

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BellSouth.com]
Sent: Friday, May 28, 2004 12:11 PM
To: Filings@psc.state.fl.us
Cc: Linda Hobbs; Meza, James; Fatool, Vicki; Holland, Robyn P.; Nancy Sims; Bixler, Micheale
Subject: Docket No. 031125-TP
Importance: High

A. Brenda Slaughter
 Legal Secretary for James Meza III
 BellSouth Telecommunications, Inc.
 c/o Nancy Sims
 150 South Monroe, Rm. 400
 Tallahassee, FL 32301-1558
 (404) 335-0714
brenda.slaughter@bellsouth.com

B. Docket No. 031125-TP: Complaint of IDS Telecom LLC against BellSouth Telecommunications, Inc. for over billing and discontinuance of service, and petition for emergency order restoring service

C. BellSouth Telecommunications, Inc. on behalf of James Meza III

D. 6 pages total

E. BellSouth Telecommunications, Inc.'s Unopposed Motion to Amend

Brenda Slaughter (sent on behalf of James Meza III)
 BellSouth Telecommunications, Inc.
 Suite 4300 - Legal Department
 675 W. Peachtree Street

CMP Atlanta, GA 30375-0001
COM Phone: (404) 335-0714

CTR _____

ECR _____

GCL _____

OPC <<Unopposed Motion.pdf>>

MMS _____ *****

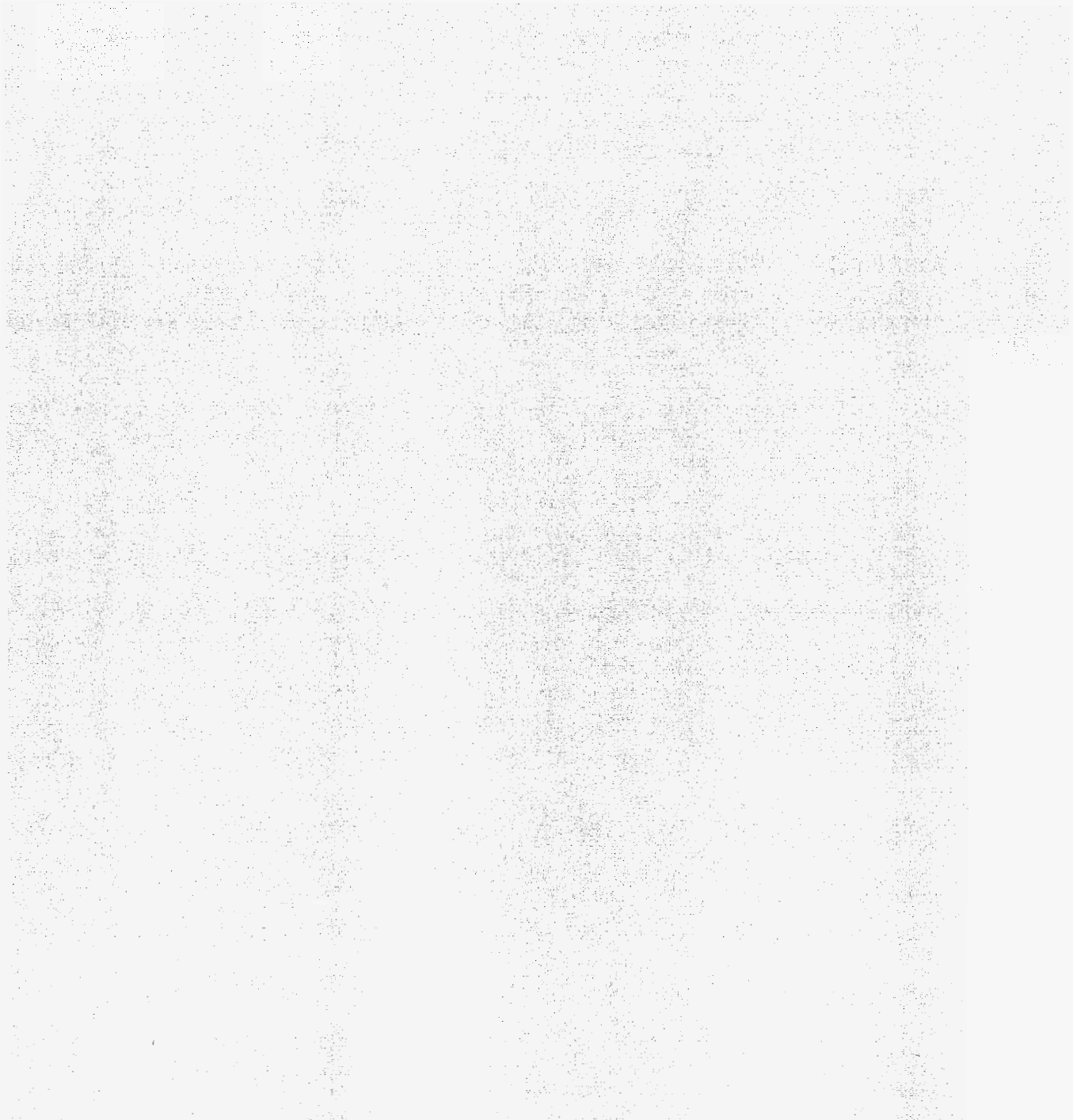
RCA _____

SCR _____ The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the

OTH _____

06111 MAY 28 3

material from all computers. 113



ORIGINAL

Legal Department

JAMES MEZA III
Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0769

May 28, 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

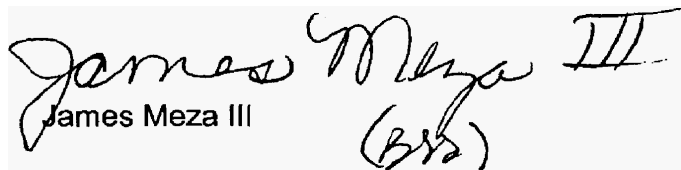
**Re: 031125-TP: Complaint of IDS Telecom LLC against BellSouth
Telecommunications, Inc., for over billing and discontinuance of
service, and petition for emergency order restoring service**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Unopposed Motion to Amend Answer. We ask that you file this document in the referenced docket.

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

Sincerely,


James Meza III
