



# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

COMMISSION  
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SEP - 6 AM 11:00

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**DATE:** SEPTEMBER 6, 2001

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (FORDHAM) *E.S.F. - (PSC)*  
DIVISION OF COMPETITIVE SERVICES (CASEY) *[Signature]*

**RE:** DOCKET NO. 010309-TL - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR AN EXPEDITED REVIEW OF THE NORTH AMERICAN NUMBERING PLAN ADMINISTRATION DENIAL OF A CENTRAL OFFICE CODE FOR THE ORLANDO MAGNOLIA SWITCH

DOCKET NO. 010782-TL - PETITION BY BELLSOUTH TELECOMMUNICATIONS, INC. FOR A GENERIC PROCEEDING TO ESTABLISH AN EXPEDITED PROCESS FOR FUTURE NORTH AMERICAN NUMBERING PLAN ADMINISTRATION CODE DENIALS

DOCKET NO. 010783-TL - BELLSOUTH'S PETITION FOR REVIEW OF POOLING ADMINISTRATOR'S DENIAL OF REQUEST FOR ADDITIONAL NUMBERING RESOURCES FOR THE JACKSONVILLE AND FT. LAUDERDALE RATE CENTERS

**AGENDA:** 09/18/01 - REGULAR AGENDA - FINAL ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\010309R.RCM

### CASE BACKGROUND

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. The protest referenced Docket Nos. 010309-

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TL, 010565-TL, 010782-TL, and 010783-TL. At the July 24, 2001 Agenda Conference, Commissioners voted not to consider the July 16, 2001 pleading by Emmanuel Arvanitas and Peggy Arvanitas in the disposition of Docket No. 010565-TL. This recommendation addresses Emmanuel Arvanitas' and Peggy Arvanitas' pleading regarding 010309-TL, 010782-TL, and 010783-TL.

Docket 010309-TL

On January 24, 2001, BellSouth Telecommunications, Inc. (BellSouth) submitted an application to the North American Numbering Plan Administrator (NANPA) for a central office (NXX) code for the ORLFLMADS1 switch in the Orlando rate center. The code request was made to fulfill a request made by a specific customer who is in need of 2,500 consecutive Direct Inward Dialing (DID) numbers in an NXX with a four as the last digit (NX4). On February 6, 2001, NANPA denied BellSouth's request for a NXX code for the ORLFLMADS1 switch because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On March 9, 2001, BellSouth filed with this Commission a Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration. By Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL, the Commission directed the NANPA to provide BellSouth a growth code ORLFLMADS1 switch in the Orlando rate center.

On June 1, 2001, a Protest for Proposed Agency Action Order Directing NANPA to Provide BellSouth with a Growth Code for the ORLDFLMADS1 Switch, Petition for a Formal Proceeding Pursuant to Rule 25-22.029, Florida Administrative Code in FPSC Docket No. 010309-TL was filed. The petition was filed by Mr. Jonathan W. Kylleskwy, III, and Mr. Thomas Enderson, purportedly on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)."

On June 6, 2001, BellSouth filed a Motion to Dismiss PAA Protest which was filed by Mr. Jonathan W. Kylleskwy, III, and Mr. Thomas Enderson. The motion addressed the Proposed Agency Action (PAA) protest of Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL.

On June 12, 2001, Mr. Kylleskwy filed a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials in Docket 010309-TL. On June 27, 2001, BellSouth filed a Motion to Strike and/or Dismiss Pleading requesting the Commission strike or dismiss Mr. Kylleskwy's Motion.

On June 28, 2001, staff filed a recommendation which recommended that BellSouth's Motion to Dismiss Mr. Kylleskwy's Response and Protests and its Motion to Strike and/or Dismiss Pleading be approved. The Commission approved staff's recommendation at the July 10, 2001 Agenda Conference. The Commission also approved referral of the matter to agencies having jurisdiction to seek sanctions against the person(s) responsible for filing the probable bogus documents, and directed staff to cooperate fully with the appropriate agency.

