



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** JULY 20, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF COMPETITIVE SERVICES (ILERI) *ji*  
DIVISION OF LEGAL SERVICES (CALDWELL) *SK*

**RE:** DOCKET NO. 981444-TP - NUMBER UTILIZATION STUDY:  
INVESTIGATION INTO NUMBER CONSERVATION MEASURES.

**AGENDA:** 08/01/00 - REGULAR AGENDA - MOTION FOR RECONSIDERATION -  
INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\981444C.RCM

**CASE BACKGROUND**

As part of the Commission's ongoing effort to conserve area codes, on April 2, 1999, it filed a petition with the FCC seeking authority to implement number conservation measures, which would help minimize consumer confusion and expenses associated with imposing new area codes too frequently.

On September 15, 1999, the FCC issued Order No. FCC 99-249 granting the Commission's Petition for Delegation of Additional Authority to Implement Number Conservation Measures. In its Order, the FCC granted the Commission interim authority to:

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- (1) Institute thousand-block pooling by all LNP<sup>1</sup>-capable carriers in Florida;
- (2) Reclaim unused and reserved NXX codes;
- (3) Maintain rationing procedures for six months following area code relief;
- (4) Set numbering allocation standards;
- (5) Request number utilization data from all carriers;
- (6) Implement NXX code sharing; and
- (7) Implement rate center consolidation.

At the Commission's February 29, 2000, Agenda Conference, it approved portions of staff's recommendation to exercise the federal authority to conserve telephone numbers and delay the early exhaustion of area codes in Florida. At the Agenda, a number of concerns were raised by the industry and the North American Numbering Plan Administrator (NANPA) regarding staff's recommendation to implement various portions of the FCC's Order. The Commission voted to require immediate NXX code reclamation for wireline and wireless carriers in all of Florida's Numbering Plan Areas (NPA's), and thousands-block number pooling for wireline carriers in the 954, 561, and 904 area codes, beginning May 1, July 1, and October 1, 2000, respectively. In addition, the Commission established criteria for obtaining initial numbering resources, approved mandatory thousands-block number management procedures, and instituted a process to verify and reconcile numbering resource data available from different sources, all of which are equally applicable to wireline and wireless carriers. On March 16, 2000, Order No. PSC-00-543-PAA-TP was issued memorializing this decision.

In response to that PAA Order, a number of Florida code holders (Florida Code Holders Group or FCHG) submitted on March 23, 2000, an explanatory letter and Number Pooling Implementation Plan for the 954, 561, and 904 area codes. The FCHG filed this plan because they believed that the number pooling implementation time line set forth in the PAA Order was not feasible and that their alternative time line would not materially affect the exhaust lives of the applicable area codes. In addition, the FCHG sought

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<sup>1</sup>LNP (Local Number Portability) is a service that provides residential and business telephone customers with the ability to retain, at the same location, their existing telephone numbers when switching from one local telephone service provider to another.

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implementation of thousand-block number pooling using software release version 3.0 (SR30) which the Commission had specifically rejected its decision. The PAA Order scheduled software release 1.4 (SR14) for implementation in the 954 and 561 area codes on May 1, 2000 and July 1, 2000, respectively.

On March 31, 2000, staff held an implementation meeting with NeuStar and the industry. This meeting was concluded with an understanding among the participants that implementing thousand-block number pooling would take anywhere from 96 to 132 days, plus any upgrades and testing necessary, prior to pooling.

On March 31, 2000, the FCC issued a Report and Order and Further Notice of Proposed Rule Making, (FCC 00-104) in the matter of Number Resource Optimization. The Commission believes that this Order does not affect the Commission's delegated authority nor has any party suggested that its authority is affected. In FCC 00-104 at paragraph 4, the FCC addressed the two major factors that contribute to number resource exhaustion:

the absence of regulatory, industry, or economic control over requests for numbering resources, which permits carriers to abuse the allocation system and stockpile numbers, and the allocation of numbers in blocks of 10,000, irrespective of the carrier's actual need for new numbers.

In addition, the FCC addressed other number conservation measures, as well as issues related to the future implementation of thousand-block number pooling on a national basis.

