

**FLORIDA PUBLIC SERVICE COMMISSION**

Complaint of IDS Telcom, LLC against  
BellSouth Telecommunications, Inc. for  
over billing and discontinuance of service, and  
petition for emergency order restoring service

Docket No. 031125-TP  
Filed: July 19, 2004

**IDS TELCOM'S RESPONSE AND OPPOSITION TO  
BELLSOUTH'S MOTION FOR RECONSIDERATION**

IDS TELCOM, LLC ("IDS"), by and through its undersigned counsel and pursuant to Rule 25-22.0376, Florida Administrative Code, hereby files this its response and opposition to BELLSOUTH TELECOMMUNICATIONS, INC. ("BellSouth"), Motion For Reconsideration (dated July 12, 2004) ("Motion for Reconsideration"), and in support thereof states as follows.

**I. BACKGROUND**

1. On or about March 15, 2004, BellSouth served its First Set of Interrogatories and Request for Production ("Discovery"). The interrogatories purported to be numbered 1 through 35, however many interrogatories contained between four and ten sub-parts each. In total with sub-parts, BellSouth propounded approximately 123 interrogatories. Together with the interrogatories, BellSouth served one overly broad, vague and harassing request for production, which simply stated as follows: *"Please produce all documents identified, referred to, relied upon or responsive to BellSouth's First Set of Interrogatories propounded upon IDS on March 15, 2002."*

2. On or about April 14, 2004, IDS served its responses and objections to BellSouth's discovery. IDS objected to some of the interrogatories and responded to the production request by stating that it would produce documents and correspondence relating to the settlement "Q" Account. As part of its responses, IDS not only answered many of BellSouth's approximately 123 interrogatories (counting sub-parts), but IDS also produced to BellSouth hundreds of pages of documents relating to the settlement "Q" Account dispute set forth in IDS' pleadings in this docket.

3. After receiving IDS' responses, BellSouth advised that it believed IDS' responses to Interrogatory Nos. 23 and 24 were not acceptable. Interrogatory No. 23 made the following request:

Identify all legal proceedings (by case caption and court) where IDS, any owner of IDS, any present or former officer of IDS, and/or any current or former employee of IDS testified about or provided discovery responses relating to IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Agreement. For each such proceeding, identify all pleadings, depositions, and discovery responses responsive to this Interrogatory.

Likewise, Interrogatory No. 24 was similar to Interrogatory No. 23, making the following request:

Identify all legal proceedings (by case caption and court) where former employees of IDS sued IDS and alleged facts that implicated or relate to the IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Amendment.

4. IDS had originally responded to these two BellSouth's interrogatory by objecting and stating that there were no lawsuits or other proceedings pending that involved the same issues being litigated in this docket. Although IDS's response was a true statement, BellSouth complained that the response was not satisfactory because it was aware of a lawsuit filed against IDS in which one the plaintiffs had subpoenaed BellSouth for a copy of the September 2001 Settlement Agreement, that is part of the settlement "Q" Account dispute. BellSouth did not proffer any relevance for the interrogatory questions, but stated that unless IDS revised its answers, BellSouth would file a motion to compel.

5. Although the lawsuit mentioned by BellSouth had no relevance to this docket, to avoid an unnecessary discovery motion, IDS agreed to revise its responses to Interrogatory Nos. 23 and 24 to identify the lawsuit which BellSouth was referring to [i.e. Gulas, et al. v. Noshay, et al., Case No. 02-29516 (CA 01)] and directing BellSouth to the Miami-Dade County Clerk of the Court website which contained a docket of the case. A true and correct copy of that website docket is attached hereto as Exhibit "A". A copy of the IDS' revised response is attached to BellSouth's

Motion for Reconsideration as Exhibit "1". IDS had also agreed to make some other revisions and provide BellSouth copies of the documents it intended to produce.

6. Because IDS did not finish its revisions and document production within the time period sought by BellSouth, BellSouth filed its motion to compel on or about June 4, 2004. On or before June 9, 2004, IDS had produced documents to BellSouth and had completed the revisions agreed to with BellSouth. On June 11, 2004, IDS filed its response to BellSouth's Motion to Compel stating, in part, that it believe most of BellSouth's motion to compel was moot because IDS had produced the agreed documents and had revised its interrogatory responses. IDS also stated that it still objected to BellSouth's Interrogatory No. 22, which requested information on IDS' gross revenues, on the grounds that it was irrelevant, harassing and abusive.

7. On July 1, 2004, this Commission entered an order denying BellSouth's Motion to Compel, noting that IDS had provided BellSouth supplemental interrogatory answers which appeared to have mooted the motion to compel on everything but BellSouth Interrogatory No. 22, which was then denied because it appeared that IDS' gross revenues were irrelevant to any of the issues in dispute (and not likely to lead to the discovery of admissible evidence).

