



Public Service Commission
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DATE: JUNE 28, 2001
TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAY) (SND)
FROM: DIVISION OF LEGAL SERVICES (FORDHAM) C. J. F. BIC
DIVISION OF COMPETITIVE SERVICES (CASEY)
RE: DOCKET NO. 010309-TL - PETITION FOR EXPEDITED REVIEW OF
NORTH AMERICAN PLAN ADMINISTRATION'S (NANPA) DENIAL OF
APPLICATION FOR USE OF CENTRAL OFFICE CODE NUMBERING
RESOURCES OR NXX CODES IN ORLANDO MAGNOLIA SWITCH BY
BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 010782-TL - PETITION FOR GENERIC PROCEEDINGS TO
ESTABLISH EXPEDITED PROCESS FOR REVIEWING NORTH AMERICAN
PLAN ADMINISTRATION (NANPA) FUTURE DENIALS OF APPLICATIONS
FOR USE OF ADDITIONAL NXX CODES BY BELLSOUTH
TELECOMMUNICATIONS, INC.

DOCKET NO. 010783-TL - PETITION FOR REVIEW OF POOLING
ADMINISTRATOR'S DENIAL OF REQUEST FOR ADDITIONAL NUMBERING
RESOURCES BY NEUSTAR BY BELLSOUTH TELECOMMUNICATIONS, INC.

DOCKET NO. 010743-TL - PETITION FOR REVIEW OF PROPOSED
NUMBERING PLAN RELIEF FOR THE 407/321 AREA CODES BY
NEUSTAR, INC., AS NORTH AMERICAN NUMBERING PLAN
ADMINISTRATION (NANPA), ON BEHALF OF FLORIDA
TELECOMMUNICATIONS INDUSTRY.

DOCKET NO. 990455-TL - REQUEST FOR REVIEW OF PROPOSED
NUMBERING PLAN RELIEF FOR THE 305/786 AREA CODE - DADE
COUNTY AND MONROE COUNTY/KEYS REGION.

DOCKET NO. 990456-TL - REQUEST FOR REVIEW OF PROPOSED
NUMBERING PLAN RELIEF FOR THE 561 AREA CODE.

DOCKET NO. 990457-TL - REQUEST FOR REVIEW OF PROPOSED
NUMBERING PLAN RELIEF FOR THE 954 AREA CODE.

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DOCKET NO. 960786-TL - CONSIDERATION OF BELL SOUTH TELECOMMUNICATIONS, INC.'S ENTRY INTO INTERLATA SERVICES PURSUANT TO SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

AGENDA: 07/10/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010309.RCM

CASE BACKGROUND

On January 24, 2001, BellSouth Telecommunications, Inc. (BellSouth) submitted an application to the North American Numbering Plan Administrator (NANPA) for a central office (NXX) code for the ORLFLMADS1 switch in the Orlando rate center. The code request was made to fulfill a request made by a specific customer who is in need of 2,500 consecutive Direct Inward Dialing (DID) numbers in an NXX with a four as the last digit (NX4). On February 6, 2001, NANPA denied BellSouth's request for a NXX code for the ORLFLMADS1 switch because BellSouth had not met the rate center months-to-exhaust (MTE) criteria currently required to obtain a growth code.

On March 9, 2001, BellSouth filed with this Commission a "Petition for Expedited Review of Growth Code Denials by the North American Numbering Administration." By Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL, the Commission directed the NANPA to provide BellSouth a growth code ORLFLMADS1 switch in the Orlando rate center.

On June 1, 2001, a Protest for Proposed Agency Action Order Directing NANPA to Provide BellSouth with a Growth Code for the ORLDFLMADS1 Switch, Petition for a Formal Proceeding Pursuant to Rule 25-22.029, Florida Administrative code in FPSC Docket No. 010309-TL was filed. The petition was filed by Mr. Jonathan W. Kyllleskwy, III, and Mr. Thomas Enderson, purportedly on behalf of

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"the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)."

