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Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

June 29, 2004

BY HAND DELIVERY
Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 040488-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of IDS Telcom, LLC are an original and fifteen copies of IDS' Brief Regarding BellSouth's Complaint to Enforce Deposit Requirements in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

FOR Norman H. Horton, Jr.

NHH/amb
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth Telecommunications, Inc. Against IDS Telcom, LLC to Enforce Interconnection Agreement Deposit Requirements	))))	**Docket No. 040488-TP** Dated: June 29, 2004

RESPONDENT IDS' BRIEF
REGARDING BELLSOUTH'S COMPLAINT
TO ENFORCE DEPOSIT REQUIREMENTS

RESPONDENT IDS TELCOM, LLC ("IDS"), by and through its undersigned counsel, and pursuant to the request of FPSC Staff, hereby files this its Brief Regarding BellSouth's Complaint To Enforce Deposit Requirements, in response to the Complaint filed by the Petitioner BellSouth Telecommunications, Inc. ("BellSouth"), and in support thereof states as follows:

I. BACKGROUND

On or about May 21, 2004, BellSouth initiated this docket by filing its Complaint To Enforce Deposit Requirements ("Complaint"). The Complaint essentially alleges that the parties have an interconnection agreement which provides that if "IDS experiences an adverse change in its creditworthiness, BellSouth can obtain additional security." See paragraph 5 of the Complaint. The Complaint also alleges that after conducting a credit analysis of IDS, BellSouth demanded a deposit of $4,600,000. See paragraph 8 of the Complaint. BellSouth claims it has an "unfettered right to request a deposit from IDS under the [agreement] after conducting a credit analysis of IDS." BellSouth's complaint seeks in Count I an order requiring IDS to post a $4,600,000 cash deposit or other security, and in Count II expedited consideration of the Complaint.

On or about June 11, 2004, IDS filed its Answer, Affirmative Defenses And Counterclaim To BellSouth's Complaint To Enforce Deposit Requirements ("Answer"). The Answer denies

BellSouth's interpretation of the relevant facts and BellSouth's alleged rights. The Answer further set forth nine affirmative defenses. The nine defenses raise various issues which, without waiver of other relevant facts and arguments, include and may be summarized as follows.

IDS contends that BellSouth breached the parties' agreement by refusing to implement in good faith both its deposit request, failing to satisfy conditions precedent, and failing to allow IDS to adopt relevant portions of other available interconnection agreements filed with this Commission. In particular, BellSouth failed to perform any analysis that demonstrates that IDS experienced "an adverse change in its creditworthiness;" when in fact IDS' creditworthiness has only improved since completing BellSouth's Credit Profile. BellSouth's Complaint concedes that BellSouth must first determine that IDS has experienced an adverse change in creditworthiness, before it can even seek a deposit. See paragraph 5 of the Complaint. IDS also contends that prior to filing its Complaint BellSouth failed to consider any other deposit other than a "two month security deposit;" never adequately explained its reasons for seeking a deposit; did not apply its credit standards on a non-discriminatory basis; and never attempted to work in good faith towards determining a reasonable deposit amount. Moreover, BellSouth's bills are habitually rendered as late as two weeks after the billing date. For example, BellSouth's bills to IDS are to be rendered on the 17th day of each month (e.g., for this month on June 17, 2004). Yet as of the date of this brief (June 29, 2004), IDS has yet to receive BellSouth's bill. Given the sheer volume, complexity and repeated errors in BellSouth's billing, it is inconceivable that BellSouth can render bills up to two weeks late and still insist that IDS make prompt payments. In fact, in the past BellSouth has advise IDS that it can take at least an extra ten days or more to submit payment when BellSouth's bills are late. Yet, BellSouth now claims that any such delays by IDS (which are ultimately caused by BellSouth) justify imposing an onerous deposit.

IDS notes that recently, during various discussions involving Joe Millstone (IDS President), Harry Goldberg (BellSouth Vice-President) and their counsel, BellSouth admitted that its provides many CLECs terms in which to build up a deposit, such as paying over several months. However, BellSouth has failed to extend such options to IDS in its Complaint. IDS also notes that BellSouth has obtained no deposit from Supra Telecommunications & Information Systems, Inc. ("Supra Telecom") for services rendered in Florida, a CLEC that has been in bankruptcy since October 2002. Moreover, BellSouth allowed another South Florida CLEC (Saturn Telecommunications Services, Inc. d/b/a STS Telecom) to merely provide BellSouth a UCC-1 (security agreement) in lieu of a deposit. Finally, BellSouth used poor Dun & Bradstreet credit ratings to demand a security deposit from Florida Digital Network ("FDN"), while discounting IDS' excellent Dun & Bradstreet credit ratings in order to demand a deposit from IDS. IDS contends that these actions demonstrate that BellSouth has not applied its credit standards in a non-discriminatory manner.

IDS also contends that BellSouth refused to allow IDS to adopt the deposit provisions/requirements and/or the billing section of an approved interconnection agreement between BellSouth and Supra Telecommunications & Information Systems, Inc. ("BellSouth/Supra Agreement"). The BellSouth/Supra Agreement was filed with Commission on August 16, 2002 (Document No. 08661) in Docket No. 001305-TP. This Commission subsequently approved the BellSouth/Supra Agreement on August 22, 2002 in Order No. PSC-02-1140-FOF-TP (Docket No. 001305-TP). That agreement purports to last three years (or until or about July 14, 2005), and thus is available for adoption. As will be explained in greater detail herein, in December 2003 IDS sought to adopt the deposit provisions/requirements of the BellSouth/Supra Agreement. BellSouth refused the request, erroneously claiming that IDS could only adopt "network elements." Thereafter, in April 2004, IDS requested to adopt the entire billing section of the BellSouth/Supra

Agreement (i.e. Attachment 6, thereto). BellSouth once again erroneously refused that request. As part of its Answer, IDS filed a counterclaim seeking to require BellSouth to comply with its adoption obligations in reference to these two adoption requests. Nevertheless, as a result of further research into this issue, on June 25, 2004, IDS filed an amendment to the interconnection agreement which conforms IDS deposit provisions/requirements with those found in the BellSouth/Supra Agreement (see FPSC Docket No. 040611). Because BellSouth had no right to refuse any of the adoption requests, BellSouth's deposit request should be interpreted in accordance with the relevant deposit portions of the BellSouth/Supra Agreement; which has no sixty day resolution window and thus would allow the parties and this Commission a reasonable opportunity to resolve this dispute on the merits.

BellSouth's deposit request also improperly seeks to establish deposit requirements for services rendered in other states, including but not limited to Georgia, North Carolina and Tennessee. IDS provides substantial services in those other BellSouth states. This Commission does not have the jurisdiction over activities in such sates and thus should not be attempting to establish deposit requirements for services rendered in those other states. Moreover, although BellSouth correspondence states otherwise, BellSouth seeks to establish a deposit for amounts billed in error or otherwise subject to billing disputes. From January 2004 through May 2004, BellSouth's normal average monthly billing for all services provided in Florida has been $1,290,655. However, after taking into account numerous billing errors and disputes, the average month billing for all such services is only $1,020,575. Therefore, even if IDS was required to post a two month deposit as demanded by BellSouth, the maximum such deposit for services rendered in Florida should not exceed approximately $2 million (two months billing in Florida after billing errors and disputes). In any event, BellSouth's deposit request of $4.6 million has no basis

whatsoever and is grossly inflated and over-estimated.

Even if BellSouth is entitled to any deposit, the purpose of any such deposit is to provide security for payment and should not be used as an anticompetitive tool to harm a CLEC. Most of BellSouth's billing is for monthly recurring charges which are billed in advance. Thus when BellSouth renders IDS a wholesale bill, the due date for payment is usually on or before the date services are rendered. Under the agreement, BellSouth may issue a thirty day notice to IDS if payment is not made by the due date, and thereafter terminate services if the undisputed portion of the bills are not paid. Thus as a general proposition, a one month deposit will likely be sufficient; particularly since BellSouth owes IDS monies for access services, which at current BellSouth access rates, exceeds $400,000 in undisputed billing. Given that BellSouth has failed to dispute or pay such undisputed bills for accessing IDS' facilities network, and will likely continue to do so in the future, BellSouth is more than secure with only a one month deposit.

