

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

ORIGINAL

December 2, 2002

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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COMMISSION
CLERK

Re: Docket No. 021061-TP

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Joint Response of NEFTC, ALLTEL and Smart City in Opposition to CNM Network, Inc.'s Motion to Dismiss the Petitions for Intervention, or, in the Alternative, to Conduct a Generic Proceeding or Rulemaking or to Stay Pending FCC Action.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,



John P. Fons

AUS
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COM — cc: All Parties of Record
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: In Re Petition of CNM Network, Inc.
for Declaratory Statement Regarding Florida
Public Service Commission Jurisdiction

DOCKET NO. 021061-TP
FILED: December 2, 2002

**JOINT RESPONSE OF NEFTC, ALLTEL AND SMART CITY
IN OPPOSITION TO CNM NETWORK, INC.'S MOTION
TO DISMISS THE PETITIONS FOR INTERVENTION, OR, IN
THE ALTERNATIVE, TO CONDUCT A GENERIC PROCEEDING
OR RULEMAKING OR TO STAY PENDING FCC ACTION**

NORTHEAST FLORIDA TELEPHONE COMPANY d/b/a NEFTC ("NEFTC"), ALLTEL and Smart City ("Joint Respondents"), pursuant to Rule 28-106.204, Florida Administrative Code, Uniform Rules of Procedure, jointly respond in opposition to CNM Network, Inc.'s ("CNM") Motion to Dismiss the Petitions for Intervention, or, in the Alternative, to Conduct a Generic Proceeding or Rulemaking or to Stay Pending FCC Action ("Motion to Dismiss"), stating as follows:

1. On October 18, 2002, CNM filed its petition requesting that the Commission issue a declaratory statement "determining that phone-to-phone Internet protocol ("IP") telephony is not telecommunications under Florida law." CNM further seeks a declaratory statement from the Commission that "CNM is not a telecommunications company subject to the Commission's certification and tariffing requirements." The Joint Respondents filed its Motions to Intervene in a timely manner, and included allegations demonstrating that they are entitled to participate in the proceeding because their "substantial interests are subject to determination or will be affected through the proceeding." Rule 28-106.205, Florida Administrative Code.

2. NEFTC's Motion to Intervene sets forth specific reasons why NEFTC's substantial interests are "subject to determination or will be affected through the proceeding." In fact, CNM concedes as much when it acknowledges that NEFTC's Motion to Intervene includes statements of its substantial interest, without claiming that such statements are "insufficient" under Florida law.¹

3. Elsewhere CNM contends that "[n]one of the putative intervenors have demonstrated how the question of whether phone-to-phone IP telephony offered by CNM constitutes telecommunications and, thus, whether CNM is a 'telecommunications company' subject to the jurisdiction of the Commission, affects the substantial interest of each of the petitioners." CNM Motion to Dismiss, ¶¶6. CNM has forgotten that one of the major underpinnings of its request for a declaratory statement is its concern that; "Once the Commission decides that IP telephony is a telecommunications service, reciprocal compensation must apply to IP telephony, as required under federal law." CNM's Petition for Declaratory Statement, ¶¶14. CNM wrongly assumes that reciprocal compensation is the applicable compensation. If the IP telephony is interexchange, then access is due. CNM disregards who would be due compensation for terminating its traffic, and who would be denied such compensation in the event the Commission decides otherwise. Nowhere in its Petition for Declaratory Statement does CNM state where it will be providing IP telephony and to which local telephone companies it will potentially be required to pay

¹ NEFTC's Motion to Intervene alleges that:

NEFTC has entered into a resale agreement with an alternative local exchange company ("ALEC") that is providing services to end user customers using the type of calling arrangement described in paragraph 8 of CNM Network, Inc.'s ("CNM") Petition for Declaratory Statement ("Petition"). NEFTC is currently in a dispute with that ALEC regarding whether intrastate access charges apply to some or all of the traffic being carried by the ALEC using that arrangement.

access or reciprocal compensation. If it's not in Florida, then there is no reason to ask the question. If it is, all of the ILECs in Florida have a stake in the answer.

