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Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BELLSOUTH.COM]
Sent: Monday, July 12, 2004 3:48 PM
To: Filings@psc.state.fl.us
Cc: Meza, James; Linda Hobbs; Fatool, Vicki; Nancy Sims; Holland, Robyn P.; Bixler, Micheale
Subject: Docket No. 031125-TP
Importance: High

A. Brenda Slaughter (secretary to James Meza III)
Legal Secretary
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. 13 pages total (PDF - official filing with signature)
6 pages total (WORD in lieu of disk)

E. BellSouth Telecommunications, Inc.'s Motion for Reconsideration

Brenda Slaughter (on behalf of James Meza III)
BellSouth Telecommunications, Inc.
Suite 4300 - Legal Department
675 W. Peachtree Street
Atlanta, GA 30375-0001
Phone: (404) 335-0714

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Legal Department

JAMES MEZA III
Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0763

July 12, 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 Motion for Reconsideration, which we ask that you file in the captioned docket.

Copies are being served via Electronic Mail and First Class U.S. Mail to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III (BSS)

James Meza III

Enclosures

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

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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 First Class U.S. Mail this 12th day of July, 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 (BHS)
James Meza III

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, by IDS Telecom, LLC	Docket No.: 031125-TP Filed: July 12, 2004

BELLSOUTH'S MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 25-22.0376, Florida Administrative Code, requests that the Florida Public Service Commission ("Commission") reconsider its finding in Order No. PSC 04-0635-PCO-TP ("Order") that BellSouth's Motion to Compel as to Interrogatory Nos. 23-24 and Request for Production No. 1 have been rendered moot by IDS Telecom, LLC's ("IDS") supplemental response and production. As will be established below, IDS's supplemental responses to these specific discovery requests are deficient and incomplete. In support of this Motion, BellSouth states the following:

BACKGROUND

1. On March 15, 2004, BellSouth served IDS with its First Set of Interrogatories and Requests for Production (collectively referred to as "Discovery").

2. April 14, 2004, IDS served its responses and objections to the Discovery, wherein IDS provided incomplete answers or asserted erroneous objections to a host of discovery requests.

3. BellSouth attempted to resolve IDS's incomplete and deficient answers on several occasions. In this regard, the parties had several communications and even had an agreement whereby IDS would produce supplemental responses by May 18, 2004 for all discovery except for Interrogatories Nos. 14 and 22. However, IDS failed to

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comply with this agreement, thereby forcing BellSouth to file the Motion to Compel for Interrogatory Nos. 12, 17, 18, 22, 23, and 24 and Requests for Production No. 1.

4. On June 9, 2004, IDS filed supplemental responses to the Discovery, except for Interrogatory No. 22, for which IDS maintained its objection. In its Response to the Motion to Compel, filed on June 11, 2004, IDS stated that BellSouth's Motion to Compel had been rendered moot as a result of its supplemental response. Importantly, however, IDS did not provide the Commission with a copy of its supplemental responses with this filing or otherwise. Thus, the Commission could not confirm the veracity of IDS's statement.

5. In the Order, the Commission held that "the Motion to Compel appears to be moot, except as it relates to Interrogatory No. 22, which is addressed below." Order at 1. Accordingly, the Commission did not address or consider BellSouth's arguments for all of the other discovery requests at issue in the Motion to Compel.

ANALYSIS

6. The standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. See Diamond Cab Co. v. King, 146 So. 2d 889, 891 (Fla. 1962). The Commission must rely upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached." DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1st DCA 1957). See also, Agrico Chem. Co. v. State of Fla. Dept. of Environmental Reg., 365 So.2d 759, 763 (Fla. 1st DCA 1979); and Ammerman v. Fla. Board of Pharmacy, 174 So.2d 425, 426 (Fla. 3d DCA 1965). The evidence must "establish a substantial basis of fact from

which the fact at issue can reasonably be inferred." DeGroot, 95 So.2d at 916. "The public service Commission's determinative action cannot be based upon speculation or supposition." 1 Fla. Jur. 2d, §174, citing Tamiami Trail Tours, Inc. v. Bevis, 299 So.2d 22, 24 (1974). "Findings wholly inadequate or not supported by the evidence will not be permitted to stand." Caranci v. Miami Glass & Engineering Co., 99 So.2d 252, 254 (Fla. 3d DCA 1957).

7. The Commission should reconsider its decision as it relates to Interrogatories Nos. 23 and 24 and Request for Production No. 1 because IDS's supplemental responses were evasive and incomplete as to these requests and thus were not rendered moot as a result of IDS's supplemental responses. Specifically, as will be stated below, reconsideration is warranted because the Commission failed to consider the substance of IDS's supplemental responses in reaching its decision. In fact, as stated above, because IDS failed to even provide the Commission with a copy of its supplemental responses, the Commission was precluded from making such an evaluation.