Finally, IDS' main investor is MCG Capital Corporation ("MCG"), a publicly traded company which, as of March 31, 2004, had total assets of over $767 million and total equity of over $455 million. MCG has indicated a willingness to provide a corporate guaranty under commercially reasonable terms, in lieu of a deposit for services provided in Florida. Although in discussions with BellSouth (Harry Goldberg), BellSouth has indicated a willingness to accept such a guaranty, it has not expressed that position in this docket. Given the fact that BellSouth has accepted alternate forms of security from other CLECs, it would be discriminatory for BellSouth to refuse a MCG corporate guaranty, particularly when the assets of MCG far exceed its liabilities thus minimizing BellSouth's exposure to loss.

II. FACTUAL BACKGROUND AND DISCUSSION

On or about February 10, 2003, BellSouth filed a request for approval of an interconnection,

unbundling, resale and collocation agreement with IDS ("Interconnection Agreement"). See FPSC Docket No. 030158 (Document No. 01383-03). This Commission approved that agreement for the State of Florida, on or about May 15, 2003. See FPSC Docket No. 030158 (Document No. 04332-03). Relevant portions of the Interconnection Agreement (as initially filed) are attached hereto as Exhibit 1.

Section 13 of the General Terms and Conditions of the Interconnection Agreement (attached as Exhibit "1") provides in pertinent part as follows:

> "Adoption of Agreements. BellSouth shall make available, pursuant to 47 USC Section 252 and the FCC rules and regulations regarding such availability, to IDS Telcom any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC Section 252."

Thus it is clear that under this section, IDS has the right to adopt any interconnection agreement available under "47 USC Section 252 and the FCC rules and regulations regarding such availability."

Section 27 of the General Terms and Conditions of the Interconnection Agreement (attached as Exhibit "1") provides in pertinent part as follows:

> "Good Faith Performance. Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement."

Thus it is clear under this section, that each party shall act in good faith in interpreting the Interconnection Agreement, and that neither party shall unreasonably withhold or delay any required consent (such as the adoption of interconnection agreements).

Additionally, Section 1.7.2 of Attachment 7 of the Interconnection Agreement (attached as Exhibit "1") provides in pertinent part as follows:

> "BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not

> received by the bill date in the month after the original bill date . . . BellSouth may . . . provide written notice to the person designated by IDS Telcom to receive notices of noncompliance that BellSouth may discontinue the provision of existing services to IDS Telcom if payment is not received by the thirtieth day following the date of the initial notice."

Thus under this section, it appears that BellSouth may terminate services to IDS if payment of an undisputed amount is not made by the due date, provided BellSouth provides 30 days written notice and an opportunity to cure.

Finally, Section 1.8 of Attachment 7 of the Interconnection Agreement as originally filed (attached as Exhibit "1") provided in pertinent part as follows:

> "Deposit Policy. When purchasing services from BellSouth, IDS will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in its sole discretion, some other form of security. Any such security deposit shall in no way release IDS from its obligation to make complete and timely payments of its bill, if, in the sole opinion of BellSouth, IDS experiences an adverse change in its creditworthiness in comparison to the level initially used to determine the level of the current security deposit and/or gross monthly billing has increased beyond the level initially used to determine the level of security, BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC 1) security interest in IDS's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed two months' estimated billing.
>
> When BellSouth requests a deposit, BellSouth is willing to provide IDS a written explanation as to why a deposit has been requested. BellSouth shall apply all credit standards to IDS on a non-discriminatory basis. The Parties will work together to determine the amount of a reasonable deposit. If the Parties are unable to agree, either party may petition the Commission for resolution of the dispute. In the event that the dispute is not resolved within sixty days after petitioning the Commission, and IDS fails to remit to BellSouth any deposit requested pursuant to this Section, service to IDS may be terminated in accordance with the terms of Section 1.7 of this Attachment, and any security deposits will be applied to IDS's account(s)."

Although it is IDS' position that this provision has now been superceded by IDS' right to adopt either the deposit provisions/requirements and/or the billing section of the BellSouth/Supra

Agreement, it is clear that this provision has certain requirements as discussed below.

First, BellSouth may not increase the original security required after assessment of the initial BellSouth Credit Profile, unless "IDS experiences an adverse change in its creditworthiness in comparison to the level initially used to determine the level of the current security deposit." BellSouth states in paragraph 5 of its Complaint that it performed this analysis and deemed that IDS had experienced such an adverse change. However, there is no factual support for this contention.

Second, the maximum deposit BellSouth may request (which assumes the worst creditworthiness) is two months billing. However, since the Interconnection Agreement at issue was filed and approved in Florida, and since this Commission lacks regulatory jurisdiction over services provided in other states, the most reasonable interpretation of this provision is that any deposit amount must be determined on a state by state basis. Indeed, in every state in which BellSouth provides IDS service, there is a separate agreement. Furthermore, since the applicable Commission for resolution of any dispute is the public service commission for the state in which service is being provided, it is clear that this Commission may only resolve the deposit dispute as it relates to services provided within the state of Florida. Thus any required deposit amount must be calculated in reference to those services provided within Florida, and only Florida.

Third, the form of security need only be suitable; which presumes the inclusion of all reasonable forms of security. No time period for the posting of such "additional security" is prescribed or defined. Moreover, all standards need to be applied on a non-discriminatory basis and therefore the form of security, together with the method, and timing of the posting of such security, needs to be implemented in a non-discriminatory way. Otherwise, the "credit standards" applied will be discriminatory. Hence, the way BellSouth treats other CLECs is relevant to this dispute and its resolution, including the form of the security and the time period over which such security

should be provided.

Finally, when BellSouth makes a deposit request, it must provide IDS "a written explanation as to why a deposit has been requested" and that the parties will work together to determine the amount of a reasonable deposit. Logically, the written explanation provided by BellSouth should be sufficient enough for IDS to negotiate fair and non-discriminatory treatment, otherwise that provision would be rendered meaningless.

On or about December 9, 2003, Eric Reinhold (BellSouth Credit Manager) wrote Angel Leiro (IDS VP of Regulatory Affairs) advising IDS that BellSouth had conducted a credit assessment of IDS and had concluded that the information available was "not sufficient to extend credit on an unsecured basis." Therefore, BellSouth was demanding "additional security in the amount of $4,600,000" and that "[i]n order to prevent the potential for suspension or termination of service" IDS needed to "remit the above mentioned security deposit by January 9, 2004." A true and correct copy of that letter is attached hereto as Exhibit "2".

BellSouth's deposit request violated Section 1.8 of Attachment 7 of the Interconnection Agreement because: (a) the request was not based upon adverse changes in IDS' financial creditworthiness; (b) did not request a reasonable or justifiable deposit amount; (c) demanded payment of the deposit in an unreasonable amount of time which was not specified in the Interconnection Agreement; (d) did not demonstrate non-discriminatory treatment of IDS; and (e) was not a reasonable or justifiable request given IDS' prompt payment history of undisputed amounts.

On or about December 22, 2003, Angel Leiro (of IDS) responded to Eric Reinhold (of BellSouth) asking BellSouth to provide: (a) a copy of IDS' current BellSouth Credit Profile; (b) all information which BellSouth relied upon in determining IDS' creditworthiness; (c) all information

used by BellSouth to determine the amount of the deposit; (d) an explanation for why the deposit was needed; (e) the credit standards used by BellSouth to determine when a deposit is required requested; (f) whether IDS can provide an alternative form of security; (g) what adverse change in creditworthiness required a deposit; and (h) what elements of gross billing where included to arrive at the deposit (i.e. normal monthly billing, or normal monthly billing plus extraordinary backbilled charges). A true and correct copy of that letter is attached hereto as Exhibit "3".

On or about December 31, 2003, Angel Leiro (of IDS) made a request of Martha Romano (BellSouth Manager of Interconnection Services), to adopt the deposit provisions/requirements of the BellSouth/Supra Telecom Agreement. A true and correct copy of IDS' e-mail request is attached hereto as Exhibit "4".