On April 6, 2000, a formal protest of Commission Order No. PSC-00-0543-PAA-TP was filed by a number of parties<sup>2</sup> (Joint

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<sup>2</sup>ALLTEL Communications, Inc.; AT&T Communications of the Southern States, Inc.; AT&T Wireless Services, Inc.; BellSouth Mobility, Inc.; BellSouth Telecommunications, Inc.; Florida Cable Telecommunications Association; Global NAPs, Inc.; GTE Service Corporation; Intermedia Communications; MCI WorldCom, Inc.; Media One Communications; Florida Telecom, Inc.; Sprint Spectrum Ltd., d/b/a Sprint PCS; Sprint Communications Company Ltd Partnership; Sprint-Florida, Inc.; Time Warner Telecom of

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Petitioners). Specifically, the Joint Petitioners protested and sought a hearing regarding only the portions of the PAA order that related to: (1) mandatory implementation of thousand-block pooling; (2) thousand-block pooling software release and implementation dates; and (3) designation of a pooling administrator.

The remaining portions of the Order were not protested by the Joint Petitioners. Thus, those portions are deemed stipulated pursuant to Section 120.80(13)(b), Florida Statutes.

In addition, on April 6, 2000, Ms. Peggy Arvanitas filed comments responding to the informal Florida NXX Code Holders Group and protested a portion of the PAA Order. On April 11, 2000, the Joint Petitioners filed an Offer of Settlement to Resolve the Number Pooling Implementation Protest of our PAA Order. The Offer of Settlement addresses many of the same issues set forth in the Florida NXX Code Holders Group's Number Pooling Implementation Plan for the 954, 561, and 904 NPAs.

On April 13, 2000, Ms. Arvanitas filed a clarification to her original filing stating that she is "Protesting and challenging the industry's protest to number pooling." On April 16, 2000, the Joint Petitioners filed an additional provision to their Plan stating that they would implement SR14 if SR30 is not available by the specified dates.

On May 30, 2000, proposed agency action Order No. PSC-00-1046-PAA-TP, was issued approving the offer of settlement and dismissing the protest of Ms. Arvanitas. On June 20, 2000, Ms. Arvanitas filed Peggy Arvanitas's Motion for Reconsideration of Order No. PSC-00-1046-PAA-TP (Motion). On July 3, 2000, AT&T Communications of the Southern States, Inc., AT&T Wireless Services, Inc. (AT&T), and MCI WorldCom, Inc. (WorldCom) filed their Response to Motion for Reconsideration. On July 7, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed its Response to the Motion for Reconsideration of Ms. Arvanitas. Also on July 7, 2000, Sprint-Florida Incorporated, Sprint Communications Company Limited Partnership, and Sprint PCS (collectively Sprint) filed their concurrence in AT&T and MCIWorldCom's Response.

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Florida, L.P.; Trivergent Communications, Inc.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant Peggy Arvanitas's Motion for Reconsideration of Order No. PSC-00-1046-PAA-TP?

**RECOMMENDATION:** No. Staff recommends that the Commission deny the portion of Ms. Arvanitas's Motion requesting reconsideration of the final agency action. Further, staff recommends that the Commission dismiss on its own motion the remaining portion of Ms. Arvanitas's Motion protesting the proposed agency action. Finally, Staff recommends that an order consummating the proposed agency action portion of the order should be issued and the final agency action portion of the order should also be implemented without further delay. (CALDWELL)

**STAFF ANALYSIS:** Ms. Peggy Arvanitas filed her Motion for Reconsideration of Order No. PSC-00-1046-PAA-TP, pursuant to Rules 25-22.060 and 28-106.204, Florida Administrative Code. Ms. Arvanitas seeks "reconsideration and clarification according to four statements" to the Order. (Motion at 1)

#### ARGUMENTS

##### Ms. Arvanitas

###### a. Rulemaking for voluntary stipulation

Ms. Arvanitas argues that Order No. PSC-99-1393-S-TP directs staff to initiate rulemaking in anticipation of necessary authority from the FCC for conservation measures. Ms. Arvanitas explains that she recommends "to the Commission that we go back into Rulemaking like we were supposed to and define the Voluntary Stipulation." (Motion at 2) Ms. Arvanitas appears to argue that the Commission is required to go to rulemaking because the authority from the FCC that the Commission was awaiting had been received, so the requirements of Section 120.54(1)(b), Florida Statutes, and the Commission's own order have been met. Ms. Arvanitas contends that the Commission has, therefore, erred by failing to initiate rulemaking. (Motion at 2)

Ms. Arvanitas also contends that "once the voluntary stipulation was incorporated into an order, you cannot modify that document, and incorporate this modification into future orders, without going into rulemaking, as per FS 120." Ms. Arvanitas adds