8. Interrogatories Nos. 23 and 24 and Request for Production No. 1 requested the following information:

> **Interrogatory No. 23**: Identify all legal proceedings (by case caption and court) where IDS, any owner of IDS, any present or former officer of IDS, and/or any current or former employee of IDS testified about or provided discovery responses relating to IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Amendment. For each such proceeding, identify all pleadings, depositions, and discovery responses responsive to this Interrogatory.

Interrogatory No. 24: Identify all legal proceedings (by case caption and court) where former employees of IDS sued IDS and alleged facts that implicated or relate to the IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Amendment.

Request for Production No. 1: Please produce all documents identified, referred to, relied upon or are responsive to BellSouth's First Set of Interrogatories propounded upon IDS on March 15, 2004.

9. **In its supplemental responses, IDS identified the proceedings in Case No.:** 02-29516CA-01-13, pending in the 11th Judicial Circuit for Miami-Dade County ("Civil Proceeding") as being responsive to these requests. Further, IDS confirmed the relevancy of this request as it stated that the Civil Proceeding "involves a claim by the Plaintiff's **[sic] for a contingency fee on the credits provide [sic]** by BellSouth in the Settlement Agreement." See IDS's Supplemental Responses, attached hereto as Exhibit 1. IDS closed by referring BellSouth to the website of the 11th Judicial Circuit for Miami-Dade County to obtain all other information. **Id.**

10. Contrary to the narrowly-tailored requests, IDS did not identify any specific pleadings, depositions, or discovery responses that were responsive and failed to produce any of the identified information -- information that BellSouth knows exists. Indeed, based on publicly available information, BellSouth understands that IDS's CEO, Joe Millstone, was deposed in the Civil Proceeding and that the parties reached a settlement soon thereafter. See Exhibit H to the Motion to Compel. Under the terms of the Settlement in the Civil Proceeding, which IDS apparently attempted to get out of, IDS and/or certain principals of IDS agreed to pay the plaintiffs in the Civil Proceeding a

lump sum of $135,000 as well as 5 percent of any credits in excess of $2.5 million that IDS received from BellSouth resulting from the Settlement Agreement. See Exhibits J and K to Motion to Compel. The plaintiffs are now attempting to enforce the 5 percent component of the settlement and have issued discovery to BellSouth in this regard.[1]

11. At a minimum, BellSouth knows that Mr. Millstone gave a deposition in the Civil Proceeding, and IDS has already identified Mr. Millstone in this proceeding as the person who ultimately approved the Settlement Agreement and Settlement Amendment. See IDS's Response to Interrogatory No. 9, Exhibit B to Motion to Compel. Clearly, this information is relevant as it relates to the same agreements and subject matter that is at issue in the Commission proceeding and should be produced. IDS has essentially admitted this fact in its supplemental response.

12. Moreover, referring BellSouth to a website for the docket of the Civil Proceeding is insufficient to satisfy its discovery obligations because discovery responses and depositions are not routinely filed in the record of civil proceedings. BellSouth has obtained the record in the Civil Litigation and has confirmed this fact. Accordingly, the only means in which BellSouth can obtain this highly relevant information is directly from IDS.

13. BellSouth would have provided this information prior to the Commission's Order but reply briefs or memoranda are prohibited by Commission rules.

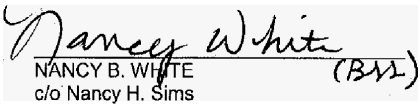
WHEREFORE, for these reasons, BellSouth requests that the Commission reconsider its finding that BellSouth's Motion to Compel as to Interrogatory Nos. 23 and 24 and Request for Production No. 1 was moot. As made clear by a cursory review of

[1] Given the terms of this settlement, IDS has every incentive to argue in this proceeding that BellSouth only provided IDS with credits in the amount of $2.5 million.

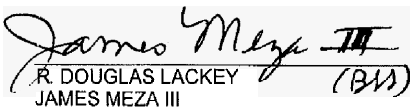
IDS's supplemental responses, IDS's responses to these requests were evasive, incomplete, and deficient. Accordingly, the Commission should require IDS to immediately (1) identify all pleadings, depositions, and discovery responses that relate to the Civil Proceeding; and (2) produce said pleadings, depositions, and discovery.

Respectfully submitted this 12th day of July, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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



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

543880

EXHIBIT
1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth Telecommunications, Inc. for overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telcom, LLC	)	Docket No. 031125-TP

IDS TELCOM, LLC'S SUPPLEMENTAL RESPONSES TO BELLSOUTH TELECOMMUNICATIONS, INC.

Petitioner IDS Telcom, LLC ("IDS"), by and through its undersigned counsel hereby serves its Supplemental Responses to BellSouth Telecommunications, Inc. ("BellSouth") First Set of Interrogatories, and in support thereof states as follows:

SUPPLEMENTAL ANSWERS

Interrogatory 2:

Identify all persons who have any knowledge about any of the allegations asserted in the Complaint, describing in detail the name of the person, the last known address of the person, where the person is employed, and a summary of each person's knowledge.

