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June 14, 2002

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


Re: Docket No. 010743-TL (407/321 Area Codes)

Dear **Ms.** Bayo:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Order No. PSC-02-0743-FOF-TL, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original **was** filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (LMB)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 010743-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this **14th** day of **June, 2002** to the following:

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James Meza III (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for review of proposed)
Numbering plan relief for the 407/321)
Area codes by NeuStar, Inc., as North)
American Numbering Plan Administrator)
(NANPA), on behalf of Florida)
Telecommunications Industry)

Docket No. 010743-TP

Filed: June 14,2002

BELLSOUTH TELECOMMUNICATIONS. INC.'S
MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. (“BellSouth”) respectfully submits this Motion for Reconsideration and requests that the Florida Public Service Commission {“Commission”} reconsider its **Order** No. PSC 02-0743-FOF-TL, In re: Petition for review of proposed numbering plan relief for the 407/321 area codes by NeuStar, Inc., as North American Numbering Plan Administrator (“NANPA”), on behalf of Florida Telecommunications Industry (“Order”) issued on May 31,2002 in one respect. The Commission should reconsider its finding that the Commission has the authority to require BellSouth or other telecommunications carriers to “drop” a **386** number in the Sanford exchange so that Osteen customers can obtain 386 numbers (“Volusia County Proposal”). Reconsideration is required because, **as** a matter of law, the Commission does not have the authority to require carriers to implement such a proposal.

ARGUMENT

The standard 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 an order. See Diamond Cab Co. v. King, 146 So. 2d **889**, 891 (Fla. 1962). The Commission must rely upon evidence that **is** “sufficiently relevant and material that a reasonable **man** would accept

it as adequate to support the conclusion reached.” DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1st DCA 1957). See also, Agrico Chem. Co. v. State of Fla. Dept. of Environmental Reg., 365 So.2d 759, 763 (Fla. 1st DCA 1979); and Ammerman v. Fla. Board of Pharmacy, 174 So.2d 425, 426 (Fla. 3d DCA 1965). The evidence must “establish a substantial basis of fact from which the fact at issue can reasonably be inferred.” DeGroot, 95 So.2d at 916. “The public service Commission’s determinative action cannot be based upon speculation or supposition.” 1 Fla. Jur. 2d, §174, citing Tamiami Trail Tours, Inc. v. Bevis, 299 So.2d 22, 24 (1974). “Findings wholly inadequate or not supported by the evidence will not be permitted to stand.” Caranci v. Miami Glass & Engineering Co., 99 So.2d 252,254 (Fla. 3d DCA 1957).

In the instant matter, while refusing to adopt Volusia County’s Proposal, the Commission erred in determining that it nevertheless had the authority to order carriers to implement the proposal. In its Order, the Commission determined that this authority came from two sources: (1) federal law; and (2) Florida law. Order at 12. However, as established below, the Commission overlooked several points of facts and law in reaching this conclusion as neither Florida law nor federal law provides the Commission with the authority to require carriers to implement the Volusia County Proposal.

A. State Law Does Not Provide the Commission with any Authority.

First, the Commission erred as a matter of law because it failed to recognize that Florida law does not give the Commission any authority whatsoever over numbering issues, including the power to require carriers to implement the Volusia County Proposal. As made clear by the Telecommunications Act of 1996 (the “Act”), the Federal Communications Commission (“FCC”) has sole authority over numbering issues: “The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the~

United States.’: 47 U.S.C. § 251(e)(1). In conflict with this exclusive authority, the Commission found that, pursuant to its general police powers in Sections 364.01 and 364.15, Florida Statutes, it could require the implementation of the Volusia County Proposal. While the Commission does have broad authority to “protect the public welfare” under Florida law, that authority does not allow the Commission to circumvent Congress’ **express** requirement that the FCC have “exclusive jurisdiction” over numbering issues.

“Under the Supremacy Clause of the United States a federal law preempts a state law where the two conflict.” Morgan v. City of Lakeland, 694 So. 2d 886, **886** (Fla. 2nd DCA 1997) (citing Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123 (**1988**); Free v. Bland, 369 U.S. 663, **82** S.Ct. 1089, **8** L.Ed.2d 180 (1962)). In this case, the Commission’s finding that its general police powers under state law gives it authority over numbering issues conflicts with the Act and thus must be rejected pursuant to the Supremacy Clause. Because the Commission failed to consider the Supremacy Clause and the fact that Congress gave exclusive jurisdiction over numbering issues to the FCC, reconsideration of the Order is warranted.

B. Federal Law Does not Provide the Commission with any Authority.

Second, the Commission erred in finding that it has authority under federal law to require carriers to implement the Volusia County Proposal. This is so because the Commission failed to consider the following points of fact and **law**, all of which require reversal on reconsideration.

While the FCC has exclusive authority over numbering issues, the **Act** allows the FCC to delegate all or portions of this authority to state commissions. 47 C.F.R. § 251(e)(1). In the Local Competition Second Report & Order, the FCC delegated the authority to implement new area codes to the state commissions, but retained broad authority over numbering. See

Pennsylvania Numbering Order, FCC Order No. 98-224 at ¶ 7 (Sep. 28, 1998). As stated by the FCC:

We retain our authority to set policy with respect to all facets of numbering administration in the United States. By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act . . . We authorize state to resolve matters involving the implementation of new area codes.

