



# Public Service Commission

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**DATE:** JULY 18, 2001

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

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *c.f.g. 12*  
DIVISION OF COMPETITIVE SERVICES (BROWN, CASEY) *PJC*

**RE:** DOCKET NO. 010565-TL - PETITION BY BELL/SOUTH TELECOMMUNICATIONS, INC. FOR AN EXPEDITED REVIEW OF THE NORTH AMERICAN NUMBERING PLAN ADMINISTRATION DENIAL OF A CENTRAL OFFICE CODE FOR THE ORLANDO PINECASTLE SWITCH

**AGENDA:** 07/24/01 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** 08/13/01

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\010565.RCM

### CASE BACKGROUND

On March 30, 2001, BellSouth Telecommunications, Inc. (BellSouth) submitted an application to the North American Numbering Plan Administrator (NANPA) for a central office (NXX) code for the ORLFLPCDSO switch in the Orlando rate center. The code request was made to fulfill two requests made by specific customers who are in need of 2,500 and 500 consecutive Direct Inward Dialing (DID) numbers, respectively. On April 10, 2001, NANPA denied BellSouth's request for a NXX code for the ORLFLPCDSO switch because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On April 20, 2001, BellSouth filed a "Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration." By Order No. PSC-01-1312-PAA-TL, issued June 18, 2001, the Commission directed NANPA to provide BellSouth with a

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growth code for the ORLDFLPCDSO switch in Orlando as soon as possible.

On June 22, 2001, a protest of Order No. PSC-01-1312-PAA-TL was filed by Emmanuel Arvanitas. On July 5, 2001, BellSouth filed a Motion to Dismiss Mr. Arvanitas' protest. On July 16, 2001, Emmanuel Arvanitas and Peggy Arvanitas filed a Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing. This recommendation addresses Emmanuel Arvanitas' protest, BellSouth's Motion to Dismiss, and the July 16 filing by Emmanuel Arvanitas and Peggy Arvanitas.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should BellSouth's Motion to Dismiss Mr. Emmanuel Arvanitas' Protest be granted?

**RECOMMENDATION:** Yes. BellSouth's Motion to Dismiss Mr. Emmanuel Arvanitas' Protest should be granted, and Order No. PSC-01-1312-PAA-TL should be made final, and effective as of the date of the vote on this recommendation, and the NXX codes issued by NANPA should be released to BellSouth for customer assignment. (**FORDHAM, BROWN, CASEY**)

**STAFF ANALYSIS:** As mentioned in the case background, BellSouth was denied needed numbering resources for its Orlando ORLDFLPCDSO switch by NANPA. On April 20, 2001, BellSouth filed a petition requesting that the Commission overturn NANPA's decision. By Order No. PSC-01-1312-PAA-TL, issued June 18, 2001, the Commission overturned NANPA's decision to deny a growth code to BellSouth, and directed NANPA to provide BellSouth with a growth code for the ORLDFLPCDSO switch in Orlando as soon as possible. On June 22, 2001, a timely protest of Order No. PSC-01-1312-PAA-TL was filed by Emmanuel Arvanitas, and on July 5, 2001, BellSouth filed a Motion to Dismiss Mr. Arvanitas' protest.

The Notice of Further Proceedings or Judicial Review attached to 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.

Staff believes that Mr. Arvanitas has failed to properly demonstrate standing to protest the Order. Mr. Arvanitas must show whether his substantial interests have been affected before the Commission can consider his protest.

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.)

Mr. Arvanitas did not provide an address or phone number with his petition. More importantly, however, while Mr. Arvanitas notes that he is a consumer of Florida's numbering resources, nowhere in his Protest does he describe how the action of overturning NANPA's denial of numbering resources for the Orlando ORLDFLPCDSO switch affects him.

It is appropriate, therefore, to apply the two-pronged test for "substantial interest" set forth in Agrico Chemical Co. V Dept. Of Environmental Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), rev. denied 415 So. 2nd 1359 (Fla. 1982). According to the Agrico test, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Id. At 482. Mr. Arvanitas has not alleged facts demonstrating that he has met this test. Moreover, the protested Order directs NANPA to issue numbering resources in the 407 area code, not the 904 area code where Mr. Arvanitas lives. Therefore,

in staff's opinion, Mr. Arvanitas' substantial interests have not been affected.

