FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MARCH 21, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN, PELLEGRINI, COX)
DIVISION OF COMMUNICATIONS (GREER, WIDELL)

RE: DOCKET NO. 961153-TL - PETITION FOR NUMBERING PLAN AREA RELIEF FOR 904 AREA CODE, BY BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: APRIL 1, 1997 - REGULAR AGENDA - POST-HEARING DECISION - MOTION FOR RECONSIDERATION - PARTIES HAVE REQUESTED ORAL ARGUMENT

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\961153.RCM

CASE BACKGROUND

On September 20, 1996, BellSouth Telecommunications, Inc., (BellSouth) filed a petition with this Commission seeking approval of a plan to provide relief from the expected exhaustion of numbers available for assignment in the 904 NPA code. The 904 NPA code includes the Pensacola, Panama City, Tallahassee, Jacksonville and Daytona Beach LATAs, as well as a part of the Orlando LATA.

Usually, code holders within the NPA code are able to arrive at a consensus on how to relieve an exhaustion of an NPA code. The industry has only requested that the Commission determine an NPA code relief plan once before. That was for the exhaustion of the 305 NPA code, Docket No. 941272-TL. In this case, the code holders could not agree on an appropriate plan for the 904 NPA code. Therefore, BellSouth presented three plans the industry considered viable for the Commission to review in this proceeding. Each of these was a geographic split along LATA boundaries. They were:

> Option 1, assigning a new NPA code to the Pensacola, Panama City and Tallahassee LATAs, with the Jacksonville, Daytona Beach, and 904 portion of the Orlando LATAs retaining the 904 code;

> **Option 1a, assigning a new NPA code to the Jacksonville, Daytona Beach, and 904 portion of the Orlando LATAs, with the Pensacola, Panama City and Tallahassee LATAs retaining the 904 code; and**
>
> **Option 2, assigning a new NPA code to the Pensacola and Panama City LATAs, with the Tallahassee, Jacksonville, Daytona Beach and 904 portion of the Orlando LATAs retaining the 904 codes.**

These plans were developed by the code holders at two industry meetings held on July 31, 1996, and August 22, 1996, in Jacksonville.

The Commission held five service hearings, one in each 904 code LATA, Pensacola, Panama City, Tallahassee, Daytona Beach and Jacksonville during the period of November 4-21, 1996, to provide customers an opportunity to express their views on which plan should be implemented. On December 9, 1996, the Commission held a technical hearing in Tallahassee. At this hearing, the Commission evaluated options that included two three-way geographic splits in addition to the three options presented in BellSouth's petition. These were:

> **Option 3, a three-way split crossing LATA lines, assigning NPA code 1 to the Pensacola and Panama City LATAs, NPA code 2 to West Jacksonville and the Tallahassee LATA and NPA code 3 to East Jacksonville and the Daytona Beach and 904 portion of the Orlando LATAs; and**
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> **Option 4, a split following LATA lines, assigning a new NPA code 1 to the Jacksonville LATA; a new NPA code 2 to the Daytona Beach and 904 portion of the Orlando LATAs, with the Tallahassee, Panama City and Pensacola LATAs retaining the 904 code.**

In Order No. PSC-97-1038-FOF-TL, issued February 10, 1997, the Commission decided that the most appropriate way to avoid the expected exhaustion of the 904 NPA code was Option 4. The Commission ordered that permissive dialing begin by June 30, 1997, and mandatory dialing, by June 30, 1998.

On February 21, 1997, ALLTEL Florida, Inc., (ALLTEL) and Northeast Florida Telephone Company, Inc., (Northeast) filed their joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL and request for oral argument on the motion. ALLTEL and Northeast attached two letter to their motion. The first letter is dated February 12, 1997, from Ronald R. Conners, Bellcore, Director, NANP Administration, to R. Stan Washer, NPA Code Administrator, BellSouth Telecommunications, Inc. The second letter is dated February 17, 1997, from Alan C. Hasselwander, Chairman, NANC, to Chairman Johnson. Both letters addressed the Commission's decision in Order No. PSC-97-0138-FOF-TL to use two new area codes to provide 904 area code relief. ALLTEL and Northeast asked that the Commission consider the letters as new evidence in its reconsideration decision. On February 28, 1997, St Joseph Telecommunications, Inc., (St. Joseph) and Quincy Telephone Company, Inc., (Quincy) filed a joint response to the motion. On March 10, 1997, AT&T filed a Response to Motions for Reconsideration and Oral Argument and Ex-Parte Communications. The respondents all objected to consideration of the letters in the Commission's reconsideration deliberations on the grounds that the letter to Chairman Johnson was an ex-parte communication, and neither letter was part of the record in the proceeding.