On May 25, 2001, BellSouth filed a Petition for Generic Proceedings to Establish Expedited Process for Reviewing NANPA's Denial of Applications for Use of Additional NXX codes. This petition was assigned Docket No. 010782-TL. No recommendation has been filed or Order issued in this docket. Staff's recommendation is scheduled to be filed July 26, 2001.

Also on May, 25, 2001, BellSouth filed a Petition for Review of Pooling Administrator's Denial of Request for Additional Numbering Resources. This petition was assigned Docket No. 010783-TL. It addresses NANPA's denial of BellSouth's request for numbering resources for the Ft. Lauderdale and Jacksonville rate centers. No recommendation has been filed or Order issued in this docket. Staff's recommendation is scheduled to be filed July 12, 2001.

On June 5, 2001, this Commission received a 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, and Response and Protest to BellSouth Telecommunications' Petition for Review of Pooling Administrator's Denial for Additional Numbering Resources by NeuStar in Docket No. 010783-TL, and Petition for a Formal Hearing Proceeding Pursuant to Rule 25-22.029, Florida Administrative Code. This petition was also filed by Mr. Jonathan W. Kylleskwy, III, purportedly on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)."

On June 6, 2001, BellSouth filed a Motion to Dismiss PAA Protest which was filed Mr. Jonathan W. Kylleskwy, III, and Mr. Thomas Enderson. This motion addresses the Proposed Agency Action (PAA) protest of Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL.

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On June 12, 2001, Mr. Kylleskwy filed a Motion to Stay and Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials in the following Dockets:

<u>010309-TL</u>	NANPA denial of NXX code for the Orlando Magnolia Switch
<u>010743-TL</u>	Area Code Relief for the 407/321 Area Codes
<u>990455-TL</u>	Area Code Relief for the 305/786 Area Codes
<u>990456-TL</u>	Area Code Relief for the 561 Area Code
<u>990457-TL</u>	Area Code Relief for the 954 Area Code
<u>960786-TL</u>	BellSouth Interlata Section 271 Application
<u>010782-TL</u>	Request for expedited procedure for denial of NXX codes
<u>010783-TL</u>	NANPA denial of Numbering Resources for the Jacksonville and Ft. Lauderdale rate centers

On June 13, 2001, BellSouth filed a Motion to Dismiss Response and Protest in Docket No. 010782-TL, and a Motion to Dismiss Response and Protest in Docket No. 010783-TL to answer to Mr. Kylleskwy's petitions.

On June 27, 2001, BellSouth filed its Motion to Strike and/or Dismiss Pleading in Docket No. 010309-TL, in answer to Mr. Kylleskwy's June 11, 2001, Motion to Stay and Continue PAA Protest and Response to BellSouth's Alleged, Unreasonable, and Anticompetitive Responses. Although filed only in Docket No. 010309-TL, BellSouth's Motion appears to seek dismissal of Mr. Kylleskwy's pleading as it applies to all of the affected Dockets.

This recommendation addresses Mr. Kylleskwy's and Mr. Enderson's protests, and BellSouth's Motions, well as the Dockets in which similar pleadings have been filed by Messrs. Kylleskwy and Enderson.

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's Motions to Dismiss Response and Protests and its Motion to Strike and/or Dismiss Pleading be granted and the protested Orders be made final?

RECOMMENDATION: Yes. Staff recommends that BellSouth's Motions to Dismiss Protest be granted, that the Motion to Strike and/or Dismiss Pleading be granted, and the protested Orders be made final, effective as of the end of the protest period for each of the orders in question. (FORDHAM)

STAFF ANALYSIS: On June 6, 2001, BellSouth filed its Motion to Dismiss PAA Protest which was filed Mr. Jonathan W. Kylleskwy, III, and Mr. Thomas Enderson. This motion addresses the Proposed Agency Action (PAA) protest of Order No PSC-01-1146-PAA-TL, issued May 21, 2001, in Docket No. 010309-TL. In that Motion, BellSouth maintains the following:

- 1) 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;
- 2) BellSouth questions whether the signatories to the Protest, Mr. Thomas Enderson or Mr. Jonathan Kylleskwy, III, actually filed the Protest or even exist. BellSouth's research on the Internet has failed to reveal a phone number or address for either of these individuals.
- 3) Neither the Martindale Hubbell web site nor the Florida Bar Association web site has either person registered as attorneys in the State of Florida.
- 4) The addresses provided in the Protest do not appear to be valid. 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.
- 5) The Protest lists Jonathan W. Kylleskwy, III's address as 3343 North 5th Street, Suite 911, Miami, Florida 33130. A

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

6) 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.

