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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning)
Complaint of IDS Telcom, LLC against BellSouth)
Telecommunications, Inc., regarding breach of)
interconnection agreement)

Docket No. 010740-TPSC COMMISSION CLERK

Filed: September 21, 2001

IDS TELCOM, LLC'S MOTION TO COMPEL BETTER RESPONSES TO ITS REQUESTS FOR PRODUCTION AND INTERROGATORIES

IDS Telcom, LLC, ("IDS") through undersigned counsel and pursuant to Rule 28-106.204, Florida Administrative Code, respectfully requests that this Commission enter an Order compelling BellSouth Telecommunications, Inc. ("BellSouth") to respond fully and completely to IDS's First Request for Production of Documents and Interrogatories. As grounds for this motion IDS states that BellSouth has substantially failed to respond to pending discovery. In further support of this motion, IDS shows the Commission that:

- 1. On May 11, 2001, IDS filed a Complaint against BellSouth for breach of its Interconnection Agreement with IDS.
2. On August 23, 2001 and August 24, 2001 respectively, IDS filed its First and Second Requests for Production of Documents to BellSouth. IDS filed its First and Second set of Interrogatories to BellSouth on August 24, 2001. Copies of these Requests are attached as Exhibits "A" and "B," respectively.

3. In response to IDS's First discovery requests, on September 5, 2001, BellSouth produced a set of patently incomplete documents and unresponsive answers to IDS's Interrogatories.

4. By serving such woefully inadequate responses to IDS's discovery requests, BellSouth is in violation of Fla. Admin. Code Rule 28-106.206. Accordingly, the Commission

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should order BellSouth to respond to IDS's First Request for Production of Documents and Interrogatories.

ARGUMENT

Pursuant to Florida Administrative Code Section 28-106.206, which governs proceedings before the Public Service Commission, discovery is to be carried out "through the means and manner provided in Rules 1.280 through 1.400 of the Florida Rules of Civil Procedure." This section also authorizes presiding Commission officers to "issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions . . ." Fla. Admin. Code § 28-106.206. Fla. R. Civ. P. 1.280 provides for liberal, expansive discovery:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Fla. R. Civ. P. 1.280.

Accordingly, this presumption in favor of liberal discovery also applies to Commission proceedings. In spite of this liberal policy, BellSouth furnished IDS with unresponsive and evasive responses to IDS's Requests for Production and Interrogatories. In many cases, the documents produced "in response" to specific requests were disproportionately few compared with the subject-matter or the position of the person to whom they were directed; did not even remotely correspond to the subject-matter of the request; or consisted of unsigned, scribbled notes for whom the authors could not be identified. Many of the Interrogatories simply went unanswered based on inappropriate

objections, or BellSouth provided skeletal responses. These insufficient responses constitute nothing short of a failure to answer, and the Commission should therefore compel BellSouth to fully respond to IDS's discovery requests.

SPECIFIC REQUESTS AND RESPONSES

Specifically, BellSouth has failed to properly respond to nine requests for production and five interrogatories, as follows:

Request Number 2

Request: Provide any and all e-mails, correspondence, notes, minutes of meetings, memoranda, etc. from Linda Tate to any and all Bulk Ordering Project Team members from the period September 1, 1999, through the present.

The documents produced by BellSouth in response to this Request are incomplete. The minimal number of documents produced is disproportionately small compared to the significant role that Linda Tate played in the Bulk Order process. Linda Tate is Senior Director of BellSouth Technology Services – Network Services Delivery Organization, and in that capacity, supervises the delivery of new system solutions or enhancement for Service Management Layer (“SML”) capabilities, including Bulk Ordering. It defies logic that only a few documents could have resulted from such a great degree of involvement.

Request Number 3

Request: Any and all e-mails, correspondence, notes, minutes of meetings, memoranda, etc. to and from Michael Lepkowski from the period September 1, 1999, through the present.