On February 25, 1997, the City of Jacksonville (Jacksonville) filed a petition in support of ALLTEL's and Northeast's joint motion and motion for leave to participate in the motion. Jacksonville also filed a request for oral argument. On March 4, 1997, St. Joseph, Quincy, Gulf Telecommunications, Inc., (Gulf) and Florala Telecommunications, Inc., (Florala) jointly filed a response objecting to Jacksonville's motion.

Since the Motion for Reconsideration was filed, staff has received copies of other letters from NANC, Bellcore, and the Federal Communications Commission (FCC) concerning the Commission's decision to use two new area codes in its relief plan.

In this memorandum, staff recommends that the Commission reopen the record in this proceeding for the limited purpose of considering the letters from NANC, Bellcore and the FCC, and properly providing all parties of record the opportunity to respond to them. Staff recommends that the Commission briefly defer its decision on the motion for reconsideration until the letters can be properly addressed. If the Commission decides not to reopen the record, staff has provided its recommendation on ALLTEL's and Northeast's motion for reconsideration and request for oral argument, as well as Jacksonville's motion for leave to participate and requests for oral argument.

ISSUE A: Should the Commission reopen the record for the limited purpose of considering the letters from NANC, Bellcore, and the FCC concerning the Commission's decision to use two new area codes in its relief plan?

RECOMMENDATION: Yes. The Commission should reopen the record for the limited purpose of considering the letters from NANC, Bellcore, and the Federal Communications Commission (FCC) concerning the Commission's decision to use two new area codes in its relief plan. The Commission should defer its reconsideration decision until the letters can be properly addressed. The Commission should provide parties of record the opportunity to conduct limited discovery, conduct a limited hearing on April 16, 1997, to provide parties the opportunity to conduct cross-examination and present evidence on the letters, and provide argument on the letters. Staff suggests that at the conclusion of the hearing the Commission should make a bench decision on the motion for reconsideration.

STAFF ANALYSIS: At the hearing in this case the Commission heard testimony regarding the establishment of two new area codes to provide relief for the imminent exhaustion of the 904 area code. BellSouth's witness Baeza was asked whether he was aware of any instance where the numbering plan administrator had rejected a state commission plan to provide area code relief. He testified that the administrator would review the plan to determine consistency with the industry guidelines, he was aware that the administrator had rejected industry relief plans, but he could not think of a time when an administrator had rejected a plan approved by a state commission. (TR 89-104)

The same issue arose at the Commission's January 21, 1997, Agenda Conference when the Commission made its decision to require two new area codes. The Commission discussed whether Bellcore would release the codes, whether NANC would object, and whether the Commission should defer its decision until it heard definitively whether the administrator would release the codes. The Commission decided not to defer its decision, reasoning that the decision should be made, and then the administrator and NANC could respond.

The letters from Bellcore, NANC, and the FCC, written after the record had closed and the Commission had made its decision, represent those entities' response to the Commission's decision. They address the questions that arose at the hearing and at the Agenda Conference but could not be answered at the time. Staff believes that the letters provide new evidence that may be material to the Commission's reconsideration decision. If the new evidence is competent and relevant, staff believes that the Commission

should admit it into the record and consider it. Staff recommends that the appropriate way to deal with the new evidence is to reopen the record, allow parties a brief, but reasonable opportunity to conduct discovery and respond to the evidence, and conduct a brief hearing to consider it.

Staff recommends that if the Commission decides to reopen the record, it should defer its decision on Issues 1 through 4 below, which address the underlying motion for reconsideration, until the new evidence is considered. If the Commission decides not to reopen the record to consider the new evidence, the Commission should address Issues 1 through 4.