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that "according to my April 6, 2000, filing I stipulate this fact which was ignored." (Motion at 3)

Ms. Arvanitas asserts that the Commission cannot accept any modification to the voluntary stipulation according to Section 120.80(13)(b), Florida Statutes. In support of her position, Ms. Arvanitas cites staff's recommendation that notes that pursuant to Section 120.80(13)(b), Florida Statutes, portions of the PAA Order that were not protested are deemed stipulated. (Motion at 3) It appears Ms. Arvanitas's point is that because no one challenged the Commission's directive to staff to initiate rulemaking, that no other action can take place other than rulemaking.

Ms. Arvanitas demands that the Commission delete any modification to Order No. PSC-99-1393-S-TP, and open up the Voluntary Stipulation to Rulemaking. Ms. Arvanitas adds that rulemaking is the forum for which donation of only uncontaminated numbers should be addressed. (Protest at 3)

- b. Timetable implementation schedules for 3.0 and/or 1.4 software.

Ms. Arvanitas next argues that the software implementation dates were erroneous and not within the May 5, 2000 hearing transcripts filed. (Motion at 3) Ms. Arvanitas asserts "the 3.0 software, if it is implemented, was to be on line by all carriers for a January 22, 2001, time frame." (Motion at 3) Ms. Arvanitas argues that the purpose of the discussion at the hearing was to "allow for a plan "B" so that, regardless [sic] of the availability or unavailability of 3.0, 954 would not be left without a safety net." (Motion at 4)

Ms. Arvanitas directs the Commission to acknowledge their "obvious desires that were omitted, define a back up date for the probability that 3.0 has more software glitches, and cannot be implemented." She adds that the Commission needs to define "dates that the delivery of 3.0 would be in default, and a timetable for implementation of 1.4 by December 4, 2000, as per the Commissioner's conversations." (Motion at 4)

- c. Cost recovery issues

Ms. Arvanitas argues that Order No. PSC-00-1046-PAA-TP was incorrect as to her statements concerning cost recovery issues.

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(Motion at 4) She asserts that the Order was incorrect that the costs were not known for cost recovery. Ms. Arvanitas argues "I told them what they weren't charging for, . . . ." (Motion at 5) Ms. Arvanitas states that she challenged BellSouth in this contention that it needed reimbursement for "OSS upgrades". She states that the costs were "portability cost upgrades, as per FCC 95-116 3rd order, May 1998." (Motion at 4) She continues that:

if they were LNP capable and that might be a reason why we are being asked to delay number pooling? As per LSMS, SCP upgrades, I directed them to read a copy of FCC 00-104, paragraph 216, which said that was a direct cost and not "competitively neutral" as per 1996 Telecommunication's [sic] Act Section 251. (Motion at 4 - 5)

Ms. Arvanitas concludes by stating "that meant they could not charge the consumer a federal end user charge." (Motion at 5)

Finally, Ms. Arvanitas argues that the Order incorrectly stated that the Commission "cannot order NANPA to cease and desist in the allocation of numbers if the State of Florida has a problem with compliance." (Motion at 5)

Ms. Arvanitas does not request any relief with regard to this issue.

d. INC Pooling Guidelines

Finally, Ms. Arvanitas contends that the Proposed Stipulation attempts to "exclude any revision of the INC Number Pooling Guidelines after February 28, 2000, from being incorporated." Ms. Arvanitas asserts that FCC Order 00-104 requires "NANPA/NeuStar pooling administrator to incorporate the very unified State's revisions in Number Pooling Contracts." Ms. Arvanitas suggests the Commission modify its order to be in compliance with the FCC. (Motion at 5)

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RESPONSES

Staff notes that based upon the representation by the respondents that they did not receive a copy of Ms. Arvanitas's Motion, it believes that the responses should be considered timely filed.