On or about January 5, 2004, Eric Reinhold (of BellSouth) wrote back Angel Leiro (of IDS) submitting a copy of IDS' most recent Credit Profile (dated 4/21/98). A true and correct copy of that letter is attached hereto as Exhibit "5". The BellSouth letter stated that "BellSouth's decision is based on relevant factors that affect creditworthiness", and that "[t]he two main criteria utilized were IDS' payment manner with BellSouth and its financial condition." The letter claimed that IDS payment with BellSouth fell under the category of "Prompt to Slow 90+ days" in the aggregate and net of disputes "Prompt to Slow 60 days." BellSouth also stated that the security deposit was being requested because IDS had "failed to live up to its obligation to make complete and timely payments of its undisputed bills" and that IDS' "financial condition raises serious concerns about the future viability of the company." Taken as a whole, it was clear that "additional security" was actually being requested because IDS had various unresolved billing disputes with BellSouth, hence the statement that IDS' payment history was "Prompt to Slow 90+" in the aggregated. Thus rather than resolving the billing disputes, BellSouth's solution was to demand a security deposit (and

thereby circumvent the billing dispute portions of the Interconnection Agreement).

What BellSouth's letter did not accomplish, was to satisfy the requirements of Section 1.8 of Attachment 7. In particular, BellSouth did not identify any changes since the original Credit Profile which justified a demand for "additional security" under that section. In fact, IDS' financial stability and creditworthiness had only become better since the original Credit Profile, and in fact IDS had been paying BellSouth the same way for years. IDS' payment of undisputed amounts has always been within approximately 30-33 days of receiving BellSouth's bill. This payment manner had been consistent for years, and had been allowed by BellSouth because of BellSouth's own inability to render a timely and accurate bill. As set forth previously, for the last several years, BellSouth's monthly bill has been late every month by at least a week to as much as two weeks.

The standard categories for payment terms within the industry are as follows: (a) within 30 days; (b) between 30 and 60 days; (c) between 61 and 90 days; and (d) greater than 90 days. Thus if IDS paid all undisputed amounts within 35-45 days of the bill date, then IDS' payment history would, according to BellSouth, be "Prompt to Slow 60 days." However, this label would not reflect the very real fact that BellSouth's bills are consistently late and full of errors. In reality, IDS' true payment history would generally reflect the payment of all undisputed amounts within 30-33 days of actually receiving BellSouth's bill. Any delay claimed by BellSouth is actually a delay caused by BellSouth's own failure and inability to render timely and accurate bills; a requirement presumed by good faith under the Interconnection Agreement.

Given the undisputed history of billing errors in wholesale billing to CLECs, it is unreasonable for BellSouth to penalize IDS (or any other CLEC) for raising billing errors and disputes. In any event, it is clear that BellSouth's January 5, 2004 letter (Exhibit "5") did not respond to IDS' prior letter of December 22, 2003 (Exhibit "3"). Moreover, it is also clear that the

reasons set forth by BellSouth in its January 5, 2004 letter, did not satisfy the conditions precedent required by Section 1.8 of Attachment 7 before demanding "additional security." Thus BellSouth's request for "additional security" violated the provisions of Section 1.8 of Attachment 7 of the Interconnection Agreement.

On or about January 12, 2004, Angel Leiro (of IDS) provided a further response to Eric Reinhold (of BellSouth) advising that since 1998, IDS' creditworthiness has only improved. A true and correct copy of that letter is attached hereto as Exhibit "6". In that letter Angel Leiro also provided a copy of IDS' current Dunn & Bradstreet Credit Rating, which listed IDS as having a PAYDEX rating of 78 (80 is a perfect score), which over the past year, indicated that IDS paid its supplier an average of 3 days beyond terms. Moreover, Dunn & Bradstreet rated IDS' credit rating as a 2 (good) on a scale of 1 through 4. With a score of 2 being the highest rating a company (like IDS) can receive without supplying current financial statements. Moreover, in March 1997 and November 1998, IDS' Dunn & Bradstreet credit rating was a "3". Thus IDS' current credit score was higher than the credit score which IDS had when it initially submitted the BellSouth Credit Profile. Mr. Leiro also expressed his belief that BellSouth was penalizing IDS for raising legitimate billing disputes and requested a payment history net of such billing errors and disputes. He noted BellSouth's habitual lateness and errors in rendering bills, that BellSouth collects monthly recurring charges in advance, and concluded that BellSouth is owed little or nothing for undisputed charges by the time IDS usually submits its regular monthly payments. Mr. Leiro also requested information about other CLECs to verify that BellSouth was, in fact, applying its credit standards in a non-discriminatory way. The letter closed by requesting much of the same information previously requested (but not provided) and advised that IDS was willing to work through the issues with BellSouth in good faith.

On February 3, 2004, Eric Reinhold (of BellSouth) replied to Angel Leiro (of IDS) admitting that "D&B is a valuable source of reliable credit information" and that "[a]n analysis of IDS' D&B Rating and 12-month PAYDEX Score are admirable ratings." A true and correct copy of that letter is attached hereto as Exhibit "7". However, BellSouth claims it relied upon other factors in making the deposit request. Mr. Reinhold stated that BellSouth would not provide information about other CLEC's credit ratings or deposit amounts. The letter did not provide the information requested in IDS' previous letters; but rather provided a spreadsheet which indicated that BellSouth's deposit request was determined by including extraordinary and non-recurring back-billing; thus confirming that the deposit request of $4.6 million was in excess of two months of estimated future billing (since the back-billing would not recur again in the future). The letter closed by restating BellSouth's position that the deposit request of a $4.6 million was "reasonable," but again failed to provide any support for the deposit request which would satisfy Section 1.8 of Attachment 7 of the Interconnection Agreement.

On or about February 5, 2004, Eric Reinhold (of BellSouth) sent Angel Leiro (of IDS) an e-mail wishing to follow up on "IDS' intentions for complying with BellSouth's request for deposit." The e-mail further stated that "we both agreed to disagree about BellSouth's request for deposit" and that BellSouth intended to "proceed with the process . . . in order to resolve this matter" (an obvious reference to filing a complaint with the Commission). A true and correct copy of that e-mail is attached hereto as Exhibit "8".

On or about February 6, 2004, Angel Leiro (of IDS) responded to Eric Reinhold (of BellSouth) in an e-mail advising that it was not possible for IDS to negotiate a reasonable deposit amount without BellSouth first providing IDS the information previously requested. The e-mail pointed out that BellSouth has simply demanded an alleged maximum deposit with little or not

support, and that BellSouth's obligation to act in a non-discriminatory manner imported some obligation to disclose relevant information to IDS. The e-mail closed by advising that IDS wished to negotiate a reasonable security, but that IDS needed cooperation from BellSouth. A true and correct copy of that e-mail is attached hereto as Exhibit "9".

On or about February 11, 2004, Martha Romano (of BellSouth) finally responded to Angel Leiro's December 31, 2003 request to adopt the deposit provisions/requirements of the BellSouth Supra agreement. A true and correct copy of that letter is attached hereto as Exhibit "10". In her letter, Ms. Romano denied the request, erroneously stating in essence that IDS may only adopt network elements from other agreements.

On or about February 16, 2004, Angel Leiro (of IDS) made a second request of Martha Romano to adopt the referenced deposit provisions, citing the FCC's decision in The Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Contractual Arrangement under Section 252(a)(1), as support for such request. A true and correct copy of that letter is attached hereto as Exhibit "11". The letter advised BellSouth that under the Qwest decision, the FCC had determined that "business relationships and business-to-business administrative procedures (e.g. escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between parties, and non-binding service quality or performance standards)" are all agreements for "interconnection, services or network elements" which must be filed with state commissions, and thus are available for adoption under 47 USC Section 252.

On or about February 16, 2004, Eric Reinhold (of BellSouth) responded to Angel Leiro (of IDS) via an e-mail stating that BellSouth had no obligation to demonstrate that it was applying its credit standards in a non-discriminatory basis. A true and correct copy of that e-mail is attached

hereto as Exhibit "12". Although Mr. Leiro later attempted to get further information from BellSouth in order to determine how BellSouth arrived at IDS' creditworthiness, he was never able to do so. Moreover, to date, BellSouth has never provided any evidence that satisfies the requirements of Section 1.8 of Attachment 7 of the Interconnection Agreement in the form of changes since the original Credit Profile which justified a demand for "additional security" under that section. Accordingly, BellSouth has never satisfied the requirements set forth therein for demanding "additional security."