ISSUE 1: Should the Commission grant the request of ALLTEL Florida, Inc., and Northeast Florida Telephone Co., Inc., for oral argument on their joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL?

RECOMMENDATION: No. The Commission should deny the request for oral argument, because oral argument is unlikely to aid the Commission's comprehension and evaluation of the issues before it.

STAFF ANALYSIS: On February 21, 1997, ALLTEL and Northeast filed a request for oral argument on their Joint Motion for Reconsideration of Order No. PSC-97-0138-FOF-TL, pursuant to Rule 25-22.058, Florida Administrative Code. The petitioners state that the issues they raise in the motion are complex, and that oral argument will aid the Commission's comprehension and evaluation of them.

Rule 25-22.058, Florida Administrative Code, requires that a request for oral argument be contained in a separate document, accompany the pleading upon which argument is requested, and state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it. Rule 25-22.060, Florida Administrative Code, provides that the Commission may, within its discretion, permit oral argument on a motion for reconsideration. Staff recommends that although the petitioners have complied with the technical requirements of Rule 25-22.058, they have not shown that oral argument will aid the Commission in considering the substantive issues raised in the Motion for Reconsideration. The petitioners have sufficiently laid out their arguments in support of reconsideration in their motion. Those arguments are not particularly difficult or complex, and therefore oral argument would not assist the Commission in its decision. Staff recommends that the petitioners' request for oral argument should be denied. If the Commission decides to hear oral argument, staff recommends oral argument be limited to five minutes a side. Rule 25-22.060(1)(f), Florida Administrative Code, provides that a party who fails to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.

ISSUE 2: Should the Commission grant the request of the City of Jacksonville for oral argument on its petition in support of, and its motion for leave to participate in, ALLTEL Florida, Inc.'s and Northeast Florida Telephone Co.'s joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL?

RECOMMENDATION: No. The Commission should deny the city of Jacksonville's request for oral argument.

STAFF ANALYSIS: On February 25, 1997, the City of Jacksonville filed a Request for Oral Argument on its Petition in Support of and Motion for Leave to Participate in ALLTEL Florida, Inc.'s and Northeast Florida Telephone Co.'s Joint Motion for Reconsideration. Jacksonville argues that oral argument would aid the Commission's comprehension and evaluation of its request for participation at this stage of this proceeding and its support for the motion for reconsideration.

Staff notes that Jacksonville is not a party to this proceeding. Staff believes that Jacksonville has not sufficiently demonstrated how the Commission will benefit from Jacksonville's oral argument, either in considering Jacksonville's participation in reconsideration or its arguments in support of ALLTEL's and Northeast's motion. Staff recommends that the request for oral argument should be denied. If the Commission grants Jacksonville's request for oral argument, staff recommends that it be limited in duration to five minutes.

ISSUE 3: Should the Commission grant the motion of the City of Jacksonville for leave to participate in ALLTEL Florida, Inc.'s and Northeast Florida Telephone Co.'s joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL and consider its petition in support of ALLTEL Florida, Inc.'s and Northeast Florida Telephone Co.'s joint motion for reconsideration?

RECOMMENDATION: No. The commission should deny Jacksonville's motions.

STAFF ANALYSIS: On February 25, 1997, Jacksonville filed a Petition in Support of ALLTEL's and Northeast's Joint Motion for Reconsideration and Motion for Leave to Participate in ALLTEL's and Northeast's Joint Motion for Reconsideration. On March 4, 1997, St. Joseph Telecommunications (St. Joseph), Inc., Quincy Telephone Company (Quincy), Gulf Telecommunications, Inc.,(Gulf) and Florala Telecommunications, Inc., (Florala) filed a Response to Motion of City of Jacksonville for Leave to Participate and for Oral Argument. The respondents object to Jacksonville's participation at this stage of the proceedings.

