

JAMES MEZA III  
Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(305) 347-5561

June 13, 2001

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

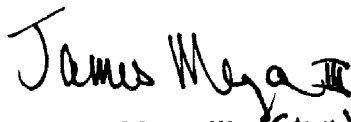
**Re: Docket No. 010782-TL  
BellSouth's Petition for Generic Proceedings to Establish Expedited  
Process for Reviewing NANPA's Denial of Applications for Use of  
Additional NXX Codes**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Dismiss Response and Protest, 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 (KA)

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

DOCUMENT NUMBER-DATE

07395 JUN 13 01

FPSC-RECORDS/REPORTING

**CERTIFICATE OF SERVICE**  
**Docket No. 010782-TP**

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

U.S. Mail this 13th day of June, 2001 to the following:


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

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

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

Time Warner Telecom of Florida, L.P.  
c/o Carolyn Marek  
233 Bramerton Court  
Franklin, Tennessee 37069  
Tel. No. (615) 376-6404  
Fax. No. (615) 376-6405  
carolyn.marek@twtelecom.com

Peter M. Dunbar, Esq.  
Karen M. Camechis, Esq.  
Pennington, Moore, Wilkinson,  
Bell & Dunbar, P.A.  
P.O. Box 10095 (32302)  
215 South Monroe Street, 2nd Flr.  
Tallahassee, FL 32301  
Tel. No. (850) 222-3533  
Fax. No. (850) 222-2126  
Counsel for Time Warner  
Pete@penningtonlawfirm.com  
Karen@penningtonlawfirm.com

  
James Meza III (ka)

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for expedited review	)	
Of North American Plan Administration's	)	Docket No. 010782-TL
(NANPA) denial of application for use of	)	
central office code numbering	)	
resources or NXX codes in Orlando	)	
Magnolia switch by BellSouth	)	Filed: June 13, 2001
<u>Telecommunications, Inc.</u>	)	

**MOTION TO DISMISS RESPONSE AND PROTEST**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully requests that the Florida Public Service Commission ("Commission") dismiss the 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 ("Protest and Response") allegedly filed by Jonathan W. Kyleskwy, III. In support of this Motion to Dismiss, BellSouth submits the following:

1. On May 25, 2001, BellSouth filed a Petition for Generic Proceeding to Establish Expedited Process for Reviewing NANPA's Denial of Applications for Use of Additional NXX Codes. In its Petition, BellSouth requested that, pursuant to various federal and state statutes, rules, and Commission and Federal Communication Commission ("FCC") Orders, the Commission adopt an expedited review process of NANPA's denials of future requests for additional numbering resources. Such a review process is necessary to minimize the detrimental effect that these denials have on carriers and their customers.

2. On June 5, 2001, some person filed the Response and Protest to BellSouth's Petition. The pleading indicates that Jonathan W. Kylleskwy, III, purportedly filed the Response and Protest on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)." Protest at 2. The Commission should dismiss the Response and Protest on an expedited basis for lack of standing for the following reasons.

3. First, BellSouth believes that the Response and Protest is a bogus pleading filed by a person who does not exist. The pleading indicates that Mr. Jonathan Kylleskwy, III, filed the Response and Protest and that his address and telephone number are: 1 North Main Street, Couldersport, PA 16915, 888-743-2233. This address is different than the nonexistent address set forth in the first pleading he allegedly filed on June 1, 2001– the Protest in Docket No. 010309, wherein he listed his address as 3343 North 5<sup>th</sup> Street, Suite 911, Miami, FL 33130.

4. This new address is the address for the corporate headquarters of Adelphia Business Solutions ("Adelphia") and the phone number is the phone number for Adelphia's corporate offices. BellSouth called the number listed on the Response and Protest and asked for Mr. Kylleskwy but was informed that Adelphia did not have anyone by that name. BellSouth also contacted Adelphia's Director of Regulatory for Florida and confirmed that (1) Adelphia does not have an employee named Johnathan Kylleskwy, III; and (2) Adelphia did not author or authorize the Response and Protest.

5. Based on these facts, BellSouth believes that the Response and Protest is a bogus, unauthorized pleading, meant only to deceive BellSouth and the Commission and delay BellSouth's request for a generic proceeding. Accordingly, the Protest should be dismissed for lack of standing because it appears to be a sham pleading, ripe with bogus information and a fictitious signatory. BellSouth also requests that, if its beliefs are true, the "phantom" author of this pleading be sanctioned to the fullest extent of the law, especially given the fact that this "phantom" author is now passing off his work as that of another, respected carrier.

