

ORIGINAL

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]
 Sent: Friday, May 07, 2004 3:07 PM
 To: Filings@psc.state.fl.us
 Cc: Nancy Sims; Holland, Robyn P.; Fatool, Vicki; Meza, James; Linda Hobbs; Bixler, Micheale
 Subject: Docket No. 031125-TP
 Importance: High

- A. Brenda Slaughter
 Legal Secretary to James Meza III
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, FL 32301-1558
 (404) 335-0714
brenda.slaughter@bellsouth.com
- B. Docket No. 031125-TP: Complaint of IDS Telecom LLC against BellSouth Telecommunications, Inc. for over billing and discontinuance of service, and petition for emergency order restoring service
- C. BellSouth Telecommunications, Inc. on behalf of James Meza III
- D. 6 pages total
- E. BellSouth Telecommunications, Inc.'s Motion for Leave to Amend Answer to Assert Counterclaim

Brenda Slaughter
 BellSouth Telecommunications, Inc.
 Suite 4300 - Legal Department
 675 W. Peachtree Street
 Atlanta, GA 30375-0001
 Phone: (404) 335-0714

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<<Motion for Leave To Amenda Answer.pdf>>

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5/7/2004

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Legal Department

JAMES MEZA III
Attorney
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150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0769

May 7, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

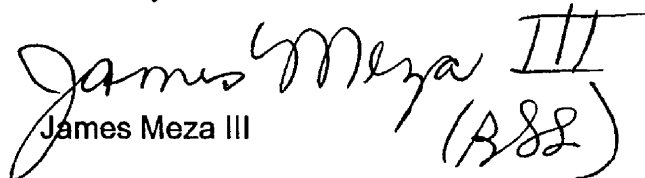
**Re: 031125-TP: Complaint of IDS Telecom LLC against BellSouth
Telecommunications, Inc., for over billing and discontinuance of
service, and petition for emergency order restoring service**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion for Leave to Amend Answer to Assert Counterclaim, 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
(BSS)

Enclosures

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

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**CERTIFICATE OF SERVICE
DOCKET NO. 031125-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Facsimile this 7th day of May, 2004 to the following:

Patty Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6191
Fax. No. (850) 413-6192
pchriste@psc.state.fl.us

Norman H. Horton, Jr.
Meser, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax No. (850) 224-4359
nhorton@lawfla.com
Represents IDS


James Meza III
(BSS)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against BellSouth Telecommunications,) Docket No.: 031125-TP
Inc. for alleged overbilling and discontinuance of service,)
by IDS Telecom, LLC)
_____) Filed: May 7, 2004

**MOTION FOR LEAVE TO AMEND ANSWER
TO ASSERT COUNTERCLAIM**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 1.190 Florida Rules of Civil Procedure and Rule 28.106.24, Florida Administrative Code, hereby requests leave to amend its Answer in this proceeding for the sole purpose of asserting the attached Counterclaim. In support, BellSouth asserts the following:

1. On December 23, 2003, IDS filed its Complaint in this proceeding. IDS subsequently filed an Amended Complaint on December 30, 2003. Based on a review of the Amended Complaint, the claims asserted, the relief requested, and the attached exhibits, BellSouth believed that IDS raised several billing disputes for the Florida Public Service Commission ("Commission") to resolve. Indeed, in support of its Amended Complaint, IDS attached a letter to the Commission Staff wherein it raised a host of billing disputes and asked for Staff intervention and resolution. See Exhibit B to Counterclaim; Exhibit F to Amended Complaint. In response, Commission Staff advised IDS that it would have to file a formal complaint to resolve the billing disputes, which resulted in the Amended Complaint. See Exhibit C to Counterclaim.

2. On January 16, 2004, BellSouth filed its Partial Motion to Dismiss and Answer. BellSouth did not assert a Counterclaim at that time because BellSouth believed that IDS requested Commission resolution for the majority of the parties' billing disputes in its Amended Complaint.

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3. On March 15, 2004, BellSouth issued discovery to IDS. On April 15, 2004, IDS responded to this discovery and, for the first time, expressly stated that it was only seeking the resolution of a single billing dispute – the Special Q Account – in its Amended Complaint.

4. Regarding the amendment of pleadings, Rule 1.190(e) of the Florida Rules of Civil Procedure provides:

At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

5. Given the Commission's limited hearing schedule, justice requires that BellSouth's Counterclaim be resolved within the instant proceeding to promote judicial efficiency, minimize the cost and expense in litigating the disputes asserted by IDS and BellSouth, and to minimize the delay in BellSouth's receipt of the amounts set forth therein. Litigating two proceedings on separate tracks involving the same parties is neither economical nor efficient.

6. Moreover, because the original Complaint is limited to a single issue – a dispute related to a special Q Account – the resolution of the Disputes in the instant docket will not unnecessarily delay the original proceeding.

7. Lastly, as stated above, based on IDS's Amended Petition, IDS's informal complaint and the Commission Staff's response, BellSouth believed that IDS raised additional disputes in its initial filing. It was not until IDS responded to BellSouth's discovery did IDS disclose that the only dispute it wished to resolve in its Complaint was

the special Q Account Dispute. This is not surprising in light of the fact that IDS takes the position that as long as billing disputes are outstanding, BellSouth is prohibited from terminating IDS's service for nonpayment. See Amended Complaint at ¶ 21.

8. Had BellSouth previously known of this fact, BellSouth would have filed the instant Counterclaim regarding the billing disputes with its Answer. In addition, since filing its Answer, it has become clear that the parties will be unable to resolve BellSouth's request for a deposit.

9. Given IDS's recent disclosure of its intentions to limit the parameters of its Complaint and the parties' ongoing settlement discussions, BellSouth filed this Counterclaim as expeditiously as possible.

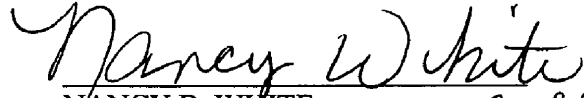
10. No party will be prejudiced by consideration of BellSouth's Counterclaim in the instant docket.


11. Counsel for BellSouth has contacted counsel for IDS and has been advised that IDS objects to BellSouth's Motion.

WHEREFORE, BellSouth respectfully requests that it be granted leave to amend its Answer in this proceeding for the sole purpose of asserting the attached Counterclaim.

Respectfully submitted this 7th day of May, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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