On or about March 11, 2004, Martha Romano (of BellSouth) responded to Angel Leiro's (of IDS) letter of February 16, 2004, and expressed BellSouth's continuing refusal to allow IDS to adopt the deposit provisions/requirements of the BellSouth/Supra Agreement. A true and correct copy of BellSouth's letter is attached hereto as Exhibit "13". In response, on or about April 22, 2004, Mr. Leiro (of IDS) sent Ms. Romano (of BellSouth) an e-mail requesting adoption of the entire billing section of the BellSouth/Supra Agreement. A true and correct copy of that e-mail request is attached hereto as Exhibit "14". On or about May 10, 2004, Ms. Romano (of BellSouth) responded to Mr. Leiro (of IDS), refusing to allow IDS to adopt even the entire billing section of the BellSouth/Supra Telecom Agreement, claiming that billing provisions are not "terms and conditions specific to the provision of 'any interconnection, service, or network element.'" A true and correct copy of BellSouth's May 10, 2004 response is attached hereto as Exhibit "15".

BellSouth's refusal to allow IDS to adopt the deposit provisions and/or billing section of the BellSouth/Supra Agreement is a violation of the parties' Interconnection Agreement; the applicable FCC and Florida PSC rulings on the issues, and 47 U.S.C. Section 252 of the Telecommunications Act of 1996. Section 252(i) of the Telecommunications Act of 1996 states in pertinent part as follows:

> "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

In The Matter of Qwest Communications International, Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Contractual Arrangement under Section 252(a)(1), FCC 02-276 (WC Docket No. 02-89) (October 4, 2002) (a copy of which is attached hereto as Exhibit "16"), the FCC interpreted the meaning of "interconnection agreement" as used in 47 USC Section 252, stating in paragraph 8 of that order as follows:

> "Based upon these statutory provisions, we find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement . . . We therefore disagree with Qwest that the content of interconnection agreements should be limited to the schedule of itemized charges and associated descriptions of the services to which the charges apply . . ."

In paragraph 9, the FCC further stated as follows:

> "We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1). Unless this information is generally available to carriers (e.g., made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements."

Finally, in paragraph 12, the FCC further stated as follows:

> "We disagree with the blanket statement made by Qwest in its petition that '[s]ettlement agreements that resolve disputes between ILECs and CLECs over billing or other matters are not interconnection agreements under Section 253.' Instead, and consistent with the guidance provided above, we find that a settlement agreement that contains an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1)."

Thus, according to the FCC, the test for deciding whether or not provisions provided to any other carrier is an "interconnection agreement" under Section 252, is whether or not the provision "creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to

rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement ." Thus any contract provision that creates any such "ongoing obligation" is clearly an "interconnection agreement" which must be made available to other carriers for adoption.

In making these findings, the FCC specifically rejected Qwest's contention that agreements defining business relationships and business-to-business administrative procedures (such as escalation clauses and dispute resolution provisions) are not interconnection agreements. Furthermore, as argued by Qwest, these types of agreements which define business relationships and business-to-business procedures also include arrangements regarding the mechanics of provisioning and billing. Certainly, the deposit provisions of the BellSouth/Supra Agreement meet the FCC's definition of "interconnection agreement" because such contract provisions are "an agreement that creates an *ongoing* obligation pertaining to resale, . . . , reciprocal compensation, interconnection, unbundled network elements, or collocation." Furthermore, the billing section (Attachment 6) of the BellSouth/Supra Agreement also clearly creates the same "ongoing obligations" that meet the FCC's test for an "interconnection agreement." Thus, under the **Qwest** opinion, both the deposit provisions/requirements and the billing section of the BellSouth/Supra Agreement are "interconnection agreements" available for adoption by IDS. BellSouth's refusal to allow the adoptions requested by IDS violated both the adoption provision (paragraph 13 of the General Terms and Conditions) and the good faith provision (paragraph 27 of the General Terms and Conditions) of the parties' Interconnection Agreement.

In FPSC Docket No. 021069-TP (Document No. 00690) (a copy of which is attached hereto as Exhibit "17"), the FPSC Staff issued a recommendation stating that BellSouth could not refused to allow the adoption of dispute resolution provisions since they met the FCC's definition of an

"interconnection agreement" in the Qwest ruling. FPSC Staff also stated that the "signing of the proposed adoption agreement on behalf of BellSouth was unnecessary" since BellSouth had no right to refuse to allow the adoption. Although that docket was eventually resolved by agreement, the logic of the FPSC Staff recommendation is still correct and applicable. As a result of this prior recommendation, on June 25, 2004, IDS filed an agreement adopting the deposit provisions/requirement of the BellSouth/Supra Agreement. A copy of that adoption agreement, which has now been assigned FPSC Docket No. 040611-TP, is attached hereto as Exhibit "18". IDS advises this Commission that if necessary, it is also willing to adopt the entire billing section of the BellSouth/Supra Agreement.

The relevance of this adoption agreement is that it eliminates deposit language from the Interconnection Agreement, and imposes the deposit requirements of the BellSouth/Supra Agreement. It is IDS' position that this adoption eliminates Section 1.8 of Attachment 7 of the Interconnection Agreement, thereby eliminating BellSouth's alleged right to take unilateral action if this docket is not resolved within 60 days. Furthermore, although BellSouth may argue some other basis for requesting a deposit, at least the parties will have an opportunity to fully and fairly litigate these issues before this Commission.

Assuming BellSouth still has the right to seek a deposit from IDS, IDS notes that BellSouth seeks to have this Commission set deposit amounts for services provide in other states, such as Georgia, North Carolina and Tennessee. IDS notes that this same situation arose between BellSouth and Supra Telecom in the state of Georgia. In that case, Supra sought to begin providing service in Georgia. BellSouth thereupon demanded a security deposit of $38.6 million from Supra. Supra voiced its objections with the Georgia PSC in its December 4, 2002 filing in GPSC Docket No. 16197-U (Document No. 59939). Relevant portions of that filing are attached hereto as Exhibit

"19". Supra contended that BellSouth was imposing a deposit requirement under a Georgia Interconnection Agreement between the parties, for services provided in Florida (see pages 38-39 of Exhibit "19"). Supra also contended that BellSouth's wholesale billing was used as a tool to impede competition due to its shear size, repeated and systematic billing errors, and the short period of time in which CLECs are provided to review the bills and identify billing errors (see page 24 of Exhibit "19"). In response to Supra's GPSC filing, on or about January 23, 2003, BellSouth filed with the GPSC a letter in that same docket (GPSC Docket No. 16197-U, Document No. 60953), in which BellSouth essentially argued that Supra was mistaken in its belief that BellSouth was attempting to use a Georgia interconnection agreement to demand a security deposit for services provided in Florida. A true and correct copy of that letter is attached hereto as Exhibit "20". Page 2 of that letter states in pertinent part that "BellSouth is hopeful that any deposit in connection with Supra's testing activities in Georgia can be established expeditiously" and that BellSouth is only seeking a "deposit amount necessary to guarantee payment for services that Supra may purchase in Georgia" on a going forward basis. Thus it is clear that in GPSC Docket No. 16197-U, BellSouth was conceding that it was only proper to seek a deposit for services rendered in the relevant state in which services are provided.

In this instance, not only does BellSouth's deposit request of $4.6 million include extraordinary, non-recurring back-billing, but the request also includes a large amount of monies to secure services rendered in other states, including Georgia, North Carolina and Tennessee. This is clearly improper since the focus of this Commission should be to set reasonable security requirements for services provided within Florida. BellSouth has not provided this Commission with any estimate of the billings made to IDS for services in Florida. However, attached hereto as Exhibit "21" is a spreadsheet covering all of BellSouth's billings to IDS in the state of Florida, for

all services rendered during the months of January 2004 through May 2004. Summaries of these billings can be found on the last page of the exhibit. Those summaries reveal that the normal billing per month made to IDS for all services in the state of Florida is $1,290,655.23. Extraordinary billing (or back-billing) during that same time period averaged $74,939.69 per month. After accounting for billing errors and billing disputes, the total average monthly billing to IDS during this five-month time period was $1,020,575.66. Considering billing disputes, the maximum security deposit (for two months billing) which can be requested by BellSouth for services rendering in Florida, is approximately $2 million. If back-billing and billing disputes were ignored, the maximum amount of a two month security deposit would be approximately $2.6 million. Finally, if extraordinary billings (such as back-billings) were included, but billing disputes were ignored, the maximum two month security deposit would be approximately $2.7 million. Given the fact that this Commission should not be setting deposit requirements for services rendered in other states, BellSouth's deposit request is over-inflated by at least $2 million over the maximum allowable for services provided in the state of Florida.