(BSS)

Enclosures

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

DOCUMENT NUMBER-DATE

06111 MAY 28 3

FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 031125-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Facsimile this 28th day of May, 2004 to the following:

Patty Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6191
Fax. No. (850) 413-6221
pchriste@psc.state.fl.us

Norman H. Horton, Jr.
Meser, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
Fax No. (850) 224-4359
nhorton@lawfla.com
Represents IDS


James Meza III
(BLL)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against BellSouth Telecommunications,) Docket No.: 031125-TP
Inc. for alleged overbilling and discontinuance of service,)
by IDS Telecom, LLC)
Filed: May 28, 2004

UNOPPOSED MOTION TO AMEND ANSWER

Defendant and Counter-Claimant, BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Florida Rule of Civil Procedure 1.190 and Rule 28-106.202, Florida Administrative Code, hereby requests that it be granted leave to amend its Answer to correct typographical errors. In support, BellSouth states the following:

1. On December 23, 2003, IDS Telcom, LLC ("IDS") filed its Complaint in this proceeding. IDS subsequently filed an Amended Complaint on December 30, 2003.

2. On January 16, 2004, BellSouth filed its Partial Motion to Dismiss and Answer. Review of the original Answer revealed certain typographical and numbering errors that resulted in a mischaracterization of BellSouth's position on the allegations asserted by IDS in its Amended Complaint. In effect, these errors resulted in BellSouth admitting certain allegations that it should have denied. See Answer at ¶ 10; Amended Complaint at ¶ 10.

3. BellSouth seeks to amend its original Answer to correct these inadvertent typographical and numbering errors so that the Answer accurately sets forth BellSouth's true position on the issues in this docket.

