

ORIGINAL

Timolyn Henry

From: Fatool, Vicki [Vicki.Fatool@BellSouth.COM]
Sent: Tuesday, October 17, 2006 4:12 PM
To: Filings@psc.state.fl.us
Subject: 060640-TP BellSouth's Response in Opposition to Sworn Motion for Order Granting Access to E-Mails
Importance: High
Attachments: 060640-T.pdf

A. Vickie (Fatool) Woods
 Legal Secretary to James Meza III and Manuel Gurdian
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
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B. Docket No. 060640-TP: Petition to investigate, claim for damages, complaint, and

other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation, by Bessie Russ

C. BellSouth Telecommunications, Inc.
 on behalf of Manuel A. Gurdian

D. 5 pages total (including letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc.'s Response in Opposition to Sworn Motion for Order Granting Access to E-Mails

.pdf version attached

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ORIGINAL

Legal Department

Manuel A. Gurdian
Attorney

BellSouth Telecommunications, Inc.
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October 17, 2006

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

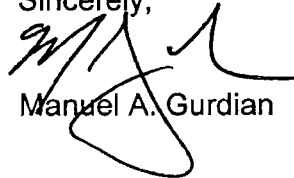
**Re: Docket No.: 060640-TP
Petition to investigate, claim for damages, complaint, and
other statements against respondents Evercom Systems, Inc.
d/b/a Correctional Billing Services and BellSouth Corporation,
by Bessie Russ**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth
Telecommunications, Inc.'s Response in Opposition to Sworn Motion for Order
Granting Access to E-Mails, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original
was filed and return the copy to me. Copies have been served to the parties
shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.
James Meza III

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 060640-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 17th day of October, 2006 to the following:

Felicia West
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
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Bessie Russ
745 Orange Street
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Tel. No. (850) 638-9695

Correctional Billing Services
Mr. Curtis Hopfinger
14651 Dallas Parkway, 6th Floor
Dallas, TX 75254-7476
Tel. No. (972) 277-0319
Fax. No. (972) 277-0416
chopfinger@securustech.net



Manuel A. Gurdian

FLORIDA PUBLIC SERVICE COMMISSION

Petition to investigate, claim for damages,) Docket No. 060640-TP
complaint, and other statements against)
respondents Evercom Systems, Inc. d/b/a)
Correctional Billing Services and BellSouth)
Corporation, by Bessie Russ)
_____) October 17, 2006

**RESPONSE IN OPPOSITION TO SWORN MOTION FOR ORDER
GRANTING ACCESS TO E-MAILS**

BellSouth Telecommunications, Inc. (“BellSouth”) respectfully submits this Response in Opposition to Petitioner, Bessie Russ’ (“Petitioner”), Sworn Motion for Order Granting Access to E-mails (“Motion”). For the reasons set forth below, the Florida Public Service Commission (“Commission”) should deny Petitioner’s Motion.

1. On or about October 6, 2006, the Commission Clerk received a copy of Petitioner’s Motion; however, to date, a copy of the Motion has not been served on BellSouth either by Petitioner or the Commission.

2. Petitioner’s Motion must be denied by the Commission because Petitioner has not followed the procedures provided by Commission Rules and the Florida Rules of Civil Procedure because it asks the Commission to order BellSouth to produce e-mails before the Petitioner has filed a Request for Production and BellSouth has been given an opportunity to respond. In essence, the Petitioner has “placed the cart before the horse.”

3. Rule 28-106.206, Florida Administrative Code, provides as follows:

After commencement of a proceeding, parties may obtain discovery through the means and manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

4. As a procedural order has not been issued by the presiding officer, the Commission must look to Rules 1.280 through 1.400, Florida Rules of Civil Procedure, as to how the Petitioner may obtain discovery from BellSouth.

5. Rule 1.350 of the Florida Rules of Civil Procedure governs the procedure where the production of documents is requested from another party. Specifically, Rule 1.350(b) provides as follows:

Without leave of court the request may be served on the plaintiff after commencement of the action and on any other party after commencement of the action and on any other party with or after service of the process and initial pleading on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing related acts. The party to whom the request is directed shall serve a written response within 30 days after service of the request, except that a defendant may serve a response within 45 days after service of process and initial pleading on that defendant.

6. Rule 1.380(a)(2) of the Florida Rules of Civil Procedure provides that a Motion for Order Compelling Discovery maybe filed “if a party in response to a request for inspection submitted under rule 1.350 fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.”

7. However, as Petitioner has not filed a request for production under Rule 1.350 of the Florida Rules of Civil Procedure, BellSouth has not had an opportunity to respond to the request as provided under the Rules and, thus, BellSouth cannot be considered to have failed to respond or failed to permit the inspection as requested.

8. Accordingly, as Petitioner has filed a Motion to Compel prior to serving a Request For Production, Petitioner’s Motion is procedurally defective and premature.

WHEREFORE, BellSouth respectfully requests the Commission to enter an Order in BellSouth's favor, deny the Petitioner the relief sought, and grant BellSouth such other relief as the Commission deems just and proper.

Respectfully submitted this 17th day of October, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.



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