As a matter of substance, BellSouth's contentions regarding IDS' financial situation are specious. Although BellSouth conceded that IDS's Dunn & Bradstreet scores were remarkably good, BellSouth contended that it relies upon other factors to determine when a deposit is required. However, in FPSC Docket No. 020252-TP, FDN complained that BellSouth was seeking to force FDN to post a deposit contrary to the parties' agreement. Relevant portions of that complaint are attached hereto as Exhibit "22". In particular, FDN alleged on page 2 of its complaint that "BST has indicated that it will not lift this 'embargo' on orders until FDN provides an unsubstantiated security deposit and meets other demands." It is also interesting to note that on page 4 (paragraph 7), FDN alleges that "FDN has been plagued by BST's repeated and systematic billing errors that

erroneously and materially inflate the amount of BST's bills to FDN." FDN further alleges on page 5 (paragraph 8) that "[t]he foregoing problems are exacerbated by the disorganized and voluminous format of BST's invoices" and that "because each bill is so rife with errors, delay by weeks the date on which FDN or any prudent businessperson would agree to make payments." Thus it appears that IDS' problems with BellSouth's bills are not an isolated incident[1].

In response to FDN's complaint, BellSouth filed an answer (relevant portions of which are attached hereto as Exhibit "23") in which on page 2, BellSouth provides support for its claims for a deposit/escrow as follows: "independent evidence suggests that FDN appears to be experiencing a period of financial distress," which "evidence includes (1) FDN's Dunn and Bradstreet's rating, which is 4A3 (with a scale of 1-4, 1 being the best and 4 being the worst); and (2) FDN's Dunn and Bradstreet's PAYDEX score, which is 53 (payments to vendors average 22 days beyond terms)." BellSouth continues by stating that FDN's poor Dunn & Bradstreet ratings reflect that FDN is experiencing financial distress. Thus, when applied to FDN, Dunn & Bradstreet credit ratings are a

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[1] Despite the fact that the Supra Telecom and FDN disputes occurred in 2002, this does not mean that BellSouth has corrected its habitual billing errors. For example, attached hereto as Exhibit "24" is a copy of BellSouth's UNE Call Flow No. 12. That Call Flow is dated June 22, 2001 and states in pertinent part as follows:

> **"Currently, for this call flow CLEC A may bill BellSouth ULS-SF for end office switching at EO A. This is due to the fact that BellSouth's billing system currently bills ULS-SF to CLEC A at EO A. Because these rates are the same and the charges net to zero, BellSouth would normally not charge, *but until BellSouth modifies its billing system to not charge CLEC A for ULS-SF*, CLEC A may bill the equivalent charges back to BellSouth.**
>
> **A terminating access (ADUF) record is provided as this is the only means available to provide CLEC A a way to quantify the terminating usage."**

UNE Call Flow No. 12 is a virtual admission by BellSouth of a billing error that has been known for at least three years, and which BellSouth has done nothing to fix. Moreover, to add insult to injury, BellSouth erroneously charges the CLEC for DUF records on this usage that should have never been billed in the first instance. At prior billing rates for DUF, the cost of the DUF record was at least three times the cost of the usage erroneously billed.

basis for BellSouth demanding a security deposit from FDN; however when applied to IDS, Dunn & Bradstreet credit ratings mean nothing. Obviously, BellSouth is speaking out of both sides of its proverbial mouth, and therefore it is clear that BellSouth has not applied its credit standards in a non-discriminatory manner.

IDS also notes that in the Supra Telecom GPSC filing (Exhibit "19"), BellSouth has not sought a security deposit from Supra Telecom for services rendered in the state of Florida. Otherwise, Supra Telecom would not have had the "mistaken" belief that BellSouth was attempting to use the Georgia interconnection agreement to collect a two month security deposit for services provided in Florida (see page 38 of Exhibit "19"). Supra Telecom is currently in Chapter 11 Bankruptcy and has been in bankruptcy since October 2002. Certainly, IDS' creditworthiness is far superior to that of Supra Telecom, yet BellSouth has apparently not sought a security deposit from that CLEC for services in Florida. Likewise, CLEC Saturn Telecommunications Services, Inc. d/b/a STS Telecom was allowed to give BellSouth a UCC-1 security interest in the company in lieu of a security deposit. Attached hereto as Exhibit "25" is a copy of a UCC-1 filed by BellSouth in Florida, which provides a security interest in that CLEC. On June 15, 2004, Jon Krutchik, the president of Saturn Telecom, gave deposition testimony in an unrelated action (Case No. 04-07761 – Circuit Court of Broward County, Florida). In that deposition, Mr. Krutchik testified that BellSouth allowed his CLEC to simply provide a UCC-1 in lieu of a deposit. See attached Exhibit "26", at page 6, lines 17 through 25, and page 7, lines 1 through 3.

Assuming arguendo, that Section 1.8 of Attachment 7 of the Interconnection Agreement still survives; given BellSouth's treatment of FDN, Supra Telecom and Saturn Telecom, it is clear that BellSouth has not applied its credit standards to IDS in a non-discriminatory manner, and thus

BellSouth has violated that provision. Moreover, during discussions with BellSouth's Vice President Harry Goldberg (some of which involved counsel for both sides), BellSouth admitted that many CLECs are allowed to build up a security deposit over time. However, with IDS, BellSouth demanded payment over a period one month.

Assuming a security deposit is required of IDS, then in order for IDS to be treated in a manner similar to that of other CLECs, IDS should first be given an opportunity to present alternate forms of security. For example, IDS' main investor is MCG. As noted previously, MCG is a publicly traded company with assets that exceed liabilities by over $455 million. Attached hereto as Exhibit "27" is MCG's latest Form 8-K filing with the Securities Exchange Commission. In that 8-K Filing, MCG set forth its current Balance Sheets and Statements of Operation. Both financial statements demonstrate that a corporate guaranty from MCG would more than adequately secure BellSouth for services rendered to IDS in the state of Florida. MCG has indicated a willingness to provide such a guaranty on commercial reasonable terms, in order to secure services provided to IDS. In the event MCG changes its position on the corporate guaranty, IDS should be allowed to post a UCC-1 in lieu of a deposit. Alternatively, if a cash deposit is required, if should be established only on the services which BellSouth provides to IDS in the state of Florida. Given IDS' history of prompt payment of undisputed amounts, IDS's excellent Dunn & Bradstreet credit rating, and the fact that BellSouth can terminate services with only one month exposure (should IDS fail to make payment), then any such security deposit should be set at no more than one month of billings in Florida (or approximately $1 million). Lastly, IDS should be given the opportunity to build up this deposit amount over time. In this regard, a six-month time period (i.e. monthly payments of approximately $167,000 per month) would be reasonable and consistent with Section 1.1.3 of Attachment 7 to the Interconnection Agreement, which provides that IDS shall have at least

six months to pay back-billings in excess of $1 million.

III. SUMMARY

In summary, BellSouth's request for a security deposit should be governed by the relevant terms of the BellSouth/Supra Agreement because: (a) IDS has adopted the deposit provisions of the BellSouth/Supra Agreement; and/or (b) IDS should be allowed to adopt either the deposit provisions and/or the billing section of the BellSouth/Supra Agreement.

If the Commission determines that Section 1.8 of Attachment 7 is still part of the Interconnection Agreement, then BellSouth's deposit request should be denied because: (a) BellSouth has failed to demonstrate a change in IDS' creditworthiness or other situation, which would justify BellSouth demanding "additional security" over that previously required in April 1998 when IDS submitted BellSouth's most current Credit Profile; (b) BellSouth has breached the adoption and good faith provisions of the Interconnection Agreement by refusing to allow IDS' adoption requests; (c) BellSouth has breached those deposit provisions by applying its credit standards in a discriminatory manner; and (d) BellSouth has breached those deposit provisions by failing to offer alternative forms of security and failing to work in good faith with IDS towards a resolution of this issue.