7) 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.

8) 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."

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. BellSouth states that 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.

On June 12, 2001, Mr. Kylleskwy filed a Motion to Stay Response and Continued Protest to BellSouth's Petition for Expedited Review of Area Code Denials in the following Dockets:

010309-TL	NANPA denial of NXX code for the Orlando Magnolia Switch
010743-TL	Area Code Relief for the 407/321 Area Codes
990455-TL	Area Code Relief for the 305/786 Area Codes
990456-TL	Area Code Relief for the 561 Area Code
990457-TL	Area Code Relief for the 954 Area Code

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960786-TL	BellSouth Interlata Section 271 Application
010782-TL	Request for expedited procedure for denial of NXX codes
010783-TL	NANPA denial of Numbering Resources for the Jacksonville and Ft. Lauderdale rate centers

It should be noted that no recommendations have been filed, or Orders issued, in Docket Nos. 010743-TL, 010782-TL, or 010783-TL. There are no outstanding Orders to protest in Docket Nos. 990455-TL, 990456-TL, or 990457-TL, and Docket No. 960786-TL is BellSouth's Section 271 application which does not address area code denials. Furthermore, the protests filed in these Dockets do not identify any specific orders at which they are directed.

This petition was again purportedly filed on behalf of "the Florida citizens, their communication needs and services, and the Alternative Local Exchange Companies (ALECs)" by Mr. Jonathan Kylleskwy, III. In his petition, Mr. Kylleskwy apologizes for the confusion over the address and phone numbers included in his first petition, stating that "...our new staffing person entered a wrong purging while preparing the documentation." Mr. Kylleskwy provided a new address and phone number in this petition. Staff called the new phone number provided in this petition and was connected with American Express Cardmember Services who had no idea of who Jonathan W. Kylleskwy was.

On June 13, 2001, BellSouth filed its Motion to Dismiss Response and Protest in Docket No. 010782-TL, and a Motion to Dismiss Response and Protest in Docket No. 010783-TL to answer to Mr. Kylleskwy's petitions. In that Motion, BellSouth maintains the following:

- 1) BellSouth believes that the Response and Protest is a bogus pleading filed by a person who does not exist.
- 2) Mr. Jonathan Kylleskwy, Ill, provided an address and telephone number of One North Main Street, Couldersport, PA 16915, 888-743-2233. This address is the address for the corporate headquarters of Adelphia Business Solutions and the phone number is the phone number for Aldephia'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, Ill; and (2) Adelphia did not author or authorize the Response and Protest.

3) 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 the reversal of NeuStar's denial of BellSouth's request for additional numbering resources.

4) The Response and Protest should be dismissed for lack of standing because it appears to be a sham pleading, ripe with bogus information and a fictitious signatory.

5) BellSouth 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) 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. Kylleskwy is not a party to the proceeding.

7) Even if the Commission construed the Response and Protest as a Petition to Intervene and the pleading was legitimate, Mr. Kylleskwy does not have standing to intervene as an individual or as representatives of the citizens of Florida or the ALEC community.

8) 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.

9) 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 NeuStar's denial of BellSouth's request for additional numbering resources to service customers in Florida.

10) Assuming that Mr. Kylleskwy was a resident of Florida, he still cannot meet the test to intervene. 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.

11) Mr. Kylleskwy has not set forth any evidence to establish how the reversal of NeuStar's decision to deny BellSouth's request for additional numbering resources to service specific customers in the Ft. Lauderdale - Cypress, Ft. Lauderdale - Sawgrass, and the Jacksonville - Clay Street switches, would subject him, as an alleged citizen of Florida, to an actual and immediate injury.