Again, BellSouth's response to this Request is clearly incomplete, consisting largely of correspondence between IDS and BellSouth, rather than intra-company communications. Mr. Lepkowski is an Account Executive in BellSouth's Interconnection General Carriers Group, which involves the sale of new products and services in the wholesale markets, and acting as a liaison between BellSouth's wholesale customers and the various divisions of BellSouth. As such, he was the principal contact person with whom IDS and other ALECs would communicate regarding resale accounts, local service requests, and UNE-P conversion orders. He would then refer problems to the different BellSouth divisions responsible for addressing them. Mr. Lepkowski was also the individual at BellSouth who proposed, and promised to oversee, the Bulk Order system as a way to expedite the switch-over process.

Given his broad umbrella of authority, particularly his role as liaison between ALECs and BellSouth's various departments, it is unthinkable that such a dearth of internal correspondence could have passed between Mr. Lepkowski and other BellSouth employees. Despite the fact that there were numerous problems afflicting the local service conversion process on a daily basis during a more than one-year period, BellSouth produced fewer than twenty internal e-mails to or from Mr. Lepkowski. BellSouth's meager response is clearly inadequate, and it should be required to produce the numerous other responsive documents that certainly exist.

Request Numbers 5 and 6

Both of these Requests ask for "[a]ny and all e-mails, correspondence, notes, minutes of meetings, memoranda, etc." to or from Jimmy Patrick and Rick Hemby from September 1, 1999, to the present.

Again, BellSouth's responses are glaringly incomplete, consisting of three or four e-mails corresponding to each Request. Jimmy Patrick is employed as a Sales Director - OSS at BellSouth, and at the time of the events in question, he worked as a contract employee for BellSouth, providing support to ALECs in obtaining access to BellSouth's electronic interfaces and databases. Rick Hemby held a similar position at BellSouth. It strains the bounds of reasonableness to suggest that two persons so substantially involved in operations support systems ("OSS"), could only have produced three or four e-mails over a two-year period.

Request Number 7

Request: Any and all e-mails, correspondence, notes, minutes of meetings, memoranda, etc. to and from Mary Jo Peed and Bill Thrasher or any member of Mr. Thrasher's staff from the period September 1, 1999, through the present.

BellSouth produced no documents at all in response to this Request. Mr. Thrasher is Operations Assistant Vice President at BellSouth, and, as such, supervises a team of 450 service representatives and management employees at one of BellSouth's Local Carrier Service Centers (LCSCs). Mr. Thrasher is thus directly involved in the customer service systems directly at issue in this action. It is therefore inconceivable that there would be absolutely no correspondence at all between himself (or his sizable staff) and anyone else over the last two years.

Request Numbers 16, 17, 18 and 22

These Requests ask for production of the following records from BellSouth: IDS conversion records, trouble tickets submitted to BellSouth from IDS, records for truck rolls performed by BellSouth at IDS's behest, and "FOC Timeliness Reports."

In response to each of these Requests, BellSouth produced CD-ROMs containing thousands of records in a format so unreadable that they are effectively non-responsive. For example, many of these records contain incomprehensible captions or notations that the record is "Null" without any further explanation. IDS requests that for Requests 16-18 and 22, BellSouth be compelled to identify in a comprehensible format the specific records that relate to conversion of lines from retail or resale to IDS UNE-P or Network Combination from April 1, 2000 until the present.

Interrogatories 6 and 7

These requests ask BellSouth to identify the number of CLECs using EDI for Port Loop Combos, and for a list of all ALECs using EDI for Port Loop Conversion and the number of customers converted by ALECs, from September 1999 until the present.

In its responses, BellSouth unilaterally undertook to limit its interpretation of the terms "Port Loop Combos" and "Port Loop Conversion" to mean only UNE-P. IDS's request was not so limited as it included Network Combination conversions as well as UNE-P conversions. BellSouth should be compelled to respond to the entire interrogatory, not just the more narrow version to which it unilaterally limited its response.