Supplemental Answer

IDS would repeat its objection and incorporate it herein but would supplement its response with the following names:

(1) Joseph Millstone, Manager, IDS Telecom, LLC, 1525 N.W. 167 Street, Suite 200, Miami, Florida 33169. Mr. Millstone has general knowledge with respect to the Settlement Agreement and subsequent activities.

Several persons formerly associated with IDS would have knowledge of the 2001 complaint, but were not involved with the instant complaint nor were they involved with the

discussions or negotiations as to the settlement agreement. These include Keith Kramer, Becky Wellman, Bill Gulas.

IDS is without knowledge as to all of the BellSouth employees who may have knowledge about the allegations in this case but have had discussions with the following current/former BellSouth employees: Lea Cooper, Roger Edmonds, Maxine Alegar, David Milton, Steven Luntz, Regina Harris, Doug Lackey and Claude Morton. Moreover, IDS' production may contain correspondence identifying other BellSouth employees who cannot be specifically recalled at this time. IDS would refer BellSouth to such production for further detail. Since these are current or former BellSouth employees, BellSouth would be the best source for the addresses and breadth of knowledge for these individuals.

Interrogatory 12:

Identify all billing disputes that IDS is asserting in the instant Commission proceeding, the monetary value of each dispute, the basis for each such dispute, all documents that support each dispute, and the person with the most knowledge at IDS about each dispute.

Supplemental Answer:

IDS would incorporate its initial response but would supplement it by identifying Mr. Angel Leiro and Elizabeth Fefer as the persons at IDS having the most knowledgeable regarding the Q Account dispute. Further, documents responsive to this request have been provided to BellSouth with this supplemental response, although many are in their possession already.

Interrogatory 17:

Identify all communications (verbal and/or written) between BellSouth and IDS relating to the Confidential Settlement and/or the Settlement Amendment. For each such dispute, please identify (1) the date of each communication; (2) the medium of each communication (written or

verbal); (3) all IDS employees involved in the communication; and (4) a summary of each communication.

Supplemental Answer:

IDS would incorporate its objection and add that as phrased, a complete answer is impossible to provide. The request for ALL written and verbal is overly broad. IDS does not have and cannot provide identification of ALL verbal communications. To the extent possible, IDS has with this supplemental response, provided copies of documents responsive to this request if not provided elsewhere.

Interrogatory 18:

Is IDS asserting that IDS does not owe BellSouth the $3,049,140.74 allegedly paid to the Q account or the $3,231,996.10 allegedly billed in the Q account, as set forth in paragraphs 10 and 12 of the Complaint, solely because the amount billed and paid exceeds the amount set forth in the Settlement Amendment?

Supplemental Answer:

No, at least not as phrased by BellSouth. Rather, IDS states that it engaged in a long and protracted process of arriving at a Settlement Agreement and Settlement Amendment, which IDS believes sets forth the monies that IDS agreed to pay to BellSouth, together with the agreed credits. IDS fulfilled its obligations to BellSouth by paying the agreed $2,475,000 (together with interest) as set forth in the Settlement Amendment. IDS never agreed to pay BellSouth more than the 2,475,000 (together with interest) identified in the Settlement Amendment and believes that BellSouth's calculations fail to include credits that BellSouth had previously agreed to provide under the settlement documents.

Interrogatory 23:

Identify all legal proceedings (by case caption and court) where IDS, any owner of IDS, any present or former officer of IDS, and/or any current or former employee of IDS testified about or provided discovery responses relating to IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Amendment. For each such proceeding, identify all pleadings, depositions, and discovery responses responsive to this Interrogatory.

Supplemental Answer:

IDS would supplement its response by identifying the case of William Gulas, et al. v. Michael Noshay et al., Case No. 02-29516 CA (01), filed in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. That lawsuit involves a claim by the Plaintiffs for a contingency fee on the credits provide by BellSouth in the Settlement Agreement. For a docket of the pleadings, depositions and/or discovery in that case, IDS directs BellSouth to public access website of the Clerk of the Court for Miami-Dade County at http://www.miami-dadeclerk.com/ .

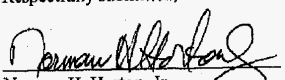
Interrogatory 24:

Identify all legal proceedings (by case caption and court) where former employees of IDS sued IDS and alleged facts that implicated or relate to the IDS' disputes with BellSouth, the Confidential Settlement, and/or the Settlement Amendment.

Supplemental Answer:

See Supplemental Answer to Interrogatory No. 23.

Respectfully submitted,



Norman H. Horton, Jr.
E. Gary Early
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
(850) 222-0720

Counsel for IDS Telcom, LLC