**AT&T and WorldCom**

In their Response, AT&T and WorldCom state that no code holder, carrier, or other interested party has filed with the Commission clerk a formal protest of the Order. AT&T and WorldCom further state that no party filed a petition on the PAA; accordingly, they assert the Order should be deemed final agency action with respect to the PAA matters, and specifically the number pooling plans for the 954, 561, and 904 NPAs discussed therein. (AT&T/WorldCom Response at 1)

AT&T and WorldCom note that Ms. Arvanitas filed on June 19, 2000, "a document she labels "Peggy Arvanitas's Motion for Reconsideration of Order No. PSC-00-1046-PAA-TP" which included an attached certificate of service, and state that "this certificate does not indicate that a copy was served on the undersigned counsel . . . ." AT&T and WorldCom add that "notwithstanding the indication that service had been made on the other parties to the docket, [representatives from other parties have indicated] that they have not received a copy of Ms. Arvanitas's Motion." AT&T and WorldCom assert that given the absence of service on counsel, the times specified in Rules 28-106.103 and 28-106.204, Florida Administrative Code, should not apply to the Response. (AT&T and WorldCom Response at 2)

AT&T and WorldCom assert that to the extent Ms. Arvanitas's Motion is seeking reconsideration of any of the PAA provisions of the Order, Rule 25-22.060(1)(a), Florida Administrative Code, specifically states that the Commission will not entertain a motion for reconsideration of a PAA order. Thus, AT&T and WorldCom contend that the Commission should dismiss Ms. Arvanitas's Motion. (AT&T and WorldCom Response at 2)

AT&T and WorldCom further argue that to the extent that the Motion goes to the final determinations in the Order regarding the denial of Ms. Arvanitas's comments on the original number conservation measures adopted in Order No. PSC-00-0543-PAA-TP, a



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motion for reconsideration of that decision would not be appropriate. AT&T and WorldCom contend that such a motion has nothing to do with the adoption of the number pooling plan in the Order, and as such, the Motion should not be considered a barrier or impediment to the adoption or implementation of the number pooling plan approved by the Order. (AT&T and WorldCom Response at 2)

AT&T and WorldCom assert that if Ms. Arvanitas's Motion is a protest of the number pooling plan adopted by the Order, the Motion fails to fulfill the legal requirements for a protest. (See 28-106-201, Florida Administrative Code) AT&T and WorldCom contend that the Motion should not be considered or deemed a protest of the PAA provisions of the Order. (AT&T and WorldCom Response at 3)

AT&T and WorldCom further state that they have specific substantive objections to the matters identified in Ms. Arvanitas's Motion: there is no basis for reconsidering the rejection of rulemaking for number pooling; the timetable approved for number pooling does address implementation of both Software Release 3.0 and 1.4, in the event 3.0 cannot be implemented; the Commission has not adopted a specific cost recovery plan as one will be addressed in a later proceeding; and the number pooling plan, as adopted, specifically provides that the INC guidelines employed will be the most currently approved version. (AT&T and WorldCom Response at 3)

Finally, AT&T and WorldCom urge the Commission to address the motion as quickly as possible to resolve any potential delay in implementing the Order. (AT&T and WorldCom Response at 3)

### **BellSouth**

In its Response, BellSouth echoes AT&T's and WorldCom's arguments. BellSouth asserts that no codeholder, carrier, or other interested party has filed a formal protest of this Order. Thus, the Order should be deemed final agency action with respect to the proposed agency action (PAA) matters, specifically the number pooling plans for the 954, 561, and 904 NPAs discussed therein. (BellSouth Response at 1)

BellSouth declares that Ms. Arvanitas did not serve a copy of her Motion on BellSouth. Having received a copy from the Commission Clerk on June 30, 2000, BellSouth asserts that its response is timely filed. (BellSouth Response at 2)

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BellSouth contends that Ms. Arvanitas's Motion should be denied to the extent she seeks reconsideration of any of the PAA provisions of the Order. BellSouth argues Rule 25-22.0601(1)(a), Florida Administrative Code, specifically states that the Commission will not entertain a motion for reconsideration of a PAA Order. (BellSouth Response at 2) BellSouth adds that if Ms. Arvanitas's intent in filing her Motion was to seek reconsideration of a final action of the Commission, such as her challenge to Order No. PSC-00-0543-PAA-TP, a request for reconsideration of that decision may be procedurally appropriate, provided she can demonstrate she has standing to raise such issues and other procedural requirements are met. Agreeing with AT&T and WorldCom, BellSouth argues that such a Motion would not affect the proposed agency actions in the Order, such as the adoption of the number pooling plan. BellSouth concludes that the Motion should not be considered a barrier or impediment to the adoption or implementation of the number pooling plan approved by the Order. (BellSouth Response at 2)