Interrogatory 8

Request: Please provide the number, name and contact person of each ALEC that experienced problems with the Bulk Ordering program in the year 2000.

Response: Please see BellSouth's Objections to IDS 1st Set of Interrogatories, Item No. 8, filed on August 24, 2001.

The Item to which BellSouth refers, states: "BellSouth objects to IDS's Interrogatories,

Requests for Production, instructions and definitions, insofar as they seek to impose obligations on BellSouth that exceed the requirements of the Florida Rules of Civil Procedure or Florida Law.” BellSouth also specifically objects to this interrogatory, but only insofar as it requests proprietary business information of ALECs other than IDS.

BellSouth’s objection is without merit. As previously stated, the Florida Rules of Civil Procedure provide for *liberal* discovery. In other words, information is presumed to be discoverable, as long as it “appears reasonably calculated to lead to the discovery of admissible evidence,” and is not covered by privilege. Fla. R. Civ. P. 1.280. So, quite contrary to BellSouth’s assertion, this interrogatory does not exceed the requirements of the Florida Rules of Civil Procedure, the information sought is *required* to be produced pursuant to the Rule. BellSouth has asserted a limited privilege only as to *some* of the information requested, but has failed to produce non-privileged information, or to deny that such information exists. BellSouth is therefore required to produce non-privileged information responsive to this interrogatory.

Moreover, the information sought by IDS in this interrogatory is highly relevant to these proceedings. A central issue in this action is the number and source of problems with BellSouth’s system for switching customers to ALEC service. The Bulk Ordering program was an integral part of the “switch-over” process, and therefore IDS is entitled to information concerning ALECs experiencing problems with this very system. Interrogatory 8 is not overbroad, as it specifically requests only information related to Bulk Ordering type “switch-over” problems, and is further limited to the names, numbers and contact persons of the ALECs involved.

Interrogatory 9

Request: Please identify all customers that experienced Memory Call/Voicemail problems when converting to ALEC, including IDS, using the UNE-P product.

BellSouth's response to this interrogatory is incomplete, because it only includes records from 6/22/01 to 7/23/01. Significantly, these records were created *after* these proceedings began; records pre-dating IDS's Complaint are conspicuously absent from BellSouth's response. As evidenced by the parties' testimony, both IDS and BellSouth have acknowledged that there were significant problems with the conversion process (though the source of these problems remains a contested issue), which arose prior to the commencement of this action. In fact, there has been testimony that many of these problems were corrected during March of 2001. Neither party denies that the Memory Call/Voicemail problems were documented. Therefore BellSouth should be required to identify those customers experiencing problems with Memory Call/Voicemail prior to June 22, 2001.

Interrogatory 13

Request: Please provide a list of disconnect notices for the period September 1, 1999, through the present.

Response: Please see BellSouth's Objections to IDS's 1st Set of Interrogatories, Item No. 13, filed on August 24, 2001. BellSouth does not understand what is being requested by IDS. Upon clarification from IDS, BellSouth will attempt to respond to this interrogatory.

There is no need for clarification as the interrogatory clearly seeks information regarding disconnect notices. IDS requests this Commission to require BellSouth, at a minimum, to produce a list of disconnection notices pertaining to IDS conversion orders to convert lines from retail or resale to Network Combination or UNE-P from April 1, 2000 until the present.

CONCLUSION

The Commission should order BellSouth to provide more meaningful and complete answers to IDS's Interrogatories and to provide IDS with documents that are responsive to BellSouth's Requests for Production. BellSouth's evasive and patently incomplete responses to IDS's discovery requests violate Section 28-106.206 of the Florida Administrative Code, which adopts the liberal discovery policy of the Florida Rules of Civil Procedure. The Commission should not permit BellSouth to contravene the Commission's discovery rules, and should therefore order BellSouth to provide complete responses to IDS's discovery requests raised herein.

Respectfully submitted this 21 day of September, 2001.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by Hand Delivery this 21st day of September, 2001 to:

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