Jacksonville argues that the Commission may, pursuant to Section 120.52(12)(c), Florida Statutes, permit its participation in the manner of an amicus curiae in this proceeding at this time. Jacksonville concedes that it may not now be permitted to participate as a "specifically named person" whose substantial interests are being determined in an agency proceeding, pursuant to Section 120.52(12)(a), Florida Statutes. Jacksonville also concedes that it may not participate pursuant to Section 120.52(12)(b), Florida Statutes. Jacksonville appears to rely on the second provision of Section 120.52(12)(c), which permits an agency to establish by rule a means of limited participation in its proceedings for persons not eligible to become parties. It argues that this provision is operative in the absence of a prohibitive Commission rule.

In addition, Jacksonville cites case law it believes "may" support a constitutional right to participate, notwithstanding its absence from the initial hearing. The proposition of the cases, Jacksonville claims, is that "[a]ll persons having a direct and substantial interest in an order sought to be reviewed ... must be made parties to an administrative appeal of that order."

The respondents argue that Jacksonville was eligible at one time to intervene in this proceeding as a party and elected not to do so. They also argue that, even if Jacksonville were deemed a person otherwise ineligible to participate as a party, the

Commission has no rule specifying limited participation by such persons. Thus, the respondents assert, Section 120.52 (12(c), Florida Statutes, provides no means of entry for Jacksonville at this point of this proceeding. The respondents add that, if the Commission permits Jacksonville to participate, in fairness, it would have to extend to all other affected communities the same opportunity. The respondents also state that the cases cited by Jacksonville in support of a constitutional right to participate are either factually distinguishable or are from an era quite distant from the present time. They conclude that there is no basis in law to grant Jacksonville's request.

Rule 25-22.039, Florida Administrative Code, permits persons who have a substantial interest in a proceeding before the Commission to petition for leave to intervene no later than five days before the final hearing. The Commission held the final hearing on December 9, 1996. Jacksonville has, from at least November 21, 1996, the date of the customer hearing held in Jacksonville, and perhaps earlier than that, been aware that the Commission's decision in this proceeding could result in a new NPA code assignment for the Jacksonville LATA. Option 1A was one of three options advanced by the industry for the Commission's consideration. It would have retained the 904 NPA code in the Pensacola, Panama City and Tallahassee LATAs and required a new NPA code for the Jacksonville, Daytona Beach, and the 904 portion of the Orlando LATAs. Jacksonville had both ample reason and opportunity to enter this proceeding in compliance with Commission rules. Jacksonville did not, and staff does not believe the Commission should allow Jacksonville to participate at this point in time.

Section 120.52(12)(c), Florida Statutes, defines "party" to mean:

> Any other person ... allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

First, Jacksonville does not assert that it is entitled to party status now. Second, staff believes that Jacksonville is not a person "not eligible to become [a party]" in this proceeding. Indeed, Jacksonville was clearly entitled to party status. Jacksonville apparently considers itself within the class of persons not eligible to become a party in this proceeding, because

it did not intervene at the appropriate time. It would be illogical, however, to construe this language as providing a safe harbor for one whose ineligibility has come about through its own inaction.

Jacksonville's argument that it may be permitted to participate as an amicus curiae is unsustainable. The purpose of an amicus curiae is generally to inform the court, when necessary or advisable, on some matter of law in respect to which the court is uncertain. An amicus curiae should be permitted to participate only where it is shown that the parties have overlooked or insufficiently briefed points and law essential to a proper consideration of the cause. Froehler v. North American Life Ins. Co. of Chicago, 27 N.E.2d 833, 838, 374 Ill. 17, 27 (Ill. 1940). In its motion and petition, Jacksonville does not advance material argument for reconsideration that is in addition to, or that strengthens, the arguments of ALLTEL and Northeast, or that addresses an oversight or insufficiency in those arguments.

Furthermore, an amicus curiae is generally one without a stake in the outcome of the case, whose role is advisory and not adversarial. See, e.g., Ginsburg v. Black, 192 F.2d 823 (7th Cir. 1951); Clark v. Sandusky, 205 F.2d 915 (7th Cir. 1953). The City of Jacksonville clearly has a stake in the outcome of the proceeding, and its role is not advisory.

In Docket No. 941272-TL, the Pompano Beach Chamber of Commerce and the Broward Economic Development Council, Inc., filed motions for reconsideration of Order No. PSC-95-1048-FOF-TL, in which the Commission approved a geographic split of the 305 NPA code. Neither had intervened in the docket. Staff recommended that their petitions to intervene be denied. Both withdrew their motions at the agenda conference at which the Commission was to consider the motions in light of the Commission's decision to adopt an interim relief plan in Docket No. 951160-TL. See Order No. PSC-95-1498-FOF-TL at 4.