BellSouth contends that Ms. Arvanitas's Motion fails to fulfill the legal requirements of a protest if she intends her Motion to be construed as a protest of the number pooling plan adopted by the Order. (See 28-106.201, Florida Administrative Code) (BellSouth Response at 2) In addition, BellSouth, like AT&T and WorldCom, has specific substantive objections to the matters identified in Ms. Arvanitas's Motion including those identified by AT&T and WorldCom in their Response. Moreover, BellSouth contends that Ms. Arvanitas's Motion is replete with factual inaccuracies and misunderstandings of the rulings of the Commission and of the FCC. BellSouth requests the right to address the merits of Ms. Arvanitas's issues at a later time should the Commission decide Ms. Arvanitas is entitled to a hearing on the merits of her Motion. (BellSouth Response at 2-3)

Finally, BellSouth urges the Commission to address Ms. Arvanitas's Motion as quickly as possible to resolve any potential delay it may cause to the timely implementation of the Commission's Order with regard to number pooling in the 954, 561, and 904 area codes.

### Sprint

Sprint filed a Concurrence in AT&T and WorldCom's response to Ms. Arvanitas's Motion for Reconsideration.

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RECOMMENDATION

Commission Order No. PSC-00-1046-PAA-TP, was a combined action order. It was a proposed agency action regarding approval of the Joint Petitioners' Offer of Settlement as amended, with all other matters, including the dismissal of Ms. Arvanitas's Protest, the selection of NeuStar as the Interim Number Pooling Administrator, and the stipulated unprotested portions of Order No. PSC-00-0543-PAA-TP, being final agency actions. (Order at 18 and 19) Staff believes that it is appropriate to address Ms. Arvanitas's issues relating to the timetable implementation schedules for SR30 and SR14 and the INC Pooling Guidelines within the context of a protest to the proposed agency action as these issues were a part of the approved agreement. Staff believes Ms. Arvanitas's remaining issues relating to rulemaking for the voluntary stipulation and cost recovery should be addressed in the context of a motion for reconsideration as the determination of these issues was final agency action.

**The Proposed Agency Action**

Rule 25-22.060(1)(a), Florida Administrative Code, provides in part:

Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order . . . . The Commission will not entertain a motion for reconsideration of a Notice of Proposed Agency Action issued pursuant to Rule 25-22.029, regardless of the form of the Notice and regardless of whether or not the proposed action has become effective under Rule 25-22.029(6).

Staff believes that a portion of Ms. Arvanitas's Motion should be dismissed to the extent that she is asking for reconsideration of the issues addressed by the proposed agency action.

Notwithstanding staff's recommendation that Ms. Arvanitas's Motion for Reconsideration should not be entertained by the Commission pursuant to the rule, staff will address the merits of her arguments for informational purposes. As stated earlier, Ms. Arvanitas argues that the implementation dates for the SR14

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software should be revised to define the dates that the delivery of SR30 would be in default, and a timetable for implementation of SR14 by December 4, 2000. Staff believes that the Order currently provides for these eventualities. Moreover, staff believes that the Order correctly reflected the Commission's intent with respect to the implementation of SR30 and SR14. The vote sheet signed by the Commissioners provides:

The companies accepted the Commission's modification to move implementation of the 954 area code to 1/22/01 with the understanding that if 1/22/01 cannot be met with 3.0, 1.4 has to be implemented. If companies have to implement 1.4, they will not seek to recover those related costs.

(See Vote sheet dated May 5, 2000.) Therefore, staff believes that the order correctly reflects the intent of the Commission as discussed at the May 5, 2000, agenda conference.

Staff believes that Ms. Arvanitas's suggestion that the Order be modified to allow for revisions to the INC Number Pooling Guidelines after February 28, 2000, is also without merit as the Order provides for just that. Paragraph 10 of the approved plan provides that subsequently modified INC Guidelines will be utilized upon being approved and becoming effective pursuant to the INC. (See Order No. PSC-00-1046-PAA-TP, pg. 44.)

If Ms. Arvanitas's Motion for Reconsideration is treated as a protest of the PAA portion of the order, it should be dismissed by the Commission on its own motion for failure to state a claim for which relief can be granted. A motion to dismiss raises as a question of law whether the petition alleges sufficient facts to state a cause of action. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). Varnes describes the standard for disposing of motions to dismiss as whether, with all allegations in the petition assumed to be true, the petition states a cause of action upon which relief may be granted. Id. When making this determination, the tribunal must consider only the petition. All reasonable inferences drawn from the petition must be made in favor of the petitioner. Id.