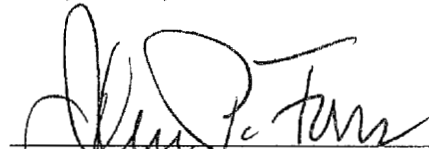
4. Finally, CNM urges the Commission, should it find that CNM's feeble efforts to stave off intervention will not prevail, as an alternative, to convert CNM's Petition for Declaratory Statement into a generic proceeding and then stay that proceeding until the Federal Communications Commission rules on the Petition filed by AT&T on October 18, 2002. CNM's Motion to Dismiss, ¶¶7 and 8. CNM's alternative relief request is anything but benign. Instituting a generic proceeding and then stopping that proceeding will simply allow CNM to obtain indirectly that which it cannot obtain directly, namely, providing IP telephony without regulation and without paying the requisite compensation to the local telephone companies for an indefinite period of time; and preventing the Commission from pursuing any proceeding against CNM for providing a "telecommunications" service without a certificate of public convenience and necessity. See, Request to Establish Docket, July 16, 2002, Docket No. 020737-T1, titled "*Compliance Investigation of CNM Network, Inc. for Apparent Violation of Rules 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required; and 25-4.043, F.A.C., Response to Commission Staff Inquiries.*" As proposed, the Joint Respondents cannot support CNM's alternative request for relief. If, however, CNM were to agree to cease providing IP telephony services in Florida pending resolution of the "telecommunications" service issue, or to pay the requisite compensation during the interim, then the Joint Respondents would be willing to support CNM's alternative relief request.

WHEREFORE, having fully demonstrated that their "substantial interests" will be determined or affected through CNM's Petition for Declaratory Statement, CNM's Motion

to Dismiss should be denied and the Joint Respondents' Motions to Intervene should be granted. Further, CNM's request for alternative relief should also be denied unless CNM agrees not to provide IP telephony services in Florida pending resolution of the "telecommunications" service issue or to pay the requisite access charges to the local exchange service providers during the interim period.

DATED this 2nd day of December, 2002.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Fons", is written over a horizontal line.

JOHN P. FONS
J. JEFFRY WAHLEN
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302
850/425-5471

ATTORNEYS FOR JOINT RESPONDENTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail transmission, U. S. Mail, or hand delivery (*) this 2nd day of December, 2002, to the following:

Samantha Cibula*
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

BellSouth Telecommunications, Inc.
c/o Nancy B. White
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Floyd Self
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P. O. Box 1876
Tallahassee, FL 32302

Bettye Willis/Steve Rowell
ALLTEL
One Allied Drive
Little Rock, AR 72203-2177

Benjamin Dickson
Blooston Law Firm
2120 L St., NW, Suite 300
Washington, DC 20037

CNM Network Inc.
4100 Guardian Street
Simi Valley, CA 93063

Angela Green
Coral Telecom, Inc.
2292 Wednesday St., Suite 2
Tallahassee, FL 32308-4334

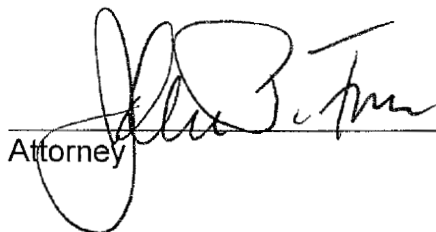
Michael A. Gross
FCTA
246 E. 6th Avenue
Tallahassee, FL 32301

Charles J. Rehwinkel/Susan Masterton
Sprint-Florida, Inc.
MCFLTHO0107
P. O. Box 2214
Tallahassee, FL 32316

David B. Erwin
127 Riversink Road
Crawfordville, FL 32327

Kimberly Caswell
Verizon Florida, Inc.
201 N. Franklin St., FLTC 0007
Tampa, FL 33602

Lynn B. Hall
Smart City Telecom
P. O. Box 22555
Lake Buena Vista, FL 32830-2555



Attorney