

Kay Flynn

ORIGINAL

From: Mary Bane
 Sent: Monday, March 29, 2004 12:51 PM
 To: Patty Christensen
 Cc: Jorge Chamizo; JoAnn Chase; Cayce Hinton; Katrina Tew; Larry Harris; Kay Flynn; Beth Keating; Jackie Schindler; Laura King; Chuck Hill; Beth Salak
 Subject: RE: Docket No. 031125-TP Complaint Against BellSouth Telecommunications, Inc. for allegeBlanca Bayod overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC

The suggested revision is approved. There is no need to file a revised recommendation since this e-mail will provide notice to the commissioners and to CCA about the correction.

-----Original Message-----

From: Patty Christensen
 Sent: Monday, March 29, 2004 11:12 AM
 To: Mary Bane
 Cc: Jorge Chamizo; JoAnn Chase; Cayce Hinton; Katrina Tew; Larry Harris; Kay Flynn; Beth Keating; Jackie Schindler; Laura King
 Subject: Docket No. 031125-TP Complaint Against BellSouth Telecommunications, Inc. for allegeBlanca Bayod overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC

A recommendation was filed on BellSouth's Partial Motion to Dismiss which was originally scheduled to be heard at the March 30, 2004, Agenda Conference. The item was deferred to the April 6, 2004, Agenda Conference. Due to an omission in the recommendation, staff is requesting permission to file a revised recommendation. Specifically, the omission occurred on page 9, last paragraph, last sentence which should have include the word "not." The paragraph should read as follows:

Similarly, staff believes it is appropriate to dismiss Count Three. Even IDS acknowledged in its response that Count Three would be appropriately dismissed if its Amended Complaint had only alleged a breach of a Settlement Agreement (not approved by the Commission). Staff agrees that the Commission in this instance is not the appropriate forum to enforce this non-commission approved Settlement Agreement. In the Sanlando Case, the Commission noted that in a typical contract dispute a party may always seek to enforce a provision or remedy a breach of contract in court. Order No. PSC-95-0536-S-WS at p. 4. Staff notes that a settlement agreement is in essence a contract. Since Count Three solely relies the Settlement Agreement as the basis for resolving the dispute in IDS's favor, staff also believe it is appropriate to dismiss Count Three. Dismissal of Count Three, however, does not prevent the Commission from considering the Settlement Agreement as evidence in the current dispute.

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