respondent maintains that the assignment of N11 codes under the BellSouth Telecommunications, Inc., Florida, ("BellSouth") Tariff A39, during the time period in question, was conducted on a "first in time" basis.

2. NTE admits Paragraph I.B. of the Petition.

3. NTE admits Paragraph I.C. of the Petition except it adds tariff language omitted by Petitioner which states (where the ellipses occur in Petition) "and if not feasible, to a seven-digit dialing arrangement." (A39.1.2.D)

4. NTE is without sufficient knowledge to admit or deny paragraph II.A. of the Petition.

5. NTE is without sufficient knowledge to admit or deny paragraph II.B. of the Petition.

6. NTE admits Paragraph II.C. except that NTE is without information concerning the role of President Clinton in the Federal Communications Commission's ("FCC") First Report and Order In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, Released February 19, 1997.

7. NTE admits Paragraph II.D. of the Petition.

8. NTE admits Paragraph II.E. of the Petition.

9. NTE denies Paragraph II.F. of the Petition.

10. NTE is without sufficient information to admit or deny the information received from Bell South Telecommunications, Inc. Florida concerning the availability of 211 numbers in the specified geographic areas. NTE admits that it recently applied for utilization of the 211 service

ACK ✓
AFA _____
APP _____
CAF _____
CML Long
CTR _____
EAG _____
LEG 1
LIR 5
OPC _____
RCH _____
SIR 1
WAS _____
OTH _____

code in Orlando.

11. NTE denies Paragraph II.H. of the Petition.
12. NTE is without sufficient knowledge to admit or deny Paragraph III.A.
13. NTE denies Paragraph III.A. of the Petition.
14. NTE is without sufficient knowledge to admit or deny Paragraph III.B. of the Petition.
15. NTE is without sufficient knowledge to admit or deny Paragraph III.C. of the Petition.
16. NTE denies Paragraph III.D. of the Petition.
17. NTE is without sufficient knowledge to admit or deny Paragraph III.E. of the Petition.
18. NTE denies Paragraph III.F. of the Petition
19. NTE denies Paragraph III.G. of the Petition.
20. NTE is without sufficient knowledge to admit or deny Paragraph III.H. of the Petition.
21. NTE is without sufficient knowledge to admit or deny Paragraph III.I. of the Petition except Respondent denies Paragraph III.I to the extent that waiver of expenses required under applicable tariffs, rules or regulations would constitute a violation of the non-discrimination principle or would constitute unfair competition to the detriment of Respondent.
22. NTE is without sufficient knowledge to admit or deny Paragraph III.J. of the Petition except Respondent denies Paragraph III.I to the extent that any reduction of expenses required under applicable tariffs, rules or regulations would constitute a violation of the non-discrimination principle or would constitute unfair competition to the detriment of Respondent.
23. NTE denies Petitioner's request for relief as set forth in Paragraphs A-D on page 5 of the Petition to the extent the request concerns the provision of N11 service in the specified geographic areas and contravenes the terms and conditions of the N11 service tariffs of Sprint-Florida and BellSouth which are duly filed with the Florida Public Service Commission ("FPSC") and which control N11 service provision in the self-same geographic territory.

Respondent submits the following affirmative defenses:

A. NTE has subscribed to N11 service, as a first in time applicant, in the Orlando geographic area under valid tariffs and thus the FPSC has no basis to grant the relief requested.

24. In accordance with the terms and conditions of Sprint-Florida's duly filed tariff, Section A39 - Abbreviated Dialing, which has been in effect since January 1, 1997, NTE applied for 211 Abbreviated Dialing Service in the Orlando/Winter Park geographic area.¹ NTE filed an application for 211 Service on April 7, 1997 and provided deposits required by the terms and conditions of the Sprint-Florida tariff.

26. Section A39.A.2.a. of the Sprint-Florida tariff provides that "[a]ssignment of N11 service codes will be conducted on a first in time basis, unless the number of requests received exceeds the number of available N11 codes." If the number of requests received exceeds the number of available N11 codes, the Sprint-Florida N11 tariff provides for the assignment of N11 codes on a lottery basis.

27. NTE's request for 211 service in the Orlando/Winter Park geographic area constituted the first in time request for said service under the Sprint-Florida N11 tariff. At the time NTE's application was filed with Sprint-Florida, conditions did not exist which would have warranted the assignment of the 211 code for the Orlando/Winter Park geographic area on a lottery basis.

