

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BellSouth.com]
Sent: Friday, May 21, 2004 2:41 PM
To: Filings@psc.state.fl.us
Cc: Holland, Robyn P.; Nancy Sims; Fatool, Vicki; Linda Hobbs; Bixler, Micheale; Meza, James
Subject: Docket No. 031125-TP
Importance: High

A. Brenda Slaughter
 Legal Secretary for James Meza III
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, Florida 32301-1558
 (404) 335-0714
brenda.slaughter@bellsouth.com

B. Docket No. 031125-TP: Complaint of IDS Telecom LLC against BellSouth Telecommunications, Inc., for overbilling and discontinuance of service, and petition for emergency order restoring service

C. BellSouth Telecommunications, Inc. on behalf of James Meza III

D. 5 pages total

E. BellSouth Telecommunications, Inc.'s Motion for Leave to Withdraw Count IV of Counterclaim

Brenda Slaughter (sent on behalf of James Meza III)
 BellSouth Telecommunications, Inc.
 Suite 4300 - Legal Department

CMP _____
 COM 3 675 W. Peachtree Street
 CTR Atlanta, GA 30375-0001
 ECR _____
 Phone: (404) 335-0714

GCL _____
 OPC _____
 <<031125-TP Motion for Leave.pdf>>

MMS _____ *****

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 SEC _____
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ORIGINAL

Legal Department

JAMES MEZA III
Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0789

May 21, 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

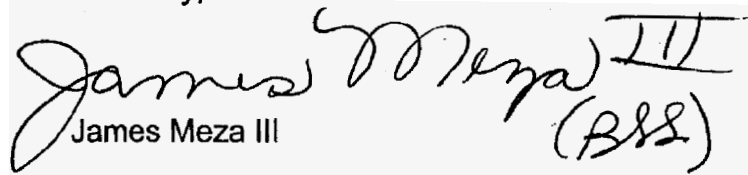
**Re: 031125-TP: Complaint of IDS Telecom LLC against BellSouth
Telecommunications, Inc., for over billing and discontinuance of
service, and petition for emergency order restoring service**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion for Leave to Withdraw
Count IV of 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

DOCUMENT NUMBER-DATE

05860 MAY 21 04

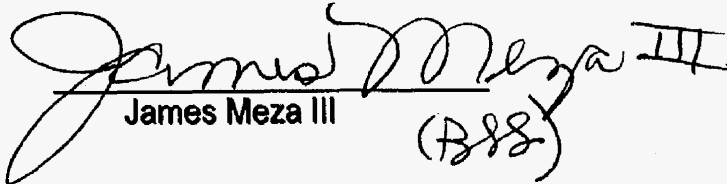
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**CERTIFICATE OF SERVICE
DOCKET NO. 031125-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Facsimile this 21st day of May, 2004 to the following:

Patty Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
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Tel. No. (850) 413-6191
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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
(B88)

ORIGINAL

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 21, 2004

MOTION FOR LEAVE TO WITHDRAW
COUNT IV OF COUNTERCLAIM

Defendant and Counter-Claimant, BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Florida Rule of Civil Procedure 1.190 and Rule 28-106.202, Florida Administrative Code, hereby requests leave to withdraw Count IV ("Deposit Dispute") from its Counterclaim. In support, BellSouth states the following:

1. On December 23, 2003, IDS Telecom, LLC ("IDS") filed its Complaint in this proceeding. IDS subsequently filed an Amended Complaint on December 30, 2003.
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 Florida Public Service Commission ("Commission") resolution for the majority of the parties' billing disputes in its Amended Complaint.
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. On May 7, 2004, BellSouth filed its Motion for Leave to Amend Answer to Assert Counterclaim and its Counterclaim. In the Counterclaim, BellSouth raised additional billing disputes (Counts I and II) for Commission resolution that it believed IDS initially asserted in its Amended Complaint as well as a request for a deposit from IDS (Count IV).

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5. On May 14, 2004, IDS filed its Opposition to BellSouth's Motion for Leave. IDS has not filed a responsive pleading to the Counterclaim.

6. Rule 1.190(a) of the Florida Rules of Civil Procedure provides that "[a] party may amend a pleading once as a matter of course at any time before a responsive pleading is served. . . ." IDS has not filed a responsive pleading to the Counterclaim. Thus, BellSouth's withdrawal of Count IV of the Counterclaim at this juncture of the proceeding is appropriate under Rule 1.190(a) of the Florida Rules of Civil Procedure.

7. Moreover, Rule 28-106.202, Florida Administrative Code, allows the Prehearing Officer to provide for the amendment of pleadings at his/her discretion. Here, withdrawal of Count IV should not be opposed by IDS because IDS opposed BellSouth's request for leave to assert Count IV in the Counterclaim. Moreover, Commission Staff has issued a recommendation to deny BellSouth's request to assert Count IV via its Counterclaim on the grounds that, if BellSouth wished to seek resolution of the Deposit Dispute, BellSouth should have filed a separate complaint noting the specific time periods required for resolution of the dispute pursuant to the Interconnection Agreement. By withdrawing Count IV, BellSouth seeks to do just that – file a separate complaint to resolve the Deposit Dispute. Indeed, if the Commission approves Staff's recommendation, then BellSouth could file a separate complaint at that time.

8. Finally, it should be noted that IDS amended its original Complaint without asking for leave from this Commission pursuant to Rule 1.190 of the Florida Rules of Civil Procedure because BellSouth had yet to file a responsive pleading. BellSouth's amendment is not different.

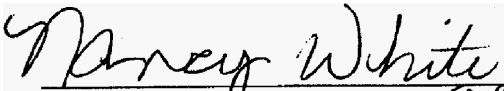
9. BellSouth has a legitimate deposit with IDS over the Deposit Dispute that requires Commission resolution. IDS has objected to BellSouth including the Deposit issue in its

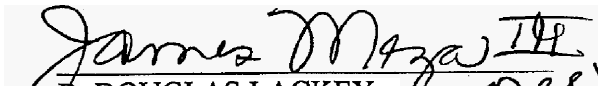
Counterclaim. BellSouth seeks to withdraw Count IV of the Counterclaim to address IDS's objections and to proceed with resolution of the Deposit dispute as expeditiously as possible in a separate proceeding.

WHEREFORE, for the foregoing reasons, BellSouth requests that the Commission grant it leave to withdraw Count IV of its Counterclaim.

Respectfully submitted this 21st day of May, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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