Docket No. 010782-TL

On May 25, 2001, BellSouth filed a Petition for Generic Proceedings to Establish Expedited Process for Reviewing NANPA's Denial of Applications for Use of Additional NXX Codes. On June 5, 2001, a Response and Protest to BellSouth Telecommunications' Petition for Generic Proceedings to Establish Expedited Process for Reviewing North American Numbering Plan Administration (NANPA) Future Denials of Applications for use of Additional NXX Codes by BellSouth Telecommunications, Inc. in Docket No. 010782-TL was purportedly filed by a Mr. Jonathan W. Kylleskwy, III. The request also requested a formal hearing proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On June 12, 2001, a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials was filed purportedly by a Mr. Kylleskwy. On June 13, 2001, BellSouth filed a Motion to Dismiss Response and Protest allegedly filed by Jonathan W. Kylleskwy, III.

On June 22, 2001, Emmanuel Arvanitas filed a Petition for Leave to Intervene in Docket No. 010782-TL, stating that he has a right to intervene as a consumer representing himself in proceedings which affect his area code. On June 28, 2001, BellSouth filed BellSouth Telecommunications, Inc. Opposition to Emmanuel Arvanitas' Petition to Intervene stating Mr. Arvanitas does not have standing, no substantial interest, and will not

suffer injury from this proceeding. On August 9, 2001, this Commission entered Order No. PSC-01-1629-PCO-TL, denying Emmanuel Arvanitas' Petition for Leave to Intervene.

On June 28, 2001, staff filed a recommendation which recommended that BellSouth's Motion to Dismiss Mr. Kylleskwy's Response and Protests and its Motion to Strike and/or Dismiss Pleading be approved. The Commission approved staff's recommendation at the July 10, 2001 Agenda Conference. The Commission also approved referral of the matter to agencies having jurisdiction to seek sanctions against the person(s) responsible for filing the probable bogus documents, and directed staff to cooperate fully with the appropriate agency.

Docket No. 010783-TL

On May 8, 2001, BellSouth submitted an application to NeuStar for two thousand consecutive DID numbers for the Cypress (FTLDFLCYDS0) switch in the Ft. Lauderdale rate center. On May 10, 2001, BellSouth submitted an application to NeuStar for a one thousand block of consecutive DID numbers with a five as the fourth digit for the Sawgrass FTLDFLSGDS0 switch which is also in the Ft. Lauderdale rate center. Also on May 10, 2001, BellSouth submitted an application to NeuStar for twelve hundred consecutive DID numbers for the Clay Street (JCVLFLCLDS0) switch in the Jacksonville rate center. Each code request was made to fulfill a specific customer request.

On May 10, 2001, NeuStar denied BellSouth's request for the Ft. Lauderdale Cypress and Sawgrass switches. On May 11, 2001, NeuStar denied BellSouth's request for the Jacksonville Clay Street switch. All denials were made because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On May 25, 2001, BellSouth filed BellSouth's Petition for review of Pooling Administrator's Denial of Request for Additional Numbering Resources requesting that the Commission overturn NeuStar's decision denying numbering resources. On June 5, 2001, a Response and Protest to BellSouth Telecommunications' Petition for Review of Pooling Administrator's Denial for Additional Numbering Resources by NeuStar in Docket No. 010783-TL was purportedly filed by a Mr. Jonathan W. Kylleskwy, III. The request

DATE: SEPTEMBER 6, 2001

also requested a formal hearing proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On June 12, 2001, a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials was filed purportedly by a Mr. Kylleskwy. On June 13, 2001, BellSouth filed a Motion to Dismiss Response and Protest allegedly filed by Jonathan W. Kylleskwy, III.

On June 28, 2001, staff filed a recommendation which recommended that BellSouth's Motion to Dismiss Mr. Kylleskwy's Response and Protests and its Motion to Strike and/or Dismiss Pleading be approved. On July 3, 2001, BellSouth filed an amended petition to withdraw its request to overturn NANPA's denial of 1,000 numbers, with a five as the fourth digit for the Sawgrass (FTLDFLSGDS0) switch in the Ft. Lauderdale rate center. BellSouth stated in its amended petition, that its customer requesting 1,000 numbers obtained service from an ALEC solely because BellSouth was unable to fulfill the customer's numbering requests.