## **II. BELLSOUTH'S MOTION FOR RECONSIDERATION**

8. On July 12, 2004, BellSouth filed its Motion for Reconsideration<sup>1</sup>, arguing that BellSouth considered IDS' revised responses to Interrogatories No. 23 and 24, to be *"evasive and incomplete ... and thus not rendered moot as a result of IDS's supplemental responses."*

9. In its Motion for Reconsideration BellSouth argues that it has met the standard for reconsideration because BellSouth has identified a point of fact or law which was overlooked or which this Commission failed to consider in rendering the order, citing Diamond Cab Co. v. King,

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<sup>1</sup> Despite having received IDS' production and interrogatory responses on or about June 9, 2004, BellSouth did not complain to IDS or otherwise advise this Commission that it believed IDS' responses were inadequate or incomplete. It simply filed a Motion for Reconsideration.

146 So.2d 889, 891 (Fla. 1962). However, BellSouth has failed to meet the reconsideration standard.

10. IDS appropriately supplemented the two interrogatory questions (and corresponding document request). First, both Interrogatory Nos. 23 and 24 ask IDS to identify any lawsuit which mentioned or related in any way (in the broadest sense) to the Confidential Settlement or Settlement Amendment. Because IDS was sued by persons claiming to have provided work on the docket leading up to the Confidential Settlement, IDS identified the lawsuit [i.e. Gulas, et al. v. Noshay, et al., Case No. 02-29516 (CA 01)]. This response completely satisfies BellSouth Interrogatory No. 24 which asks for nothing more. Like Interrogatory No. 24, Interrogatory No. 23 also asks IDS to identify the lawsuit, but then also asks IDS to identify all pleadings, depositions and discovery responses in that lawsuit. In response, IDS referred BellSouth to the Miami-Dade County Clerk of the Court website, which provides an on-line copy of docket on that case. Since the docket contains any notices of deposition and service of discovery requests, the docket does identify "all pleadings, depositions and discovery responses." See Exhibit "A" for a copy of the court docket.

11. First, BellSouth's Motion for Reconsideration complains that IDS should have provided BellSouth copies of such "pleadings, depositions and discovery responses (if any)." However, given the attachments to BellSouth's Motion to Compel, it appears that BellSouth has already copied the court file of that case. Given the fact that BellSouth's downtown Miami offices are practically across the street from the Miami-Dade County Civil Courthouse (where the file is kept), BellSouth can easily obtain a copy of the court file (and probably already has done so).

12. Second, BellSouth claims that it knows from the court file that Joe Millstone of IDS was deposed and that he may have said something in the deposition which might be inconsistent

with IDS' position in this case. IDS cannot produce documents it does not have. To IDS' knowledge, the deposition of Mr. Millstone was never transcribed, and IDS does not have a copy. If BellSouth wants those transcripts, BellSouth should purchase the transcripts directly from the court reporter.

13. Further, the only production made by IDS in the circuit court case was recently and after BellSouth had filed its Motion to Compel. Moreover, the documents produced in that circuit case are the same documents produced earlier to BellSouth in this docket, together with copies of pleadings filed in this docket. Thus, BellSouth should already have a copy of every document IDS produced in that circuit court case.

14. IDS properly responded in its supplemental answers to Interrogatory Nos. 23 and 24 by providing the style of the case and a reference to the court docket which identifies and lists the pleadings and discovery requested in that case. In addition, with respect to documentary discovery, IDS' only obligations are to make any such documents available as they are kept in the ordinary and regular course of business. See Florida Rule Civil of Procedure 1.350(b) (*"When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request"*). This means that documents may be produced where they are stored and kept. See Evangelos v. Dachiell, 553 So.2d 245 (Fla. 3d DCA 1989) (*documents need only be produced where and as they are kept in the ordinary course of business*). Although it is almost certain that BellSouth already has a copy of any and all discovery provided by IDS in that circuit court case, if BellSouth truly insists upon pursuing the court file (i.e. pleadings and discovery), BellSouth should be required (at its own cost) to go to Tampa and/or coordinate with IDS' counsel in Tampa, in order to review that file.

### **III. SUMMARY**

15. IDS satisfactorily responded to BellSouth Interrogatory Nos. 23, 24 and Request for Production No. 1 in IDS' supplemental response, and hence BellSouth's Motion for Reconsideration should be denied.

16. If this Commission does not simply deny BellSouth's Motion for Reconsideration, to the extent any discovery in the Court file has been taken and is not already public record, IDS can only produce what it has. IDS does not have the deposition transcript(s) which BellSouth claims it wants to review. If BellSouth wants such transcript, it needs to order it directly from the court reporter. With respect to documents, IDS believes that BellSouth already has copies of any production made by IDS in the circuit court case. If BellSouth wants more, it should be required to coordinate with IDS' Tampa attorney (as this is where any such documents would be kept in the ordinary course of business) and pay for any and all such costs at BellSouth's own expense. IDS' Tampa attorney is: Mitchell Lloyd Feldman, Esq. at Silver Levy Feldman & Bass, P.A., 1408 N West Shore Blvd., Suite 806, Tampa, Florida 33607-4585; telephone - (813) 639-9366, facsimile - (813) 639-9376.

**WHEREFORE**, for the reasons stated above, this Commission should deny BellSouth's Motion for Reconsideration.

s/ Vicki Gordon Kaufman  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing IDS Telcom's Response and Opposition to BellSouth's Motion for Reconsideration has been provided by Electronic Mail and U.S. Mail, this 19th day of July, 2004, to the following:

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