6. Second, assuming that the pleading was legitimate, the Response and Protest should be dismissed because it is procedurally deficient. The Protest is procedurally improper because the Commission has yet to issue a Proposed Agency Action ("PAA") in this docket. Likewise, a Response is also procedurally improper because Mr. Kyleswky is not a party to the proceeding.

7. Third, even if the Commission construed the Response and Protest as a Petition to Intervene and the pleading was legitimate Mr., Kyleswky does not have standing to intervene as an individual or as representatives of the citizens of Florida or the ALEC community. Under Rule 25-22.039, Florida Administrative Code, "persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding office for leave to intervene." To be granted leave, the intervenor must demonstrate that he "is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to

Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding.” Rule 25-22.039, Florida Administrative Code. 7.

8. As stated above, Mr. Kylleskwy allegedly filed the Response and Protest on behalf of “the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies.” Protest at 1. The Response and Protest does not establish how Mr. Kylleskwy has the authority or capacity to represent all of the citizens of the State of Florida or the ALEC community as an attorney or otherwise. As such, he does not have the authority to bring the Response and Protest on behalf of any other person or entity other than himself. For this reason alone, the Response and Protest should be dismissed.

9. Fourth, even if this Commission were to construe the Response and Protest as a Petition to Intervene solely for Mr. Kylleskwy as an individual, Mr. Kylleskwy lacks standing because he cannot meet the requirements of Rule 25-22.039. Because he is currently a resident of Pennsylvania (it should be noted that a week ago he appeared to be a resident of Florida), he did not and cannot cite to any legal authority to suggest that he has the constitutional or statutory right under Florida law to intervene in this proceeding. Additionally, as a resident of Pennsylvania, he cannot establish that he has a substantial interest in a proceeding involving the Florida Public Service Commission over NANPA’s future denials of growth code requests for the State of Florida.

10. Assuming however that Mr. Kylleskwy was a resident of Florida, he still cannot meet the test to intervene. As stated above, there is no constitutional or statutory authority that gives him a right to intervene as a matter of law. Moreover, his substantial interest as a citizen of the State of Florida would not be affected by this proceeding. To have substantial interest in the outcome of the proceeding, the petitioner must show: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a 120.57 hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. *Agrico Chem. Co. v. Dept. of Env'tl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

11. Mr. Kylleskwy has not set forth any evidence to establish how an expedited review process of NANPA's future denials of a carrier's request for additional numbering resources would subject him, as an alleged citizen of Florida, to an actual and immediate injury. In fact, BellSouth submits that the implementation of an expedited review process would not subject any person or entity in the State of Florida to actual or immediate injury because such a proceeding only applies to BellSouth, NANPA, and the customer BellSouth is trying to service. Such a process 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. See e.g., *In re: Tampa Elec. Co.*, Docket No. 941173-EG, Order No. PSC-95-1346-S-EG, Nov. 1, 1995, 1995 WL 670147 at 2 ; *In re: Joint Petition for Determination of Need for an Electrical Power Plant in Volusia County by the Utilities Commission, City of*

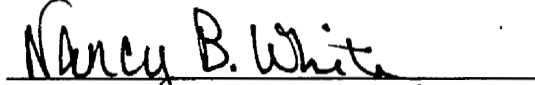
*New Smyrna Beach Florida, and Duke Energy New Smyrna Beach Power Company Ltd., L.L.P.*, Docket No. 981042-EM, Order No. PSC-99-0535-FOF-EM, Mar. 22, 1999, 1999 WL 359728 at 22-23.

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

1. The Commission dismiss the Response and Protest ; and
2. The Commission sanction the "phantom" author of the Protest, if indeed Mr. Jonathan W. Kylleskwy, III did not author the Protest.

Respectfully submitted this 13th day of June, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (LA)  
JAMES MEZA III  
c/o Nancy H. Sims  
150 So. Monroe Street, Suite 400  
Tallahassee, FL 32301  
(305) 347-5558



R. DOUGLAS LACKEY (LA)  
Suite 4300  
675 W. Peachtree St., NE  
Atlanta, GA 30375  
(404) 335-0747

392669