

ORIGINAL

REDACTED

ATTACHMENT B

BellSouth Telecommunications, Inc.
FPSC Docket No. 031125-TP
Request for Confidential Classification

Page 1 of 1
6/18/04

REQUEST FOR CONFIDENTIAL CLASSIFICATION OF BELLSOUTH'S RESPONSE
TO STAFF'S FIRST SET OF INTERROGATORIES, NOS. 1, 2 AND 10, FIRST
REQUEST FOR PRODUCTION, NO. 2 AND FIRST REQUEST FOR ADMISSIONS NO.
2, FILED JUNE 1, 2004, IN FLORIDA DOCKET NO. 031125-TP

2 COPIES OF PUBLIC DISCLOSURE DOCUMENT

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FPSC-COMMISSION CLERK

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RESPONSE: (Cont.)

[REDACTED]

RESPONSE: (Cont.)



May 7, 2004

Item No. 2

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PUBLIC

REQUEST: Please identify with specificity the dollar amount IDS owed to BellSouth pursuant to the "Settlement Amendment." Include in your response the first and last respective billing dates applicable in determining this amount.

RESPONSE: BellSouth objects to this Interrogatory on the grounds that it requires the disclosure of confidential information. Subject to this objection and pursuant to a Notice of Intent BellSouth is filing contemporaneously with this response, BellSouth states that the Settlement Amendment provides that the total amount due to IDS was \$2.475 million and that BellSouth would bill the total amount due under a new Q account termed the "Past Due Q Account." See Settlement Amendment at ¶ 3. In addition [REDACTED] by providing IDS with a \$925,000 credit. See Settlement Amendment at ¶ 5.

REQUEST: Please identify the law or laws (by state and chapter, if applicable) that govern the "Settlement Agreement." Include in your response the following:

- a) an explanation of whether the Statute of Frauds and Parol Evidence Rule are in effect in the named state; and
- b) an explanation of what that state's law requires to modify a written contract

RESPONSE: *H* BellSouth objects to this Interrogatory on the grounds that it requires the disclosure of confidential information. Subject to this objection and pursuant to a Notice of Intent BellSouth is filing contemporaneously with this response, BellSouth states that, *MS* 

In addition, BellSouth's responses regarding the application of certain laws to facts is preliminary in nature and BellSouth reserves the right to modify this response.

The Statute of Frauds is inapplicable because the crux of the dispute is that IDS failed to pay undisputed amounts owed that were provided under the interconnection Agreement, which is a writing executed by both parties. Thus, the Statute of Frauds does not apply.

Assuming arguendo it does apply, Florida's Statute of Frauds, Section 725.01, Florida Statutes, is inapplicable because IDS was required to perform – i.e. make payments for amounts owed– "within the space of 1 year from the making" of the agreement. See Rubenstein v. Premedical Healthcare, Inc., 755 So. 2d 746 (Fla. 4th DCA 2000). Further, performance, even partial performance of an oral contract removes the contract from the statute of frauds. See Miller Const. Co. v. First Indus. Tech. Corp., 576 So. 2d 748 (Fla. 3rd DCA 1991).

RESPONSE: (Cont.)

In any event, there is a general question as to whether the Statute of Frauds is even applicable to the parties' verbal agreement to include the \$667,000 in additional disputes in the Past Due Q Account because the oral agreement was not a promise to pay the debt of another. See Carole Korn Interiors, Inc. v. Goudie, 573 So. 2d 923 (Fla. 3rd DCA 1990).

The Parol Evidence Rule is inapplicable because the parties' agreement to include the additional \$667,000 in disputes into the Past Due Q Account is not a modification of the Settlement Agreement or the Settlement Amendment.

REQUEST: Please admit that the date the "Settlement Agreement" was signed is September 27, 2001.

RESPONSE: BellSouth objects to this Request for Admission on the grounds that it requires the disclosure of confidential information. Subject to this objection and pursuant to a Notice of Intent BellSouth is filing contemporaneously with this response, BellSouth denies the Request for Admission.

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[Redacted]

BellSouth Telecommunications, Inc.
Florida PSC Docket No. 031125-TP
Staff's 1st Request for Production
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POD NO. 2

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PROPRIETARY

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