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June 6, 2001

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

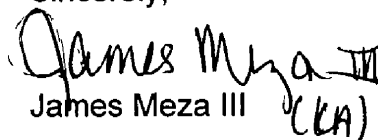
Re: **Docket No. 010309-TL**
Petition For Expedited Review of Area Code Denials

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss PAA Protest, which we ask that you file 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 (KA)

Enclosures

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

DOCUMENT NUMBER-DATE

07104 JUN-60

FPCC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 010309-TL

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

U.S. Mail this 6th day of June, 2001 to the following:

Patricia Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

NANPA
Ron Connor
Director
Suite 400
1120 Vermont Avenue
Washington, D.C. 20005

Thomas Enderson
10943 West Colonial Drive
Orange, Florida 34761

Jonathan W. Kyleskwy, III
3343 North 5th Street
Suite 911
Miami, Florida 33130


James Meza III (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for expedited review)	
Of North American Plan Administration's)	Docket No. 010309-TL
(NANPA) denial of application for use of)	
central office code numbering)	
resources or NXX codes in Orlando)	
Magnolia switch by BellSouth)	Filed: June 6, 2001
<u>Telecommunications, Inc.)</u>	

MOTION TO DISMISS PAA PROTEST

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission ("Commission") dismiss the Protest for Proposed Agency Action Directing NANPA to Provide BellSouth with a Growth Code for the ORLDFLMADS1 Switch and Petition for Formal Hearing Proceeding Pursuant to Rule 25-22.029, Florida Administrative Code ("Protest") allegedly filed by two individuals, Messrs. Thomas Enderson and Jonathan W. Kyleskwy, III. In support of this Motion to Dismiss, BellSouth submits the following:

1. On March 9, 2001, BellSouth filed a Petition for expedited review of North American Numbering Plan Administrator's ("NANPA") denial of its application for additional central office codes ("NXX") for the Orlando-Magnolia switch. In its Petition, BellSouth requested that, pursuant to 47 C.F.R. § 52.15(g)(3)(iv), the Commission reverse NANPA's denial of BellSouth's request for additional numbering resources to serve a specific customer that was in need of 2,500 consecutive Direct Inward Dialing ("DID") numbers.

2. On May 21, 2001, the Florida Public Service Commission ("Commission") issued Order No. PSC-01-1146-PAA-TL (the "PAA"), wherein in

granted BellSouth's Petition and ordered NANPA to provide BellSouth with a growth code for the Orlando-Magnolia switch as soon as possible.

3. On June 1, 2001, some person(s) filed a protest of the PAA. The pleading indicates that two individuals, Thomas Enderson and Jonathan W. Kylleskwy, III, purportedly filed the protest on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)." Protest at 1. In violation of Rule 28-106.21, the pleading fails to provide a phone number for these two individuals or establish how these two individuals have the authority to represent the citizens of Florida, the ALEC community, or any other person or entity. The Commission should dismiss this Protest on an expedited basis for lack of standing for the following reasons.

4. First, BellSouth questions whether the signatories to the Protest, Mr. Thomas Enderson or Mr. Jonathan Kylleskwy, III, actually filed the Protest or even exist. Research on the Internet has failed to reveal a phone number or address for either of these individuals. Further, neither the Martindale Hubbell web site nor the Florida Bar Association web site has either person registered as attorneys in the State of Florida. Moreover, the addresses provided in the Protest do not appear to be valid. For instance, the Protest lists Thomas Enderson's address as 10943 West Colonial Drive, Orange, FL 34761. Orange is located in the Panhandle in Liberty County. However, the 34761 zip code is for Ocoee, Florida, which is outside Orlando. Additionally, the Protest lists Jonathan W. Kylleskwy, III's address as 3343 North 5th Street, Suite 911, Miami,

FL 33130. A search on the Internet and of a map of Dade County revealed no such address or street in Miami.

5. Based on these facts, BellSouth believes that the Protest is a bogus pleading, meant only to delay the effective date of the PAA, thereby preventing BellSouth from obtaining the additional growth codes necessary to meet its customer's demands. Accordingly, the Protest should be dismissed for lack of standing because it appears to be a sham pleading, ripe with bogus information as to its signatories. Indeed, the proceeding would be a waste of the Commission's and BellSouth's valuable time because all notices and mailings would be sent to addresses that do not exist and there is no way to contact these individuals to obtain different information. BellSouth also requests that, if its beliefs are true, the "phantom" author of this pleading be sanctioned to the fullest extent of the law.