Id. Accordingly, “[t]he Authority delegated to the states was thus limited to implementing appropriate forms of area code relief.” *Id.* at ¶ 8. “Area code relief” is defined as “the process by which central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code and, often, a new area code is introduced. . . . A new area code is assigned when almost all of the central office codes within an area code are consumed.” New York Public Service Comm’n v. FCC, 267 F.3d 91, 95 (2nd Cir. 2001).

Regarding a state commission’s delegated authority to implement area code relief, the FCC promulgated Rule 52.19, which provides as follows:

- (a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes.
- (b) State commissions may perform any or all functions related to initiation and development of area code relief **plans**, so long as they act consistently with the guidelines enumerated in this part,. . . .

Thus, pursuant to these rules, **the** Commission only has the authority to implement area code relief.

In addition, pursuant to FCC Order 99-249 (“Florida Ruling”), released on September 15, 1999, the Commission has interim authority to implement several number conservation measures: including (1) thousand-block number pooling; (2) reclaim unused and reserved NXX codes; (3) maintain rationing procedures for six months following area code relief; (4) set numbering allocation standards; (4) request number utilization data from all carriers; and (5) implement NXX code sharing.’

The Commission misinterpreted its power to implement area code relief to mean that it has the authority to require carriers to implement the Volusia County Proposal. In reaching this conclusion, the Commission erred in finding that said proposal – requiring carriers *to* “drop” a 386 code in the Sanford exchange -- constituted area code relief. As stated by the Second Circuit, area code relief occurs “when central office codes are made available when there are few or no unassigned central office codes remaining in an existing area code.” New York Public Service Comm’n, 267 F.3d at 95.

As stated by Mr. Foley on cross-examination, however, adoption of the Volusia County Proposal would not extend the life of either 407 or 386:

Q If this Commission were to order BellSouth to drop a **386** code in the Sanford exchange, would that have any effect on extending the life of the 407 or 386 area codes?

A No, it would not because no codes would be returned to the inventory for reassignment anywhere else.

(Tr. 22). Accordingly, the Volusia County Proposal would not result in the transferring of central office codes from an area code with a surplus of codes to **an** area code close to exhaustion. Indeed, Mr. Foley made it absolutely clear that the Volusia County Proposal would

¹ In the Florida Ruling, this Commission asked the FCC for the authority to implement RCC. The FCC, however, expressly determined that RCC was essentially a ratemaking issue and thus

have no effect on extending the life of either 407 or **386**. Thus, the proposal cannot meet the definition of “area code relief” and therefore is outside the Commission’s authority. In failing to recognize this fact, the Commission erred and reconsideration is warranted.

Additionally, for this very same reason, the Volusia County Proposal cannot be considered “area code boundary realignment”, which the FCC has defined as “when the boundary lines between two adjacent area codes are shifted to allow the transfer of some NXX codes from an area code for which NXX codes remain unassigned to an area code for which few to no NXX codes are left for assignment.” Pennsylvania Numbering Order, FCC Order No. 98-224 at ¶ **8**. As made clear by Mr. Foley, the Volusia County Proposal will not result in the transfer of NXX codes to an area code close to exhaustion. (Tr. 22). The only thing that will result from the Volusia County Proposal would be that customers in the Osteen area could eventually migrate to 386. Nothing in the proposal extends the life of any area code or otherwise constitutes “area code relief.” Because the Commission failed to consider this fact and the definition of “area code relief” and “area code boundary realignment,” reversal of the Commission’s Order on reconsideration is warranted.

Finally, even if the Volusia County Proposal somehow constituted **area** code relief, the Commission would be prohibited from ordering it because it would violate the FCC’s numbering policy objectives.. As stated by the FCC, numbering administration should (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another. Pennsylvania Numbering Order, FCC Order No. 98-224 at ¶ 6. Further, FCC Rule 52.19(b) requires that State

already within the Commission’s jurisdiction. FCC 99-249 at ¶ **38**.

Commissions comply with the above guidelines in implementing area code relief. 47 C.F.R. § 52.19(b).

The Volusia County Proposal would violate the second guideline -- not unduly favor or disadvantage any particular industry segment or group of consumers. This is so because the Volusia County Proposal only allows BellSouth to provide Osteen customers with **386** numbers: (Tr. 19, 20-21). For other carriers to obtain **386** numbers to serve Osteen customers, they will have to ask NANPA and the Commission for their own 10,000 block of **386** numbers or obtain numbers from BellSouth's block through some type of subpooling arrangement. (Tr. at 20, 21).

This is so because the sharing of BellSouth's 386 numbers placed in the Sanford exchange would not be on an exchange level basis. (Tr. at 21). However, the Commission does not have the authority to order subpooling, and the Commission refused to require subpooling in the Order. See Order at 9-10.

Accordingly, the Volusia Country Proposal would treat BellSouth different than other competitive carriers because BellSouth, and only BellSouth, would be **able** to provide 386 numbers to Osteen customers. This result violates the FCC's guidelines **and** thus would be prohibited. Therefore, even if **the** proposal constituted area code relief, the Commission could not order it.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that the Commission reconsider the portion of its Order requiring finding that it has the authority to require carriers to implement the Volusia Country Proposal.

Respectfully submitted this 14th day of June, 2001.

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