In order to determine whether the petition states a cause of action upon which relief may be granted, it is necessary to examine

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the elements needed to be alleged under the substantive law on the matter. All of the elements of the cause of action must be properly alleged in a pleading that seeks affirmative relief. If they are not, the pleading should be dismissed. Kislak v. Kredian, 95 So. 2d 510 (Fla. 1957).

Ms. Arvanitas is requesting reconsideration of a proposed agency action with regard to timetable implementation schedules for SR30 and SR14 and the INC Pooling Guidelines. Pursuant to its own Rule 25-22.060(1)(a), Florida Administrative Code, the Commission cannot entertain a motion for reconsideration of a proposed agency action. Moreover, Ms. Arvanitas has not alleged specific facts that warrant the reversal or modification of the agency's proposed action. (See Uniform Rule 28-106.201, Florida Administrative Code.)

Finally, if the Commission believes Ms. Arvanitas's Motion is a proper protest of the PAA portion of the Order, staff further believes that Ms. Arvanitas has failed to properly demonstrate standing to protest the Commission's Order. Ms. Arvanitas must show whether her substantial interests have been affected before the Commission can consider her Motion. The Notice of Further Proceedings or Judicial Review in the Order provides:

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.

Moreover, Uniform Rule 28-106-201(2)(b), Florida Administrative Code, requires:

The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, . . . and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(emphasis supplied.) While Ms. Arvanitas notes that she is representing herself, nowhere in her Motion does she describe how the actions of implementing the software or the adoption of the INC guidelines affect her. Moreover, the Order set the implementation

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of software for number pooling in the 954 area code, not the 727 area code where Ms. Arvanitas lives. Therefore, staff believes that Ms. Arvanitas's Motion should also be dismissed for lack of standing.

Thus, for the above reasons, staff believes that the portion of Ms. Arvanitas' Motion that can be considered a protest to the PAA of Order PSC-00-1046-PAA-TP should be dismissed.

### The Final Order

The proper 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." Steward Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

In her Motion, Ms. Arvanitas argues that the Commission was required to "initiate rulemaking in anticipation of necessary authority from the FCC for conservation measures." (Motion at 1) Staff believes that Ms. Arvanitas has not shown any mistake of fact or law or raised any legal argument that prohibited the Commission from approving the proposed plan. The Order correctly found that "there is nothing in Order No. PSC-99-1393-S-TP which was issued in a separate docket that prohibits us from adopting those previously accepted measures in the PAA Order in this docket." (Order at 6) Staff believes the Commission also correctly stated that "there is nothing to prohibit us from exercising our authority granted in FCC Order No. 99-249 to proceed with requiring mandatory conservation measures." (Order at 7) Moreover, staff believes that Ms. Arvanitas is rearguing matters that have already been considered by the Commission. Finally, staff believes that the Commission was correct when it found that "it has not been feasible or practicable to begin rulemaking given the FCC's actions and the exigencies of

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area code jeopardy in this state." Id. Staff believes that it is Ms. Arvanitas' contention that "a review of the chronology time table to affirm or deny the FS 120.54" is a mistake of law and, as such, fails to meet the pleading standards that require the Commission to grant reconsideration.

Finally, staff believes Ms. Arvanitas' arguments fail to disclose a mistake of fact or law that requires the Commission to grant reconsideration of the cost recovery issue. The Order provides that the Commission acknowledge the FCC's rules and orders requiring it to resolve any matters related to cost recovery under the federal law and agree to open a docket to address this issue. Order at 15. This means that a docket will be established to address cost recovery issues and, in that process, should an order be issued, the order will follow applicable federal law. The Order did not reflect any judgment as to what costs, if any, would or would not be recovered.

Thus, for the above reasons, staff recommends that the Commission deny that the portion of Ms. Arvanitas's Motion that could be considered a Motion for Reconsideration. Staff believes that Ms. Arvanitas' Motion fails to identify a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. In addition, staff believes that Ms. Arvanitas is rearguing matters that have already been considered by the Commission. Staff recommends that an order consummating the proposed agency action portion of the order should be issued and all portions of the Order should also be implemented without any further delay.

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

**RECOMMENDATION:** No. The docket should not be closed as other issues for the Commission's consideration are pending. (CALDWELL)

**STAFF ANALYSIS:** The docket should not be closed as other issues for the Commission's consideration are pending.