The Commission approved staff's June 28, 2001 recommendation at the July 10, 2001 Agenda Conference. The Commission also approved referral of the matter to agencies having jurisdiction to seek sanctions against the person(s) responsible for filing the probable bogus documents, and directed staff to cooperate fully with the appropriate agency.

On July 12, 2001, staff filed a recommendation which recommended that the Commission overturn NeuStar's decision to deny the requested numbers, and direct NeuStar to provide BellSouth with 2,000 numbers for the Cypress (FTLDFLCYDS0) switch in the Ft. Lauderdale rate center, and 1,200 numbers for the Clay Street (JCVLFLCLDS0) switch in the Jacksonville rate center as soon as possible. The Commission approved staff's recommendation at the July 24, 2001 Agenda Conference.

#### 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." The protest referenced Docket Nos. 010309-TL, 010565-TL, 010782-TL, and 010783-TL. At the July 24, 2001 Agenda Conference, Commissioners voted not to consider the

July 16, 2001 pleading by Emmanuel Arvanitas and Peggy Arvanitas in the disposition of Docket No. 010565-TL.

This recommendation addresses the July 16, 2001 pleading by Emmanuel Arvanitas and Peggy Arvanitas in reference to Docket Nos. 010309-TL, 010782-TL, and 010783-TL.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should 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 July 16 by Emmanuel Arvanitas and Peggy Arvanitas be dismissed in Docket Nos. 010309-TL, 010782-TL, and 010783-TL?

**RECOMMENDATION:** Yes. 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 July 16 by Emmanuel Arvanitas and Peggy Arvanitas should be dismissed in Docket Nos. 010309-TL, 010782-TL, and 010783-TL on the Commission's own motion. (FORDHAM, BROWN, CASEY)

**STAFF ANALYSIS:** The first reason why 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 should be dismissed is one of standing. Uniform Rule 28-106-201(2)(b), Florida Administrative Code, requires:

. . . an explanation of how the petitioner's substantial interests will be affected by the agency determination;

Also, the Notice of Further Proceedings or Judicial Review attached to the Orders issued by the Commission in these Dockets provide:

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 Emmanuel Arvanitas and Peggy Arvanitas have failed to properly demonstrate standing to protest any of the

Orders. In order to have standing, they must demonstrate that their substantial interests have been affected. 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. Emmanuel Arvanitas and Peggy Arvanitas have not alleged facts demonstrating that they have met this test. Moreover, these Dockets deal with numbering issues and numbering resources in area codes where the Arvanitas' do not even live. Therefore, in staff's opinion, Emmanuel Arvanitas and Peggy Arvanitas' substantial interests have not been affected.

Even if standing was established, the pleading in question seems to be just a "shotgun" type approach to expressing unhappiness with each of the Dockets which are the subject of this recommendation. Their pleading does not, however, 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 various pleadings in these Dockets, the contents did not relate to the legitimate filings in any of them.

Based on an analysis of this pleading, it appears that this document was filed for the purpose of frustrating and impeding the important work of this Commission. Accordingly, staff recommends that 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, be dismissed because the Arvanitas' have failed to establish standing in these Dockets. Furthermore, the pleadings do not comply with any known rule of procedure, and do not state a cause of action upon which relief can be granted.

DOCKET NOS. 010309-TL, 010782-TL, and 010783-TL  
DATE: SEPTEMBER 6, 2001

**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** The Proposed Agency Action Orders issued in Docket Nos. 010309-TL and 010783-TL should be made final and the Dockets should be closed. Docket No. 010782-TL should remain open at this time pending resolution of the issues therein. (FORDHAM)

**STAFF ANALYSIS:** These Dockets should not be affected by the Arvinitas' pleading. The Proposed Agency Action Orders issued in Docket Nos. 010309-TL and 010783-TL should be made final and the Dockets should be closed. Docket No. 010782-TL should remain open at this time pending resolution of the issues therein.