Jacksonville seeks a similar type of intervention in this proceeding. Rule 25-22.039, Florida Administrative Code, requires that a petition to intervene must be filed at least five days before final hearing. Contrary to its arguments that its substantial interests will be harmed by the Commission's decision, Jacksonville fails to demonstrate any basis to conclude that it is a party. Moreover, Jacksonville's appearance as a witness at the service hearing in Jacksonville solely to provide public testimony also fails to establish status as a party. Notwithstanding actual notice of the hearings and the specific relief plans to be

addressed, and more than an adequate opportunity to intervene, Jacksonville never sought intervention. Jacksonville did not file testimony, did not attend or participate in the final prehearing conference or the final hearing, and did not file a post hearing statement or brief as required by Rule 25-22.056, Florida Administrative Code. Jacksonville is not a party and has failed to comply with any of the requirements of parties set forth in the Commission's rules or in Order No. PSC-96-1324-PCO-T. Accordingly, staff recommends that the Commission find that Jacksonville is not a party, and cannot now intervene at this late date in the proceeding.

Rule 25-22.060, Florida Administrative Code, provides that parties may file motions for reconsideration. Since Jacksonville is not a party to this proceeding, Jacksonville's Petition for Reconsideration must be denied because Jacksonville lacks standing under the rule to seek reconsideration.

Staff recognizes that the Commission's decision indeed affects the substantial interests of Jacksonville and its citizens; however, staff believes it is important to maintain the integrity of the process by which orderly participation in proceedings before the Commission has been established, and by which these proceedings come to a certain conclusion. Staff further recognizes that the Commission desires to open its proceedings to every person whose substantial interests are affected by its decisions. Rules have been developed to enable participation. Those rules provide every such person with a fair opportunity to address the Commission.

Jacksonville also argues that separately it may have a due process right to participate in this proceeding on the authority of State ex rel. Investment Corporation of South Florida v. Board of Business Regulation, 227 So.2d 674, 677 (Fla. 1969), citing Harison v. Ocala Building and Loan Ass'n, 42 So. 696 (Fla. 1906); Nichols & Johnson v. Frank, 52 So. 146 (Fla. 1910); Headley v. Lasseter, 147 So.2d 154 (3d DCA 1962). The proposition of these cases is that all parties directly and substantially interested in an order sought to be reviewed must be made parties to the appeal as a matter of due process of law. These cases, however, are distinguished from the present case in that the aggrieved person had either sought to become a party to the proceeding in an appropriate way and had been rebuffed, was not joined as an indispensable party, or was improperly dismissed. Here, nothing barred Jacksonville's right to full and timely intervention in the proceeding. Staff recommends that the Commission deny Jacksonville's motion to participate in the motion for reconsideration.

ISSUE 4: Should the Commission grant the joint motion of ALLTEL Florida, Inc., and Northeast Florida Telephone Co., Inc., for reconsideration of Order No. PSC-97-0138-FOF-TL?

RECOMMENDATION: No. The motion fails to satisfy the standard for reconsideration enunciated in Diamond Cab Co. of Miami v. King, 146 So.2d 889 (Fla. 1962).

STAFF ANALYSIS: On February 21, 1997, ALLTEL and Northeast filed a joint motion for reconsideration of Order No. PSC-97-0138-FOF-TL, pursuant to Rule 25-22.060, Florida Administrative Code. On February 28, 1997, St. Joseph and Quincy respondents) filed a Response to Petition for Reconsideration.

In Order No. PSC-97-0138-FOF-TL, the Commission approved the relief plan identified as Option 4 to relieve the 904 code exhaustion projected to occur in the first half of 1998. The plan is a three-way geographic split along LATA boundaries that requires the assignment of new NPA codes to the Jacksonville LATA and to the Daytona Beach and 904 code portion of the Orlando LATAs.

