

JAMES MEZA III
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October 4, 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: 040488-TP – Complaint of BellSouth Telecommunications, Inc.,
Against IDS Telcom LLC to Enforce Interconnection Agreement
Deposit Requirements**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Response to IDS Telcom LLC's Protest and Motion to Dismiss. We ask that you file this document in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (B/S)

Enclosures

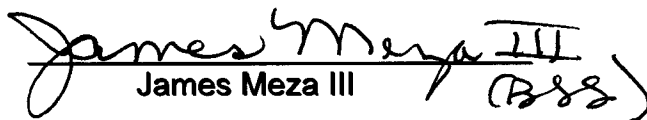
cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

**CERTIFICATE OF SERVICE
DOCKET NO. 040488-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and U.S. Mail this 4th day of October, 2004 to the following:

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James Meza III (BSS)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of BellSouth Telecommunications, Inc.) Docket No.: 040488-TP
Against IDS Telcom, LLC to Enforce Interconnection)
Agreement Deposit Requirements)
_____) Filed: October 4, 2004

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
RESPONSE TO IDS' PROTEST AND MOTION TO DISMISS**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Response to the Protest filed by IDS Telcom, LLC ("IDS") to Order No. PSC-04-0824-PAA-TP ("Order"):

GENERAL RESPONSE

In the Order, the Florida Public Service Commission ("Commission") correctly determined that IDS owed BellSouth a \$3.9 million deposit pursuant to the Parties current Interconnection Agreement ("Agreement"). The deposit provisions in the Agreement are unambiguous: (1) BellSouth has the right to conduct a credit review of IDS; (2) IDS is obligated to provide information to allow BellSouth to conduct such a review; (3) BellSouth has the right to request and obtain a deposit from IDS; and (4) the parties have an obligation to negotiate the amount of the deposit. IDS effectively concedes this fact in the Protest.¹ In fact, at the agenda conference held on August 3, 2004, IDS volunteered to pay and not protest a \$2 million deposit. IDS now takes issue with the amount of the deposit and claims that the Commission acted arbitrary and capricious in finding that IDS is required to pay a \$3.9 million deposit over several months and with the option of a corporate guaranty for \$1.9 of the ordered amount. Nothing can be farther from the truth.

¹ In paragraph 6 of the Protest, IDS states that it "has disputed the deposit amount." IDS further states in footnote 2 that "[p]ursuant to Section 120.80(13), Florida Statutes, IDS does not dispute the timing or the rate of the required deposit payments. It disputes only the amount of the deposit required."

Indeed, IDS has no basis to complain about the amount of the deposit because it directly results from IDS' abuse of the billing dispute process to fund its ongoing business operations. Specifically, to date, IDS has asserted and continues to assert several million dollars of illegitimate disputes to avoid its payment obligations to BellSouth. At the same time, as clearly set forth in BellSouth's brief, objective, independent industry standard credit analysis tools as well as IDS' own financial data establish that IDS is a substantial credit risk and a likely bankruptcy candidate. Thus, every month the amount of disputed amounts increases while IDS' financial conditions worsens, thereby exposing BellSouth to an unwarranted financial risk. The deposit ordered by the Commission and expressly authorized by the Agreement is designed to mitigate that risk. And, IDS has no legal or factual basis to support its challenge of the \$3.9 million ordered deposit. Consequently, the Commission should affirm its findings and conclusions in the Order.

MOTION TO DISMISS

A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the complaint to be true. Heekin v. Florida Power & Light Co., Order No. PSC-99-10544-FOF-EI, 1999 WL 521480 *2 (citing to Varnes, 624 So. 2d at 350). In determining the sufficiency of a complaint, the Commission should confine its consideration to the complaint and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958).

In the Protest, IDS states that it “has disputed the deposit amount.” IDS further states in footnote 2 that “[p]ursuant to Section 120.80(13), Florida Statutes, IDS does not dispute the timing or the rate of the required deposit payments. It disputes only the amount of the deposit required.” Notwithstanding these admissions, IDS asserts several factual and legal issues that have nothing to do with challenging the amount of the deposit. These allegations focus on whether BellSouth has a right to request a deposit, whether the deposit request was anticompetitive, and whether IDS can adopt the absence of deposit language from another agreement to avoid its explicit deposit obligations in the current Agreement. See Protest at ¶¶ 18-20. None of these allegations have anything to do with the amount of the deposit ordered by the Commission in the Order, which is what IDS admits it is only protesting. Accordingly, pursuant to IDS’ own admissions, the Commission should dismiss and refuse to consider any attempt by IDS to challenge anything other than the amount of the deposit ordered by the Commission.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraph 1 requires no response from BellSouth.
2. Paragraph 2 requires no response from BellSouth.
3. Paragraph 3 requires no response from BellSouth.
4. BellSouth admits the allegations contained in Paragraph 4.
5. BellSouth denies the allegations contained in Paragraph 5, except to admit that BellSouth filed a Complaint seeking a \$4.6 million deposit on or about May 21, 2004, IDS filed a response to this Complaint, and the Commission considered the Complaint at the August 3, 2004 agenda conference.

6. BellSouth denies the allegations contained in Paragraph 6, except to admit that the Commission issued the Order on August 23, 2004, which speaks for itself and is the best evidence of its terms and conditions.

7. BellSouth denies the allegations contained in Paragraph 7, except to admit that the Order speaks for itself and is the best evidence of its terms and conditions.

8. BellSouth denies the allegations contained in Paragraph 8, except to admit that the Order properly requires IDS to post a \$3.9 million deposit.

9. BellSouth denies Paragraph 9.

10. BellSouth denies Paragraph 10.

11. BellSouth denies Paragraph 11.

12. BellSouth denies the allegations contained in Paragraph 12, except to admit that BellSouth has the right to disconnect IDS' service pursuant to the Interconnection Agreement if IDS fails to post a deposit or make timely deposit payments.

13. BellSouth denies Paragraph 13.

14. BellSouth admits that the Commission issued Order No. PSC-95-0862-FOF-TI, which speaks for itself and is the best evidence of its terms and conditions. BellSouth denies the remaining allegations contained in Paragraph 14.

15. BellSouth denies Paragraph 15.

16. Paragraph 16 does not require a response from BellSouth other than to state that BellSouth denies that IDS is entitled to expedited relief.

17. BellSouth denies Paragraph 17.

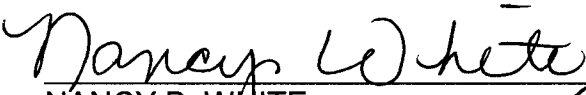
18. BellSouth denies Paragraph 18.
19. BellSouth denies Paragraph 19.
20. BellSouth denies Paragraph 20.
21. Any allegation not expressly admitted herein is denied.


AFFIRMATIVE DEFENSES

1. IDS' Protest fails to state a cause of action upon which relief can be granted.
2. IDS' Protest is barred by the fact that IDS has violated the current Interconnection Agreement by failing to comply with the applicable deposit obligations contained therein, all as set forth in BellSouth's Complaint.
3. IDS' Protest is barred because IDS has breached the covenant of good faith and fair dealing in respect to its blatant attempt to avoid its deposit requirements by abusing Section 252(i) of the Act.
4. IDS' Protest is barred from challenging the Order by the doctrine of estoppel.
5. IDS' is barred from challenging anything other than the amount of the deposit required in the Order pursuant to IDS' admissions in the Protest.

Respectfully submitted this 4th day of October, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


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