12) 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.

BellSouth submits that the reversal of a NeuStar denial, or expedited process of NANPA's future denials of a carrier's request for additional numbering resources, would not subject any person or entity in the State of Florida to actual or immediate injury

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because such a proceeding only applies to BellSouth, NeuStar, NANPA, and the customers BellSouth is trying to service. In addition BellSouth contends that such a process would not affect any other entity or person, and any argument to the contrary would result in remote, speculative abstract or indirect injuries, which is insufficient to establish standing.

On June 27, 2001, BellSouth filed its Motion to Strike and/or Dismiss Pleading in Docket No. 010309-TL, in answer to Mr. Kylleskwy's June 11, 2001, Motion to Stay and Continue PAA Protest and Response to BellSouth's Alleged, Unreasonable, and Anticompetitive Responses. Although filed only in Docket No. 010309-TL, BellSouth's Motion appears to seek dismissal of Mr. Kylleskwy's pleading as it applies to all of the affected Dockets.

Staff believes it is unnecessary to address the merits of the Protests filed under the name of Jonathan W. Kylleskwy, III. The Protests contain such an amount of totally fictitious information as to render the entire pleadings bogus and unbelievable. All efforts to validate the author and identifying information have been unsuccessful. Accordingly, there is no way to communicate with the author of the documents.

Based on the above, staff urges this Commission to grant BellSouth's Motions to Dismiss the Protests, grant its Motion to Strike and/or Dismiss Pleading, and make final all the pertinent PAA Orders, effective as of the date provided in the respective Orders.

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ISSUE 2: Should the matter be referred to agencies having jurisdiction to seek sanctions against the person(s) responsible for filing the probable bogus documents?

RECOMMENDATION: Yes. Staff believes the matter should be referred to agencies having jurisdiction to seek sanctions against the person(s) responsible for filing the probable bogus documents, for action as those agencies deem appropriate.

STAFF ANALYSIS: Staff believes there are several practical reasons why sanctions should be imposed if the identity of the author of the documents is determined. First, the filing of such documents results in a significant monetary cost to both the industry and this Commission. That cost is, ultimately, born by the citizen/taxpayer of Florida. The initial cost is the personnel cost of the normal processing of the documents. Secondly, attorneys for both the industry and this Commission must spend considerable time in reviewing, researching, and preparing responses connected with the bogus documents. Most importantly, however, the implementation of the decisions contained in the Orders is denied, pending resolution of the "protests." Thus, the will of this Commission is thwarted as a result of the irresponsible acts of an unidentified person(s).

Perhaps an even greater concern is the disruption of an already overburdened system. Our society is based on a system of law and order. Staff believes that any intentional disruption to the laws and rules by which we must live to maintain order in our society should be dealt with firmly.

Staff notes that Section 837.06, Florida Statutes, provides:

Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083.

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This provision captures exactly the actions with which this recommendation deals. Additionally, Section 454.23 provides:

Any person not licensed or otherwise authorized by the Supreme Court of Florida who shall practice law or assume or hold himself or herself out to the public as qualified to practice in this State, or who willfully pretends to be , or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to act as a lawyer in this State, and any person entitled to practice who shall violate any provisions of this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083.

Staff notes that the author of the Protests filed formal pleadings, claiming to represent the citizens of Florida and, also, the ALECs. This appears to be a direct violation of the above statute.

Because of the multi-jurisdictional nature of the pleadings addressed in this Docket, staff recommends that the Florida Attorney General would be the appropriate authority to address the apparent violations of Florida Statutes. However, staff also recommends that the Florida Bar receive information on this matter because of the apparent unauthorized practice of law.

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ISSUE 3: Should these Dockets be closed?

RECOMMENDATION: No. These Dockets should remain open, and proceed as if the Protests were not filed.

STAFF ANALYSIS: Each of these Dockets have unresolved issues remaining. Accordingly, they should remain open and unaffected by the filing of the Protests which are the subject of this recommendation.