6. Second, even if the signatories were valid, they do not have standing to file such protest as individuals or as representatives of the citizens of Florida or the ALEC community. Under Rule 25-22.029(4), Florida Administrative Code, a person may file a petition for formal hearing if that **person's substantial interest** may or will be affected by the Commission's proposed action. Rule 25-22.029(4), Florida Administrative Code (emph. added); *see also, In re: Tampa Elec. Co.*, Docket No. 941173-EG, Order No. PSC-95-1346-S-EG, Nov. 1, 1995, 1995 WL 670147 at 2 ("*Tampa Electric Order*").

7. As stated above, Messrs. Enderson and Kylleskwy filed the Protest on behalf of “the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies.” Protest at 1. The Protest does not establish how Messrs. Enderson and Kylleskwy have the authority or capacity to represent all of the citizens of the State of Florida or the ALEC community as attorneys or otherwise. As such, under Rule 25-22.029(4), they do not have the authority to bring the Protest on behalf of any other person or entity other than themselves. For this reason alone, the Protest should be dismissed.

8. Assuming *arguendo* that Messrs. Enderson and Kylleskwy have the authority to represent the citizens of Florida and the ALEC community, the petitioners, including Messrs. Enderson and Kylleskwy as individuals, lack standing because they cannot establish that their substantial interest would be affected by the proceeding. “An entity’s substantial interest are affected by a proceeding when the entity will suffer actual and immediate injury as a result of the proceeding, and when the injury is of a type or nature that the proceeding is designed to protect.” *In re: InternetU, Inc.*, Docket No. 991989-TX, Order No. PSC-01-0670-FOF-TX, Mar. 19, 2001 (citing *Agrico Chem. Co. v. Dep’t of Environmental Protection*, 405 So. 2d 478, 482 (Fla. 2d DCA 1981)). Importantly, “remote, speculative abstract or indirect injuries are not sufficient to meet the ‘injury in fact’ standing requirement.” *Tampa Electric Order* at 2 (cit. omitted).

9. Messrs. Enderson and Kylleskwy have not set forth any evidence to establish how requiring NANPA to give BellSouth additional NXX codes to

serve the needs of a BellSouth customer would subject them, as individuals, or the citizens and ALECS in Florida to "actual and immediate injury." Messrs. Enderson's and Kylleskwy's erroneous argument is that a reversal is not warranted because the loss of customers as a result of NANPA's denial is the result of competition and that "BellSouth has more administrative numbers than any other carrier in the South" Protest at 3. Besides violating federal law as mandated by the Federal Communications Commission ("FCC"), such an argument sets forth no evidence to suggest that they have standing.

Indeed, BellSouth submits that the reversal of NANPA's denial for additional NXX codes would not subject any person or entity in the State of Florida to "actual or immediate injury" because the reversal only applies to BellSouth and the customer BellSouth is trying to service. The reversal would not affect any other entity or person. Any argument to the contrary would result in "remote, speculative abstract or indirect injuries," which is insufficient to establish standing.

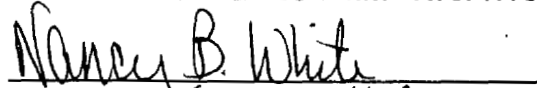
10. Finally, BellSouth requests an emergency hearing on this Motion to Dismiss. Expedited resolution of the issues set forth in this motion is necessary to (1) avoid an unnecessary hearing procedure; (2) allow BellSouth to insure its customer that the numbers will be available when they are needed; and (3) avoid the potential loss of the customer if BellSouth cannot meet the customer's numbering demands as a result of this Protest. For these reasons, BellSouth respectfully requests an emergency hearing prior to June 30, 2001.

WHEREFORE, for the foregoing reasons, BellSouth respectfully requests that:

1. The Commission dismiss the Protest for lack of standing;
2. The Commission sanction the "phantom" author of the Protest, if indeed Mr. Thomas Enderson and Mr. Jonathan W. Kyleskwy, III did not author the Protest; and
3. The Commission resolve the Motion to Dismiss on an expedited basis through an emergency hearing.

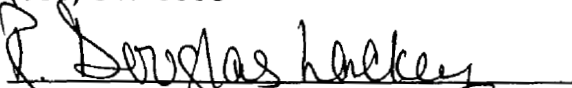
Respectfully submitted this 6th day of June, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



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