Assuming a deposit or security is required, IDS should first be allowed to obtain a corporate guarantee from MCG to secure payment for services rendered in Florida. If that cannot be worked out, then IDS should be allowed to provide a UCC-1 security interest, as BellSouth has allowed for Saturn Telecommunications Services, Inc.

In the event a deposit or security is required, the amount of such security should be based on the amount of IDS' average monthly billings for services that BellSouth provides in the state of Florida. At maximum, this amount should not exceed $2.7 million. However, IDS contends that

any such deposit should exclude billing disputes and other billing errors; which would reduce the maximum allowable deposit to approximately $2 million. Furthermore, given the fact that: (a) IDS regularly pays its undisputed monthly billings more or less within approximately 30 to 33 days of receiving BellSouth's bill; (b) IDS has an excellent Dunn & Bradstreet credit rating; (c) if IDS fails to pay undisputed amounts, BellSouth can terminate services with only 30 days exposure; and (d) BellSouth owes IDS monthly payments for accessing IDS' facilities network; the maximum deposit required should not exceed one month of average billing for services provided in the state of Florida (or no more than $1 million).

Finally, in the event IDS is required (or allowed) to post a cash deposit, IDS should be allowed at least six months in which to build up the security deposit, with deposits being made in equal monthly payments.

WHEREFORE, Respondent IDS Telcom, LLC, hereby files this its Brief Regarding BellSouth's Complaint To Enforce Deposit Requirements.

Respectfully submitted,

FOR

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

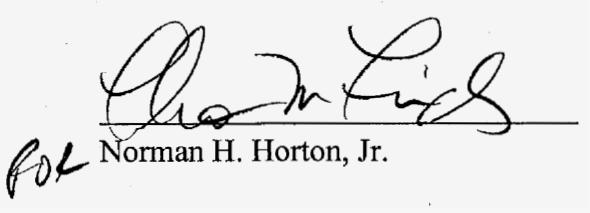
Attorneys for IDS Telcom, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing has been served upon the following parties by E-Mail and U.S. Mail this 29th day of June, 2004.

Patricia Christensen, Esq.
Office of General Counsel
Room 370 Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

James Meza, III, Esq.
Nancy B. White, Esq.
c/o Ms. Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556



FOR Norman H. Horton, Jr.

By and Between

BellSouth Telecommunications, Inc.

And

IDS Telcom, L.L.C.

EXHIBIT 1

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General Terms and Conditions

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AGREEMENT
GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and IDS Telcom LLC ("IDS Telcom"), a Florida limited liability company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or IDS Telcom or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, IDS Telcom is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, IDS Telcom wishes to resell BellSouth's telecommunications services and purchase network elements and other services, and, solely in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement); and

WHEREAS, the Parties wish to interconnect their facilities and exchange traffic pursuant to Sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and IDS Telcom agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

13. Adoption of Agreements

BellSouth shall make available, pursuant to 47 USC § 252 and the FCC rules and regulations regarding such availability, to IDS Telcom any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC § 252. The Parties shall adopt all rates, terms and conditions concerning such other interconnection, service or network element and any other rates, terms and conditions that are interrelated or were negotiated in exchange for or in conjunction with the interconnection, service or network element being adopted. The adopted interconnection, service, or network element and agreement shall apply to the same states as such other agreement and for the identical term of such other agreement. The term of the adopted agreement or provisions shall expire on the same date as set forth in the agreement that was adopted.

14. Modification of Agreement

14.1 If IDS Telcom changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of IDS Telcom to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

14.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

14.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of IDS Telcom or BellSouth to perform any material terms of this Agreement, IDS Telcom or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

15. Non-waiver of Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

16. Indivisibility

27. Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28. Nonexclusive Dealings

This Agreement does not prevent either Party from providing or purchasing services to or from any other person nor, except as provided in Section 252(i) of the Act, does it obligate either Party to provide or purchase any services (except insofar as the Parties are obligated to provide access to Interconnection, services and Network Elements to IDS Telcom as a requesting carrier under the Act).

29. Rate True-Up

29.1 This section applies to Network Interconnection and/or Unbundled Network Elements and Other Services rates that are expressly subject to true-up under this Agreement.

29.2 The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final order (including any appeals) of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the designated true-up rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any disagreement as between the records or the Parties regarding the amount of such true-up, the Parties shall submit the matter to the Dispute Resolution process in accordance with the provisions of Section 10 of the General Terms and Conditions of this Agreement.

29.3 An effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon BellSouth and IDS Telcom specifically or upon all carriers generally, such as a generic cost proceeding.

30. Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

31. Entire Agreement

Attachment 1

Resale

RESALE

1. Discount Rates

1.1 The discount rates applied to IDS Telcom purchases of BellSouth Telecommunications Services for the purpose of resale shall be as set forth in Exhibit C. Such discounts have been determined by the applicable Commission to reflect the costs avoided by BellSouth when selling a service for wholesale purposes.

1.2 The telecommunications services available for purchase by IDS Telcom for the purposes of resale to IDS Telcom, L.L.C.'s End Users shall be available at BellSouth's tariffed rates less the discount set forth in Exhibit C to this Agreement and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.

2. Definition of Terms

2.1 COMPETITIVE LOCAL EXCHANGE COMPANY (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

2.2 CUSTOMER OF RECORD means the entity responsible for placing application for service; requesting additions, rearrangements, maintenance or discontinuance of service; payment in full of charges incurred such as non-recurring, monthly recurring, toll, directory assistance, etc.

2.3 DEPOSIT means assurance provided by a customer in the form of cash, surety bond or bank letter of credit to be held by BellSouth.

2.4 END USER means the ultimate user of the Telecommunications Service.

2.5 END USER CUSTOMER LOCATION means the physical location of the premises where an End User makes use of the telecommunications services.

2.6 NEW SERVICES means functions, features or capabilities that are not currently offered by BellSouth. This includes packaging of existing services or combining a new function, feature or capability with an existing service.

2.7 RESALE means an activity wherein a certificated CLEC, such as IDS Telcom, L.L.C., subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public.

Attachment 7

Billing

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BILLING

1. PAYMENT AND BILLING ARRANGEMENTS

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

1.1 Billing. BellSouth will bill through the Carrier Access Billing System (CABS), Tapestry and/or the Customer Records Information System (CRIS) depending on the particular service(s) provided to IDS Telcom under this Agreement. BellSouth will format all bills in CBOS Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format will change as necessary when standards are finalized by the applicable industry forum.

1.1.1 For any service(s) BellSouth receives from IDS Telcom, IDS Telcom shall bill BellSouth in CABS format.

1.1.2 If either Party requests multiple billing media or additional copies of bills, the Billing Party will provide these at a reasonable cost.

1.1.3 Should either Party render a bill to the other Party for services provided more than one hundred eighty (180) days prior to the bill date, the Parties agree to make payment according to the following schedule:

(1) If the charges are $100, 000 or less, the billed Party will pay the charges within thirty (30) days following the bill date;

(2) If the charges are greater than $100,000 but $1,000,000 or less, the billed Party will pay the charges in three (3) equal monthly installments beginning in the month after the charges are billed;

(3) If the charges are greater than $1,000,000 the payments will be made in monthly installments over a period of not less than six (6) months, nor more than twelve (12) months, as shall be negotiated by the Parties.

The extended payment options set forth in the Section 1.2.2 shall not be available unless IDS files a billing dispute with BellSouth pursuant to Section 2 of this Attachment, with respect to the applicable charges.

1.1.3.1 Upon IDS's request, the Parties agree to negotiate a mutually accepted Bill Accuracy Certification Agreement.

1.1.3 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.

1.1.4 BellSouth will render bills each month for resold lines on established bill days for each of IDS Telcom's accounts. If either Party requests multiple

billing media or additional copies of the bills, the Billing Party will provide these at a reasonable cost.