4. Regarding the amendment of pleadings, Rule 1.190(e) of the Florida Rules of Civil Procedure provides:

At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental

DOCUMENT NUMBER-DATE

06111 MAY 28 8

FPSC-COMMISSION CLERK

matter to be set forth in an amended or supplemental pleading. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

5. In interpreting this rule, Florida courts have held that “[a]ll doubts should be resolved in favor of allowing amendments.” Adams v. Knabb Turpentine Co., 435 So. 2d 944, 946 (Fla. 1st DCA 1983). This is because “[i]t is the public policy of this state to freely allow amendments to pleadings so that cases may be resolved upon their merits.” Id. Further, “[c]ourts should be especially liberal when leave to amend ‘is sought at or before a hearing on a motion for summary judgment.’” Bill Williams Air Conditioning & Heating, Inc. v. Haymarket Cooperative Bank, 592 So. 2d 302, 305 (Fla. 1st DCA 1992) (quoting Montero v. Compugraphic Corp., 531 So. 2d 1034, 1036 (Fla. 3rd DCA 1988)).

6. Based on these principles, it is well-settled in Florida that litigants should be granted the opportunity under Rule 1.190(e) to amend pleadings to correct typographical, clerical, or other unintentional errors. See Carib Ocean Shipping, Inc. v. Armas, 854 So. 2d 234, (Fla. 3rd DCA 2003) (finding that trial court abused its discretion in refusing defendant’s request to amend answer to assert defense that was unintentionally omitted from answer); Nehme v. Smithkline Beecham Clinical Laboratories, Inc., 822 So. 2d 519, 520, n.1 (Fla. 5th DCA 2002) (holding that defendants could amend answer to assert affirmative defense); Auto-Owners Ins. Co. v. Massani, 627 So. 2d 1199, 1200 (Fla. 3rd DCA 1994) (finding that trial court abused its discretion in refusing to allow defendant to amend answer to assert omitted defenses to defeat motion for judgment on the pleadings); Davison v. First Federal Savings & Loan Assoc. of Orlando, 413 So. 2d 1258, 1259 (Fla. 5th DCA 1982) (finding that trial court

erred in refusing defendant ability to amend request for admission response to allow answer to read denied instead of admitted when error was based on clerical mistake); Florida Sunshine Coast Development Co., Inc., 352 So. 2d 154, 155 (Fla. 2nd DCA 1977) (holding that trial court erred in not allowing defendant to amend admission in answer); Hall v. Wojechowski, 312 So. 2d 204, 204 (Fla. 4th DCA 1975) (holding that trial court abused discretion in not allowing plaintiff to amend pleadings to correct inadvertent omission of certain claims for damages).

7. Here, consistent with the above-cited law, BellSouth seeks leave to amend its Answer to correct certain typographical and clerical errors that resulted in BellSouth admitting certain allegations that should have been denied. Justice requires this amendment to allow this proceeding to be decided on its merits rather than on a clerical error. See Adams, 435 So. 2d at 946.

8. IDS would not be prejudiced by the filing of an Amended Answer because (1) the amendment will not raise any additional issues; (2) the proceeding is in its preliminary stages; (3) the Amended Answer will make BellSouth's response consistent with its positions in other portions of the Answer; and (4) IDS will not be surprised because the Amended Answer will be consistent with BellSouth's historical positions on the issues in dispute.

9. Moreover, Rule 28-106.202, Florida Administrative Code, allows the Prehearing Officer to provide for the amendment of pleadings at his/her discretion. Accordingly, to the extent Rule 1.190(a) is not applicable herein, BellSouth requests leave to amend its Answer for the reasons discussed above. The rationale and logic behind the amendment of pleadings to correct typographical and clerical errors to allow

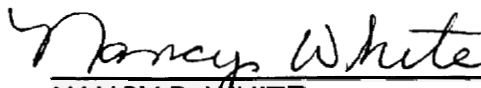
for a case to be decided on the merits rather than typographical errors applies equally to Rule 28-106.202, Florida Administrative Code


10. BellSouth contacted counsel for IDS who advised that IDS does not oppose the instant motion.

WHEREFORE, for the foregoing reasons, BellSouth requests that it be granted leave to file the attached Amended Answer to correct typographical errors that exist in the original Answer.

Respectfully submitted this 28th day of May, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.


NANCY B. WHITE (BSS)
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558


R. DOUGLAS LACKEY (BSS)
JAMES MEZA III
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0769

539636