

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-04-0625-PCO-TP
ISSUED: June 23, 2004

ORDER MODIFYING ORDER ESTABLISHING PROCEDURE

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. Also in that Order, the tentative issues to be addressed in this proceeding had been identified.

BellSouth filed on May 7, 2004, its Motion for Leave to Amend Answer to Assert Counterclaim along with its Counterclaim. In its Counterclaim, BellSouth identified four counter claims which are as follows: (1) daily usage file dispute; (2) market based rate dispute; (3) request for escrow/immediate payment; and (4) request for deposit. On May 17, 2004, IDS filed its Response in Opposition to BellSouth's Counterclaim. At the June 1, 2004, Agenda Conference, BellSouth was permitted to include counterclaims Count I regarding daily usage file dispute and Count II regarding market based rate dispute. By letter dated May 21, 2004, BellSouth withdrew Count IV which we acknowledged at the June 1, 2004, Agenda Conference. Thus, the tentative issues list, which is attached as Appendix A, is modified to add issues to reflect the June 1, 2004, Agenda Conference decision.

In addition to addressing BellSouth's Motion for Leave to Amend Answer to Assert Counterclaim, we considered the parties' desire to have the matter resolved as soon as possible. To accommodate the desire to have an earlier resolution, we instructed our staff to review the Commission's calendar to see if it would be practicable to reschedule the hearing to an earlier date. Based on the foregoing, the hearing schedule and key activities dates are modified as follows:

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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|--|--------------------|
| 1) Direct testimony and exhibits (All) | July 15, 2004 |
| 2) Rebuttal testimony and exhibits (All) | August 9, 2004 |
| 3) Prehearing Statements | August 16, 2004 |
| 4) Prehearing Conference | August 30, 2004 |
| 5) Hearing | September 10, 2004 |
| 6) Briefs | October 5, 2004 |


Further, the discovery cutoff date shall be September 2, 2004. Given the expedited nature of this proceeding, for all discovery served on or after August 9, 2004, the discovery response period shall be reduce to 10 days. Except as modified herein, Order No. PSC-04-0472-PCO-TP, issued May 6, 2004, is affirmed in all other respects.

Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the hearing, prehearing conference, and key activities dates are modified as set forth in the body of this Order. It is further

ORDERED that except as modified herein, Order No. PSC-04-0472-PCO-TP, issued May 6, 2004, is affirmed in all other respects.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 23rd day of June, 2004.


J. TERRY DEASON
Commissioner and Prehearing Officer

(SEAL)

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.

APPENDIX "A"

The tentative list of issues which have been identified in this proceeding are set forth below.

ISSUE 1: Was there a further agreement to include additional billed amounts into the Settlement Agreement and Settlement Amendment Q account?

- a. What are the amounts owed under the original Settlement Agreement and Settlement Amendment?
- b. What are the amounts owed under any other agreement or amendment?
- c. Have those amounts been paid?

ISSUE 2: Did BellSouth properly terminate IDS's access to LENS in December 2003 pursuant to the interconnection agreement?

ISSUE 3: If BellSouth improperly terminated IDS's access to LENS in December 2003, then would such action constitute anticompetitive behavior in violation of Chapter 364, Florida Statutes?

Issue 4(a): Did BellSouth assess the correct Daily Usage File (DUF) charges for services provided to IDS in Florida?

Issue 4(b): Does IDS owe BellSouth for DUF charges, if so, how much is owed?

Issue 5(a): Did BellSouth correctly assess market-based rates for services provided to IDS in Florida in the applicable MSAs?

Issue 5(b): Did BellSouth correctly calculate and bill IDS the appropriate amount?

Issue 5(c): Did IDS properly dispute the amounts in subpart 5(b) in accord with the provisions of the parties' interconnection agreement? If not, has IDS violated the interconnection agreement?

Issue 5(d): Based on subparts (a) and (b) above, how much does IDS owe BellSouth, if any?

Issue 6: When should any credit or payment be submitted?