

IN THE COUNTY COURT, EIGHTH  
JUDICIAL CIRCUIT, IN AND FOR  
ALACHUA COUNTY, FLORIDA

CASE NO.: 01-05-CC-3733  
DIVISION:

BELLSOUTH TELECOMMUNICATIONS,  
INC., a Georgia corporation,

Plaintiff,

vs.

THE CITY OF GAINESVILLE,  
a Municipal Corporation, d/b/a  
GAINESVILLE REGIONAL UTILITIES,

Defendant.

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**FIRST AMENDED COMPLAINT**

Plaintiff, BellSouth Telecommunications, Inc., a Georgia corporation, (BellSouth), by and through its undersigned counsel, files this, its FIRST AMENDED COMPLAINT to correct the name of the proper Defendant and for suit against the Defendant, The City of Gainesville, a Florida Municipal Corporation, (City), and alleges the following:

**GENERAL ALLEGATIONS**

1. This is an action for damages that exceed \$5,000.00, but is less than \$15,000.00, exclusive of interest, costs and attorney's fees.
2. BellSouth is a Georgia corporation which has its principal place of business in Atlanta, Georgia, and is authorized under applicable law to render telephone service in Florida.

3. The City is a Municipal Corporation organized and existing under the laws of the State of Florida, which has its principal place of business in Gainesville, Florida.
4. The City is the sole owner and operator of a multi-service utility located in Alachua County, registered under the fictitious name "Gainesville Regional Utilities" (hereinafter, the employees and agents of same are referred to as "GRU").
5. On or about May 3, 2004, GRU, was performing excavations at 1505 9<sup>th</sup> Street, Gainesville, Florida.
6. At all material times, BellSouth owned underground communications facilities which were lawfully buried beneath the surface of the ground in a public utility easement at the sites mentioned above.
7. In the course of performing excavations, GRU damaged underground telecommunications facilities owned by BellSouth.

### COUNT I

(Negligence)

8. BellSouth incorporated by referenced paragraphs 1 through 6 of this complaint and realleges them as though fully stated herein.
9. The locations of the utility easements and underground facilities of BellSouth were properly located by markings on the ground and, therefore, were known or should have been known to GRU in the exercise of reasonable diligence.
10. GRU had a duty to perform any excavations at or near those located underground facilities in a reasonable and prudent manner so as not to damage those facilities.

11. GRU breached its duty to BellSouth by failing to take adequate precautions to avoid causing damage to BellSouth's underground facilities when performing excavations in and around BellSouth's public utility easements.
12. GRU's breach of duty proximately caused damage to BellSouth's underground facilities.
13. In order to maintain telephone service to the public, BellSouth incurred a total of \$7,522.15 in expenses for temporary and permanent repairs of the damages caused by GRU to its underground facilities. A copy of the repair invoices applicable to each site are attached hereto as Exhibit "A".
14. BellSouth has demanded that The City, as owner of the GRU Utility and the employer of GRU employees and agents, make payment of the expenses of repair caused by GRU, but The City has failed and refused.

WHEREFORE, BellSouth demands judgment against The City Of Gainesville for \$7,522.15 with prejudgment interest thereon, costs and such other relief as the Court deems just and proper.

## COUNT II

(Underground Facility Damage Prevention and Safety)

(Chapter 556, Florida Statutes)

15. BellSouth incorporates by reference paragraphs 1 through 6 of this complaint and realleges them as though fully stated herein.
16. At all times relevant to this Complaint, BellSouth was in constructive possession of land by reason of easements located at the

sites described above, the path of each easement having been clearly marked on the ground on that date.

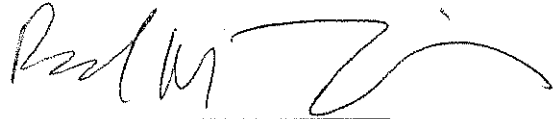
17. GRU, intentionally entered BellSouth's public utility easement properties at or around each of the sites and commenced excavations upon that property.
18. GRU failed to provide notification through Sunshine State One-Call of Florida or its intended excavations at the sites described above and failed to follow the procedures, as required by Chapter 556, Florida Statutes.
19. GRU breached its duty to BellSouth by failing to take adequate precautions to avoid causing damage to BellSouth's underground facilities when performing excavations in and around BellSouth's public utility easements.
20. The excavations performed by GRU, caused damage to underground communications cables and related facilities owned by BellSouth.
21. This breach of duty by GRU proximately caused damage to BellSouth's underground facilities.
22. In order to maintain telephone service to the public, BellSouth incurred \$7,522.15 in expenses for temporary and permanent repairs of the damages caused by GRU to its underground telecommunications facilities as more fully described in Exhibit "A".
23. BellSouth has demanded that The City, as owner of the GRU Utility and the employer of GRU employees and agents, make payment of the expenses of repair caused by GRU, but The City has failed and refused.