1.1.5 BellSouth will bill IDS Telcom in advance for all resold services to be provided during the ensuing billing period except charges associated with service usage, which will be billed in arrears. Charges will be calculated on an individual End User account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill IDS Telcom, and IDS Telcom will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.

1.1.6 BellSouth will not perform billing and collection services for IDS Telcom as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.

1.2 Establishing Accounts. After receiving certification as a local exchange carrier from the appropriate regulatory agency, IDS Telcom will provide the appropriate BellSouth local contract manager the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services, Collocation and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) assigned by the National Exchange Carriers Association (NECA), Carrier Identification Code (CIC), Group Access Code (GAC), Access Customer Name and Abbreviation (ACNA), as applicable, and a tax exemption certificate, if applicable.

1.2.1 Payment Responsibility. Payment of all charges will be the responsibility of IDS Telcom. IDS Telcom shall make payment to BellSouth for all services billed. Payments made by IDS Telcom to BellSouth as payment on account will be credited to IDS Telcom's accounts receivable master account. BellSouth will not become involved in billing disputes that may arise between IDS Telcom and IDS Telcom's customer.

1.3 Payment Due. Payment for services provided will be due on or before the next bill date and is payable in immediately available funds. Payment is considered to have been made when received by BellSouth.

1.4 If the payment due date falls on a Sunday or on a Holiday that is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If

payment is not received by the payment due date, a late payment charge, as set forth in Section 1.6, below, shall apply.

1.5 Tax Exemption. Upon BellSouth's receipt of tax exemption certificate, the total amount billed to IDS Telcom will not include those taxes or fees from which IDS Telcom is exempt. IDS Telcom will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the end user of IDS Telcom.

1.6 Late Payment. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment charge shall be due to BellSouth. The late payment charge shall be the portion of the payment not received by the payment due date multiplied by a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, as appropriate. In addition to any applicable late payment charges, IDS Telcom may be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.

1.7 Discontinuing Service to IDS Telcom. The procedures for discontinuing service to IDS Telcom are as follows:

1.7.1 BellSouth reserves the right to suspend or terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by IDS Telcom of the rules and regulations of BellSouth's tariffs.

1.7.2 BellSouth reserves the right to suspend or terminate service for nonpayment. If payment of amounts not subject to a billing dispute, as described in Section 2, is not received by the bill date in the month after the original bill date, BellSouth will provide written notice to IDS Telcom that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, provide written notice to the person designated by IDS Telcom to receive notices of noncompliance that BellSouth may discontinue the provision of existing services to IDS Telcom if payment is not received by the thirtieth day following the date of the initial notice.

1.7.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.

1.7.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and IDS Telcom's noncompliance continues,

nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to IDS Telcom without further notice.

1.7.5 Upon discontinuance of service on IDS Telcom's account, service to IDS Telcom's end users will be denied. BellSouth will reestablish service for IDS Telcom upon payment of all past due charges and the appropriate connection fee subject to BellSouth's normal application procedures. IDS Telcom is solely responsible for notifying the end user of the proposed service disconnection. If within fifteen (15) days after IDS Telcom has been denied and no arrangements to reestablish service have been made consistent with this subsection, IDS Telcom's service will be disconnected.

1.8 Deposit Policy. When purchasing services from BellSouth, IDS will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in its sole discretion, some other form of security. Any such security deposit shall in no way release IDS from its obligation to make complete and timely payments of its bill. If, in the sole opinion of BellSouth, IDS experiences an adverse change in its creditworthiness in comparison to the level initially used to determine the level of the current security deposit and/or gross monthly billing has increased beyond the level initially used to determine the level of security, BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC1) security interest in IDS's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff. Security deposits collected under this Section shall not exceed two months' estimated billing.

When BellSouth requests a deposit, BellSouth is willing to provide IDS a written explanation as to why a deposit has been requested. BellSouth shall apply all credit standards to IDS on a non-discriminatory basis. The Parties will work together to determine the amount of a reasonable deposit. If the Parties are unable to agree, either party may petition the Commission for resolution of the dispute. In the event that the dispute is not resolved within sixty days after petitioning the Commission, and IDS fails to remit to BellSouth any deposit requested pursuant to this Section, service to IDS may be terminated in accordance with the terms of Section 1.7 of this Attachment, and any security deposits will be applied to IDS's account(s).

1.9 Notices. Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, including notices relating to security deposits, disconnection of services for nonpayment of charges, and rejection of additional orders from IDS Telcom, shall be forwarded to the individual and/or address

provided by IDS Telcom in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by IDS Telcom as the contact for billing information. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, upon written notice from IDS Telcom to BellSouth's billing organization, a final notice of disconnection of services purchased by IDS Telcom under this Agreement shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of this Agreement at least 30 days before BellSouth takes any action to terminate such services.

1.10 Rates. Rates for Optional Daily Usage File (ODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

2. BILLING DISPUTES

2.1 Each Party agrees to notify the other Party in writing upon the discovery of a billing dispute. IDS Telcom shall report all billing disputes to BellSouth using the Billing Adjustment Request Form (RF 1461) provided by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the notification date. If the Parties are unable within the 60 day period to reach resolution, then the aggrieved Party may pursue dispute resolution in accordance with the General Terms and Conditions of this Agreement.

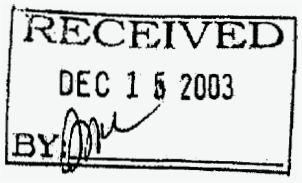
2.2 For purposes of this Section 2, a billing dispute means a reported dispute of a specific amount of money actually billed by either Party. The dispute must be clearly explained by the disputing Party and supported by written documentation, which clearly shows the basis for disputing charges. By way of example and not by limitation, a billing dispute will not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a billing dispute include the refusal to pay other amounts owed by the billed Party until the dispute is resolved. Claims by the billed Party for damages of any kind will not be considered a billing dispute for purposes of this Section. If the billing dispute is resolved in favor of the billing Party, the disputing Party will make immediate payment of any of the disputed amount owed to the billing Party or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party, pursuant to the billing dispute, will be applied to the disputing Party's account by the billing Party immediately upon resolution of the dispute.

2.3 If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds

BELLSOUTH

December 9, 2003

Attn: Angel Leiro
VP Regulatory Affairs
IDS Telecom, LLC
1525 N.W. 167th St, 2nd FL
Miami, FL 33169



RE: DEPOSIT INVOICE

Dear Mr. Leiro:

In accordance with BellSouth corporate policies, the Business Credit Management organization has conducted a credit assessment of your company. Unfortunately, the credit and financial information available to us at this time is not sufficient to extend credit on an unsecured basis.

Therefore, BellSouth is exercising its right per the Interconnection Agreement to request additional security in the amount of $4,600,000. This deposit is based on an estimate of your average monthly charges for a two-month period.

BellSouth has applied all credit standards to IDS on a non-discriminatory basis and it is our opinion that circumstances so warrant and gross monthly billing has increased beyond the level initially used to determine the level of security.

In order to prevent the potential for suspension or termination of service, please remit the above mentioned security deposit by January 9, 2004. This amount can be submitted either in cash (guaranteed funds), in the form of an Irrevocable Letter of Credit (BellSouth form) or as a Surety Bond (BellSouth form), to:

Cash deposits should be sent to:

Attn: ICS Deposits
Michelle Alexander
BellSouth PRO Center
208 N. Caldwell St
RM: 146
Charlotte, NC 28201

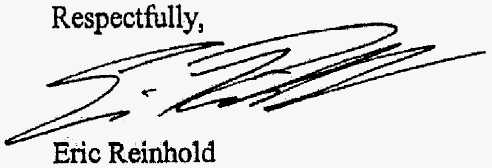
An Irrevocable Letter of Credit or Surety Bond should be sent to:

Attn: Eric Reinhold
BellSouth Telecommunications, Inc.
Business Credit Management
1025 Lenox Park Blvd
RM: 9B24
Atlanta, GA 30319

EXHIBIT 2

Your account(s) will be reviewed periodically to determine if any adjustments to the security deposit are warranted. If you have any questions regarding the contents of this letter, please contact me as soon as possible.