Staff, therefore, recommends that BellSouth's Motion to Dismiss Mr. Emmanuel Arvanitas' Protest should be granted because Mr. Arvanitas has not demonstrated that he has met the criteria for standing. Further, staff recommends that Order No. PSC-01-1312-PAA-TL should be made final and effective as of the date of the vote on this recommendation, and the NXX codes issued by NANPA should be released to BellSouth for customer assignment.

**ISSUE 2:** Should the pleading filed July 16, 2001, by Emmanuel Arvanitas and Peggy Arvanitas be considered in the disposition of this matter?

**RECOMMENDATION:** No. The pleading filed July 16, 2001, by Emmanuel Arvanitas and Peggy Arvanitas should not be considered in the disposition of this matter. (FORDHAM)

**STAFF ANALYSIS:** The "Protest of BellSouth's Protest of NANPA and PA Denials of NXX and NXX-X Codes and State of Florida PSC Overturn of Denials, and FCC Clarification Filing" filed on July 16, 2001 by Emmanuel Arvanitas and Peggy Arvanitas is deserving of some special analysis. This pleading does not cite any rule of procedure which would provide a basis for its filing. It is so ambiguous and incomprehensible that it is not possible to divine any legitimate relief that it is seeking. It does not comport with any rule of law. Although staff made great effort to interpret this pleading as being responsive to BellSouth's Motion to Dismiss, the contents did not relate to the Motion.

Based on an analysis of this pleading, and a review of a long list of similar pleadings from these same individuals, it appears to this writer that this document was filed for the purpose of frustrating and impeding the important work of this Commission. The Florida Administrative Procedure Act contemplates that there may be situations where such pleadings are filed, and provides

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certain remedies and sanctions against those who would abuse the order of our system. Among the sanctions is the assessment of costs and attorneys fees against nonprevailing parties who file frivolous pleadings. While staff is not proposing that costs be assessed in this matter, these provisions are significant for the purpose of demonstrating how critically our law-makers regard the problem of frivolous pleadings and interested persons should be put on notice.

Additionally, in similar cases on both state and federal level, courts have exercised the remedy of requiring pleadings from certain individuals to be signed by a licensed attorney. The United States Supreme Court stated in In re McDonald, 489 U.S. 180, 184 (1989):

Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of institution's limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice.

In 1993, citing the holdings in McDonald, the Court forbade Roy A. Day to file pleadings which were not signed by a licensed attorney. In that case, the Court directed the Clerk not to accept pleadings from Day which did not meet that criteria.

Most recently, in an opinion filed on June 21, 2001, Florida's First District Court of Appeal entered a similar order involving frivolous pleadings by Roy A. Day. In this decision the Court stated:

We conclude that Day's activities have substantially interfered with the orderly process of judicial administration and it is appropriate that he should be prohibited from appearing before this court in proper person as appellant or petitioner in this or any other case. . . . Additionally, the clerk of this court is directed to refuse any document submitted for filing on behalf of Mr. Day as appellant or petitioner unless signed by a member of the Florida Bar, effective upon the issuance of this published order.

ROY A. DAY v. DEPARTMENT OF HEALTH, BOARD OF CHIROPRACTIC, 1st District, 2001 Fla. LEXIS 8406

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Though that may be a viable option to explore in the consideration of our difficulties with the constant inappropriate pleadings from Emmanuel Arvanitas and Peggy Arvanitas, staff does not make that recommendation in this Docket. Staff may, however, submit a separate recommendation for consideration of this problem.

Accordingly, staff recommends that the July 16, 2001 pleading filed by Emmanuel Arvanitas and Peggy Arvanitas, as it relates to this Docket, be summarily dismissed as not complying with any known rule of procedure, and not serving any lawful or beneficial purpose.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed upon the issuance of the order. (FORDHAM)

**STAFF ANALYSIS:** This docket should be closed upon the issuance of the order.