In their joint motion, the petitioners claim that in its Order the Commission: (1) failed to consider the impact of permanent local number portability implementation and NPA code exhaustion relief concurrence in the Jacksonville LATA; (2) approved a relief plan intended to avoid the need to shortly address future exhaustion in the Jacksonville LATA under Options 1, 1A and 2, even though that need is not certain to develop; (3) failed to consider the effect of its decision on the overall administration of numbering resources; and (4) has invited a jurisdictional dispute with the FCC that, if engaged, would require more time to resolve than, in the public interest, is available. The respondents address each of these issues in their response.

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 Fla. 1st DCA 1981). Moreover, a petition for reconsideration must present to the Commission some such point by reason of which its decision is necessarily erroneous. Atlantic Coast Line R. Co. v. City of Lakeland, 115 So. 669, 680. 1927); Mann v. Etchells, 182 So. 198, 201 (Fla. 1938); Hollywood, Inc. v. Clark, 15 So.2d 175, 180 (Fla. 1943). A motion for reconsideration is not a medium by which a party may advise the Commission of its disagreement with the decision, reargue matters presented in briefs and in oral argument,

or to ask the Commission to change its mind as to a matter that has already received its careful attention. Sherwood v. State, 111 So.2d 96, 97-98 (Fla. 3d DCA 1959) (quoting State ex rel Jaytex Realty Co. v. Green, 105 So.2d 817, 818-19 (Fla. 1st DCA 1958)).

PERMANENT LOCAL NUMBER PORTABILITY IMPLEMENTATION AND NPA CODE EXHAUSTION RELIEF CONCURRENCE

The petitioners state that carriers in the Jacksonville LATA must implement permanent local number portability in the period July 1, 1998, to September 30, 1998, pursuant to FCC Order 96-286, released July 2, 1996. The petitioners further state that, because this Commission has ordered mandatory dialing by June 30, 1998, the virtual concurrence of these two requirements will cause them to experience a significant burden and may cause confusion for customers in the Jacksonville LATA. The petitioners claim that even though Northeast witness Brewer identified such a concurrence problem in prefiled testimony, the matter was not considered at the January 21, 1997, agenda conference and is not addressed in the Commission's Order.

The respondents assert that implementing permanent number portability should not cause customers confusion. They note that neither of the petitioners is required to comply with local number portability requirements by the third quarter of 1998. They suggest that if there is a concurrence problem, number portability should be set for a different time.

Witness Brewer's testimony was stipulated into the record at the technical hearing, December 9, 1996. It is the only testimony in the record of this proceeding related to the impact of number portability concurrence. It was fully considered by the Commission even though it was not specifically addressed in the Commission's order. Furthermore, the implementation of permanent local number portability at the same time as the area code change is essentially immaterial to the Commission's decision here. As the respondents point out, number portability should be transparent to the customers and, therefore, should not create additional confusion. Moreover, as the petitioners acknowledge, Section 251(f) of the 1996 Federal Telecommunications Act permits rural telephone companies to petition for suspension or modification of the requirements of Section 251(b), including the provision of number portability. See FCC Order 96-286, ¶83. Thus, staff believes that the petitioners' claim does not identify a point of fact overlooked or misapprehended by the Commission. Even if that were the case, staff does not believe it is such a fact as would necessitate a

different decision. Staff notes that neither ALLTEL nor Northeast addressed this issue in its post-hearing filings.

FUTURE EXHAUSTION

The petitioners assert that the Commission improperly considered the potential need under Options 1, 1A, and 2 for relief by means of another geographic split in the Jacksonville and Daytona Beach LATAs in the period 2000 to 2002. The respondents assert that the Commission was faced with not following the imbalance guideline now or at some point in the very near future, barring the implementation then of an overlay relief plan. In addition, they assert that the Commission properly exercised its judgment to solve a problem that could not be addressed by a pat application of the industry guidelines.

Staff believes the Commission's consideration of further exhaustion in the relatively near term is not a point of fact or law that the Commission misapprehended. The Commission's concern in that consideration was appropriately with implementing a relief plan presenting the longest length of relief consistent with the ICCF guideline that customers not be subjected to more than one NPA code change in a period of eight to ten years and a reasonable solution as well to a further exhaustion that appeared imminent enough to be virtually immediate. The petitioners' assertion is merely disagreement with the Commission's decision and as such falls short of the reconsideration standard.