28. Pursuant to its duly filed application, NTE has been assigned the 211 code for the Orlando/Winter Park geographic area under the Sprint-Florida N11 tariff and has initiated service thereunder.

29. In accordance with the terms and conditions of BellSouth's duly filed tariff, Section A39 - Abbreviated Dialing, which has been in effect since July 15, 1996, NTE applied for 211 Abbreviated Dialing Service in the Orlando geographic area. On April 7, 1997, NTE forwarded to BellSouth's designated representative - Coopers & Lybrand L.L.P. at 1100 Campanile Building, 1155 Peachtree Street, Atlanta, Georgia 30309-3630 - an application for 211 service in the Orlando geographic area and the requisite \$16,500 deposit.

30. Section A39.1.2.A. of the BellSouth tariff also provides that "[a]ssignment of N11 service codes will be conducted on a first in time basis, unless the number of requests received

¹ Sprint-Florida offers N11 service in the Orlando/Winter Park basic local calling area. BellSouth offers N11 service in the "remainder" of the Orlando geographic area.

exceeds the number of available N11 codes." If the number of requests received exceeds the number of available N11 codes, the BellSouth N11 tariff provides for the assignment of N11 codes on a lottery basis.

31. NTE's request for 211 service in the Orlando geographic area constituted the first in time request for said service under the BellSouth N11 tariff. At the time NTE's application was filed with BellSouth, conditions did not exist which would have warranted the assignment of the 211 code for the Orlando geographic area on a lottery basis.

32. Pursuant to its duly filed application, NTE has been assigned the 211 code for the Orlando geographic area under the BellSouth N11 tariff and has initiated service thereunder.

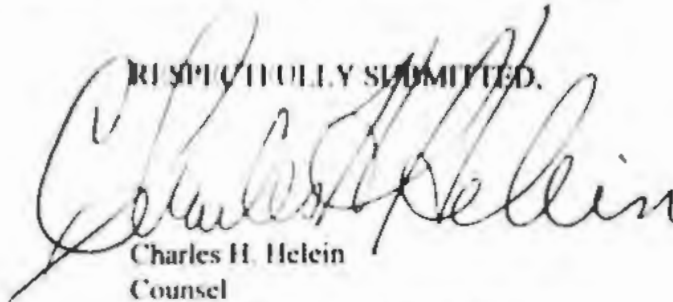
B. Conclusion

33. Based upon its duly filed application, NTE has been assigned the 211 code for the Orlando/Winter Park geographic region pursuant to the terms and conditions of Sprint-Florida's N11 service tariff. Likewise, based upon its duly filed application, NTE has been assigned the 211 code for the Orlando geographic region pursuant to the terms and conditions of BellSouth's N11 service tariff. In both cases, Respondent filed as a first in time applicant. Additionally, Respondent has initiated service in the respective geographic areas.

Petitioner has failed to show, either under the terms and conditions of the respective N11 tariffs, the rules of the Florida Public Service Commission or applicable law, grounds upon which the Public Service Commission has authority to provide the requested relief in the specified geographic areas.

WHEREFORE, for the foregoing reasons, NTE respectfully requests that the Florida Public Service Commission to dismiss the Petition and deny the relief sought therein.

RESPECTFULLY SUBMITTED.



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Date: July 7, 1997

CERTIFICATE OF SERVICE

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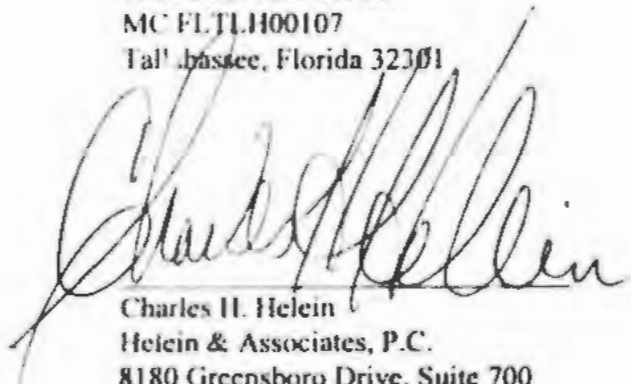
I HEREBY CERTIFY that the foregoing was served on the following Parties by U.S. Mail this 7th Day of July, 1997.

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