WHEREFORE, BellSouth demands judgment against The City Of Gainesville for \$7,522.15 together with prejudgment interest thereon, costs and such other relief as the Court deems just and proper.

Dated this 9th day of March, 2006.

Respectfully Submitted,

Duane C. Romanello, P.A.

A handwritten signature in black ink, appearing to read "Richard M. Tierney", with a long, sweeping flourish extending to the right.

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Richard M. Tierney, Esq.  
1919-8 Blanding Blvd  
Jacksonville, FL 32210  
Telephone (904) 384-1441  
Florida Bar Number 0086673  
Attorneys for Plaintiff



Claims Bureau  
 Room 36A86  
 675 W. Peachtree Street, N.E.  
 Atlanta, Georgia 30375

Forward Payment To

Gainesville Regional Utilities/Sewer  
 Skip Manasco  
 P. O. Box 147117  
 Station A-138  
 Gainesville, FL 32614

Claim Number FNF0504-115528  
 Bill Number FDP0406277  
 Date of Bill June 21, 2004  
 Total Amt Due \$7,522.15

(Please return this portion with your payment)

Claim Number FNF0504-115528 Bill Number FDP0406277 Date of Bill June 21, 2004

This bill is for damage which occurred on May 3, 2004 at  
 1505 NE 9th Street,  
 right/front (under sidewalk), Gainesville FL

How Damage Occurred:  
 600 pair cable cut while replacing sewer line

Cost to Repair:

Labor Cost:

	Hours	
FACILITY TECHNICIAN	5.00	378.63
FACILITY TECHNICIAN	7.00	530.08
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FACILITY TECHNICIAN	5.00	378.63
FACILITY TECHNICIAN	6.00	454.35
FACILITY TECHNICIAN	6.00	454.35
FACILITY TECHNICIAN	6.00	454.35
FACILITY TECHNICIAN	5.00	378.63
FACILITY TECHNICIAN	6.50	492.22
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FACILITY TECHNICIAN	6.50	492.22
FACILITY TECHNICIAN	5.00	378.63

Material Cost:

	Quantity	
MUSLIN 4" ROLL CA06727	6.00	10.42
TAPE ALUMINUM B 2'X40'RL 93132	1.00	4.47
TAPE UE 300GA PRESSURE WRPG	2.00	4.66
TAPE DR 2 "X15'	1.00	5.18
TAPE VINYL G 1" X36'BK 5/PK	0.20	0.12
TAPE CR 28"X20'	1.00	84.82
CABLE COPPER BKMA 0600	20.00	109.46
CLAMP BOND B SIZE 3/each	0.40	0.28
WIRE INS 100/24 CMR 1000' GR	72.00	70.34
CLOSURE SPLICE XAGA 1650C2	2.00	261.27
CONNECTOR 710-SD1-25/ea.	48.00	66.24

( CONTINUED )

**EXHIBIT 'A'**

Claims Bureau  
Room 36A86  
675 W. Peachtree Street, N.E.  
Atlanta, Georgia 30375

Page: 2  
( C O N T I N U E D )

aim Number FNF0504-115528 Bill Number FDP0406277 Date of Bill June 21, 2004

Material Cost:	Quantity	
CYLINDER MAPP GAS 1LB	1.00	8.33
DESICCANT B 325 GRAM CA07014	6.00	10.05
MARKER BALL EMS TEL 4"	2.00	12.38
CONNECTOR 552795-2 2W 19-26 GA	10.00	0.77
Contract Cost:		
MASTEC RWF4G0396		966.75

For questions regarding this bill contact Teresa Watson  
at (404) 230-2136.

The BellSouth Claims Office can be reached by calling 1-888-662-2004  
(toll free) or 404-230-2074 (toll charge). If you are calling from the  
Panhandle area, please call 1-205-714-0350. This claim may be paid by  
Visa or MasterCard. Payment should reach us by the date shown below.

Please Forward Payment By July 21, 2004

Total Amt Due \$

7,522.15