OVERALL ADMINISTRATION OF NUMBERING RESOURCES

The petitioners assert that the Commission failed to properly weigh the ICCF guideline that imbalances in NPA code lifetimes not exceed 15 years. Under Option 4, the new NPA code for the Daytona Beach and 904 code portion of the Orlando LATAs is projected to exhaust in 2030, while the new NPA code for the Jacksonville LATA is projected to exhaust in 2006. The imbalance of 24 years exceeds the guideline. Given the premise that telephone numbers are a scarce resource and that NPA codes are appropriately conserved when assigned consistently with the guidelines, the petitioners assert that the Commission failed to consider how its decision could affect the general administration of numbering resources.

The respondents assert that the Commission was faced with a unique circumstance in this proceeding that was, in part, created when the 352 NPA code was assigned on the recommendation of the industry to the Gainesville LATA in violation of the imbalance guideline and then administered in a manner that now precludes

joinder of the Daytona Beach LATA. The respondents claim that on the basis of the record evidence the Commission's decision would not appear to impair nationwide number administration.

The imbalance guideline states that:

> In the long term, the plan shall result in the most effective use possible of all codes serving a given area. Ideally, all of the codes in a given area shall exhaust about the same time in the case of splits. In practice, this may not be possible, but severe imbalances, for example, a difference in NPA lifetimes of more than 15 years, shall be avoided.

NPA Relief Planning Guidelines, The NPA Relief Planning Process, 4.0(h).

Staff believes that the Commission recognized the numbering plan administration implications of its decision. NPA codes are a finite resource that must be administered in a fair and efficient manner to facilitate competitive entry. See, e.g., FCC 95-283, Report and Order, ¶4. The Commission concluded that the ICCF guidelines present sound principles of NPA relief planning that are effective in the general case. Nevertheless, it concluded in the specific case before it that Option 4 best serves all the customers in the present 904 NPA area code, its inconsistency with the imbalance guideline notwithstanding. Staff notes that the guidelines were developed to facilitate and help standardize the geographic NPA relief planning process. NPA Relief Planning Guidelines, Assumptions and Constraints, 2.2. Staff believes that the precedential force, if any, of the Commission's decision is constrained by its factual context. Once again, the petitioners challenge the judgment of the Commission, but do not identify a point of fact or law overlooked or misapprehended.

JURISDICTIONAL DISPUTE

The parties suggest that should the Commission decline to reconsider its Order and adopt Option 1 instead of Option 4 as they propose, the result may be a clash with the NANC and the FCC that would not be resolved without seriously threatening the orderly implementation of relief. In making this suggestion, the parties rely on two letters. The first is a letter dated February 12, 1997, from Ronald R. Conners, Bellcore, Director, NANP Administration, to R. Stan Washer, NPA Code Administrator,

BellSouth Telecommunications, Inc. The second letter is one dated February 17, 1997, from Alan C. Hasselwander, Chairman, NANC, to Chairman Johnson.

The petitioners assert that the letters are newly discovered evidence that may be considered on a motion for reconsideration on the authority of McArthur v. McArthur, 95 So.2d 521 (Fla. 1957). The respondents claim that the letters cannot be considered on reconsideration, because there has been no opportunity to subject them to cross-examination. AT&T asserts that the letters are ex-parte and non-record, and inasmuch as the letters do not indicate that the Commission overlooked or failed to consider a point of fact or law, the Commission should not consider them on reconsideration. Staff agrees with the respondents that the letters cannot be considered because the parties have not had an opportunity to subject them to cross-examination.

Therefore, for the reasons stated above, staff recommends that the Commission deny the petitioners' motion for reconsideration of Order NO. PSC-97-0138-FOF-TL.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: If the Commission decides to reopen the record and conduct a limited hearing before it considers the motions for reconsideration, the docket should remain open pending completion of the further proceedings. If the Commission decides not to reopen the record, the docket should be closed.

STAFF ANALYSIS: The docket should remain open if the Commission decides to reopen the record. The docket should be closed if the Commission decides not to reopen the record.