

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth
Telecommunications, Inc. for alleged
overbilling and discontinuance of service, and
petition for emergency order restoring service,
by IDS Telecom LLC.

DOCKET NO. 031125-TP
ORDER NO. PSC-04-0634-PCO-TP
ISSUED: July 1, 2004

ORDER GRANTING UNOPPOSED MOTION TO AMEND ANSWER

On December 30, 2003, IDS amended its Complaint (Amended Complaint) consisting of five counts upon which it requested relief. By Order No. PSC-04-0423-FOF-TP, issued April 26, 2004, BellSouth's Partial Motion to Dismiss part of IDS' Amended Complaint was granted. Specifically, Count Three (seeking relief for alleged violation of the Settlement Agreement) and Count Five (seeking relief for alleged violation of the Telecommunications Act of 1996) were dismissed for lack of subject matter jurisdiction.

By Order No. PSC-04-0472-PCO-TP, issued May 6, 2004 (Order Establishing Procedure), the procedure was established for this proceeding and the hearing date was scheduled for October 14, 2004. By Order No. PSC-04-0625-PCO-TP, issued June 25, 2004, the Order Establishing Procedure was modified to reschedule to earlier dates the hearing, prehearing, and key activities dates.

On May 28, 2004, BellSouth filed its Unopposed Motion to Amend Answer. In support of its Motion, BellSouth asserts that on January 16, 2004, it filed its Partial Motion to Dismiss and Answer. BellSouth contends that review of the original Answer revealed certain typographical and numbering errors that resulted in a mischaracterization of BellSouth's position on the allegations asserted by IDS in its Amend Complaint. BellSouth states that, in effect, these errors resulted in BellSouth admitting certain allegations that it should have denied. See, Answer at ¶10; Amended Complaint at ¶10.

BellSouth asserts that its seeks to amend its original Answer to correct these inadvertent typographical and numbering errors so that the Answer accurately sets forth its true position on the issues in this docket. BellSouth cites to Rule 1.190(e), Florida Rules of Civil Procedure, which permits a pleading to be amended at any time in the furtherance of justice. BellSouth states that in interpreting this rule, the Florida courts have held that "[a]ll doubt should be resolved in favor of allowing amendments." Adams v. Knabb Turpentine Co., 435 So.2d 944, 946 (Fla. 1st DCA 1983). BellSouth cites additional case law interpreting Rule 1.190(e), Florida Rules of Civil Procedure, to assert that it should be permitted to amend its pleading. Further, BellSouth notes Rule 28-106.202, Florida Administrative Code, allows the Prehearing Officer to provide for the amendment of pleadings at his/her discretion. BellSouth contends that justice

DOCUMENT NUMBER-DATE

07221 JUL-1 8

FPSC-COMMISSION CLERK

ORDER NO. PSC-04-0634-PCO-TP
DOCKET NO. 031125-TP
PAGE 2


requires this amendment to allow this proceeding to be decided on its merits rather than on a clerical error. See, Adams, 435 So. 2d at 946. Moreover, BellSouth argues that IDS will not be prejudiced by the filing of an Amended Answer because (1) the amendment will not raise any additional issues; (2) the proceeding is in its preliminary stages; (3) the Amended Answer will make BellSouth's response consistent with its positions in other portions of the Answer; and (4) IDS will not be surprised because the Amended Answer will be consistent with BellSouth's historical positions on the issues in dispute. BellSouth states that it contacted IDS's counsel who advised that IDS does not oppose the instant motion.

I find it appropriate to permit BellSouth to Amend its Answer to correct the typographical and numbering errors that resulted in a mischaracterization of its positions. Thus, BellSouth Unopposed Motion to Amend Answer shall be granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth's Telecommunications, Inc.'s Unopposed Motion to Amend Answer is hereby granted.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 1st day of July, 2004


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

PAC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.