

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-04-0635-PCO-TP
ISSUED: July 1, 2004

ORDER ON MOTION TO COMPEL

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. By Order No. PSC-04-0625-PCO-TP, issued June 25, 2004, the Order Establishing Procedure was modified to reschedule to earlier dates the hearing, prehearing, and key activities dates.

On June 4, 2004, BellSouth filed its Motion to Compel IDS to respond to its First Set of Interrogatories and Requests for Production of Documents. BellSouth states in its Motion that the parties reached an agreement whereby IDS would produce supplemental responses by May 20, 2004, for all discovery except Interrogatories Nos. 14 and 22. BellSouth asserts that it was forced to file this Motion, because IDS failed to provide its supplemental response by the May 20th date. On June 11, 2004, IDS filed its Response to the Motion to Compel. In its Response, IDS notes that supplemental responses to BellSouth's First Set of Discovery were filed on June 9, 2004. Since IDS has provided supplemental discovery for all outstanding discovery except for Interrogatory No. 22, the Motion to Compel appears to be moot, except as relates to Interrogatory No. 22, which is addressed below.

In its Motion to Compel, BellSouth argues that with Interrogatory No. 22, it is requesting IDS's gross revenues on a monthly basis since March 2002 to evaluate IDS's potential motives for filing disputes in lieu of making payment of amounts owed. BellSouth asserts that IDS objected to this Interrogatory on the grounds that it was "harassing, abusive and calls for the disclosure of confidential information that is irrelevant. . . ." BellSouth contends that IDS may be submitting erroneous billing disputes to reduce its monthly payment obligations, because IDS fails to receive sufficient revenues to cover its costs of doing business. BellSouth states that asserting

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improper billing disputes to reduce payment obligations constitutes a violation of the billing dispute provisions of the Interconnection Agreement, which is an allegation in BellSouth's Counterclaim, as well as a defense BellSouth is entitled to raise in response to IDS's Complaint. BellSouth states that it is willing to enter into a confidential agreement with IDS to address IDS's confidential information concerns.

IDS responds that it continues to object to Interrogatory No. 22. IDS maintains that the issue before the Commission is payment on the "Q account." IDS claims it has overpaid BellSouth while BellSouth contends it has not been paid. IDS argues that information regarding gross revenues has no relevance to this issue at all. IDS asserts that matters sought to be discovered must be relevant to the subject matter of the case. In this case, the interrogatory is not relevant to any of the issues to be heard and is not reasonably calculated to lead to admissible evidence.

The pertinent rule on this issue is Rule 1.280(b), Florida Rule of Civil Procedure, which states that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defenses of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

In reviewing Interrogatory No. 22 and the Counterclaim filed by BellSouth, Interrogatory No. 22 does not appear to be reasonably calculated to lead to the discovery of admissible evidence. There does not appear to be a reasonable nexus between IDS's gross monthly revenues and BellSouth's Counterclaims that IDS has inappropriately disputed the DUF and market-based rates. Further, in reviewing the Counterclaim, BellSouth does not make an allegation that IDS is motivated to file disputes to avoid monthly payments that it does not have revenue to cover. Therefore, the information sought in this instance does not appear reasonably calculated to lead to the discovery of admissible evidence; therefore, the Motion to Compel as it relates to Interrogatory No. 22 is denied.


Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that BellSouth Telecommunications, Inc.'s Motion to Compel on Interrogatory No. 22 is hereby denied. It is further

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ORDERED that BellSouth Telecommunications, Inc.'s Motion to Compel on all other discovery is moot.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 1st day of July, 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

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remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

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