Respectfully,



Eric Reinhold
Credit Manager
404.986.1453

Enclosures 2

cc: Robert Hacker

IDS TELCOM Headquarters 1525 N.W. 167th Street, Suite 200, Miami, Florida 33169 U.S.A.
T+ 305 913 4000 F+ 305 913 4024 TOLL FREE+ 800 335 4437

December 22, 2003

Via Federal Express

Mr. Eric Reinhold
BellSouth Telecommunications, Inc.
Business Credit Management
1025 Lenox Park Blvd.
RM: 9B24
Atlanta, GA 30319

Re: **Deposit Request**

Mr. Reinhold:

I am in receipt of your letter dated December 9, 2003 regarding BellSouth's request for a deposit from IDS in the amount of $4,600,000 that you indicate was based on an estimate of IDS' average monthly charges for a two-month period.

IDS requests the following information from BellSouth pursuant to said deposit request:

1) Provide IDS a copy of the current BellSouth Credit Profile referenced in Attachment 7 at Section 1.8 of IDS' current Interconnection Agreement.
2) Provide IDS with any and all information BellSouth relied on to determine IDS' credit worthiness.
3) Provide IDS with whatever information BellSouth relied on to arrive at the amount of the deposit requested.
4) What did BellSouth do in order to assess IDS' credit? Please explain, in detail, why the deposit is needed.
5) What credit standards did BellSouth's use in determining that a deposit is required?
6) If a deposit is truly needed, can IDS provide one of the alternatives specified in Attachment 7 at Section 1.8 as an alternative?
7) What adverse change in IDS' credit worthiness, if any, has IDS experienced that would require a deposit at this time?
8) What level of gross monthly billing did BellSouth use to determine the current level of security?

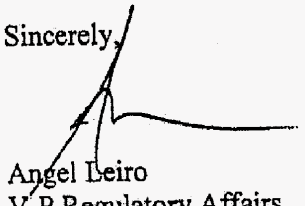
EXHIBIT 3

Kindly provide the above information in order for IDS to properly assess BellSouth request for a deposit.

If you have any questions, please do not hesitate to contact me directly.

Thank you for your assistance in this regard.

Sincerely,



Angel Leiro
V-P Regulatory Affairs

Cc: File

-----Original Message-----
From: Angel Leiro [mailto:aleiro@IDSTELCOM.com]
Sent: Wednesday, December 31, 2003 3:28 PM
To: Romano, Martha
Subject: FW: Request for Amendment of ICA dated 2/5/03 btwn IDS and BellSouth

Resend. Not sure if the first one got through.

Happy New Year!

Regards.

Angel

-----Original Message-----
From: Angel Leiro
Sent: Wednesday, December 31, 2003 3:20 PM
To: 'martha.romano@bellsouth.com'
Subject: Request for Amendment of ICA dated 2/5/03 btwn IDS and BellSouth

Martha:

IDS would like to adopt: (1) the dispute resolution provisions; and (2) deposit requirement provisions; between BellSouth and Supra Telecommunications & Information Systems, Inc. (arising out of an Interconnection Agreements dated July 15, 2002). As I understand it, the current dispute resolution provisions between Supra and BellSouth can be found in an Amendment between Supra and BellSouth dated August 20, 2002, and which was filed with the Florida Public Service Commission on August 21, 2002 in FPSC Docket No. 001305-TP.

Please let me when you can have a proposed amendment available. Alternatively, IDS would be happy to prepare the adoption agreement.

If you have any questions or comments, please feel free to contact me.

Regards,

Angel M. Leiro
V-P Regulatory Affairs
IDS Telcom, LLC.
Tel: (305) 612-4311
Fax: (305) 612-3027
aleiro@idstelcom.com

*****

dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers."

EXHIBIT 5

CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

www.idstelcom.com

IDS TELCOM Headquarters 1525 N.W. 167th Street, Suite 200, Miami, Florida 33169 U.S.A.
T+ 305 913 4000 F+ 305 913 4024 TOLL FREE+ 800 335 4437

January 12, 2004

Via Facsimile and Federal Express
Mr. Eric Reinhold
BellSouth Telecommunications, Inc.
Business Credit Management
1025 Lenox Park Blvd.
RM: 9B24
Atlanta, GA 30319

Re: **Deposit Request**

Mr. Reinhold

I am in receipt of your letter of January 5, 2004 regarding BellSouth's request for a security deposit. Absent a relevant adoption amendment already requested by IDS, the parties' Interconnection Agreement states in part at paragraph 1.8 of Attachment 7, as follows:

> "When purchasing services from BellSouth, IDS will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit."

In your letter of January 5th, you state: "BellSouth's decision is based on relevant factors that affect creditworthiness." You also provided the BellSouth Credit Profile, which IDS originally provided in 1998. At that time, no deposit amount was requested of IDS; nor has any deposit been requested until your letter of December 9, 2003. Since 1998, when BellSouth first received IDS' Credit Profile to the present, IDS' Dun & Bradstreet ratings have only improved. IDS' current D&B 12-month PAYDEX rating is 78, which according to D&B means that over the past 12 months, IDS has on a weighted average, paid its suppliers only 3 days beyond terms. Moreover, D&B rates IDS' Composite Credit Appraisal as "good", the best rating available to a company such as IDS. A copy of IDS current D&B Business Information Report is provided herein for your review. From the attached you can see that IDS' D&B Rating, is the currently the best it has ever been since 1996. Because IDS' objective D&B Rating has only improved with time, your letters requesting a deposit are troubling.

Your letter of January 5th also references unaudited IDS financial statements that purport to reflect IDS' financial condition as of December 31, 2002. I am not familiar with those statements and will note that Robert Hacker, IDS' CFO for the last few years, is no longer with the company. Therefore, could you please provide me a copy of the financial statements you are referencing, and advise me when you received those financial statements, so that I may determine whether or not they were interim and still valid.

I will also note that since seeing your December 9th letter, I have reviewed e-mail correspondence between IDS and BellSouth regarding legitimate billing disputes, and have seen statements by BellSouth personnel advising that if disputed amounts were not paid, BellSouth would demand a deposit from IDS. Moreover, your January 5th letter states that: "IDS' payment manner with BellSouth falls under the category of 'Prompt to Slow 90+ days' when reviewing the accounts in the aggregate" and that: "Net of disputes, the payment manner is 'Prompt to Slow 60 days.'" Our records apparently reflect a better payment history than BellSouth's. In fact, it has been IDS' experience that BellSouth will begin terminating services if payment of undisputed amounts is not received within 45 days of the invoice date. Please provide me a copy of the payment history you reference and please also identify whether a dispute was associated with any particular payment.

In light of reports by CLECs of erroneous billing by BellSouth, IDS has begun scrutinizing BellSouth's bills and has uncovered many mistakes, some of which BellSouth has agreed with and granted credits. Are we to believe that if IDS raises legitimate billing disputes, that BellSouth will use such disputes as a basis for demanding a deposit? Please clarify BellSouth's policy on this matter.

Furthermore, despite repeated requests, BellSouth constantly sends IDS its bills 7 to 10 days late every month. Apparently BellSouth is unable to render a timely bill to IDS. Your statement that without disputes, IDS' payment is "Prompt to Slow 60 days" ignores the fact that BellSouth's bills are always late. In fact, in the past BellSouth has advised IDS that it could have more time to pay the bills because BellSouth could not render a timely bill. Therefore, in reality, given that bills are generally due within 30 days, it appears that according to BellSouth, IDS actually pays most of its undisputed bills within 30 days after IDS actually receives the bill.

Given the monthly grace period and the fact that recurring charges are billed a month in advance, apart from usage, BellSouth is actually owed little or nothing when IDS typically tenders payment. Therefore, it is difficult to understand why you are demanding the maximum deposit of two months. Does BellSouth actually intend to use any deposits to pay down disputed amounts? If so, this would violate the parties' interconnection agreement. Please clarify this point for me and advise me whether or not BellSouth has written policies on when BellSouth will ever touch any deposit amounts.

From IDS' perspective, absent extraordinary circumstances, a Commission order should first be obtained before ever touching a deposit.

Additionally, absent a relevant adoption amendment already requested by IDS, the parties' Interconnection Agreement also states at paragraph 1.8 of Attachment 7, as follows:

> "When BellSouth requests a deposit, BellSouth is willing to provide IDS a written explanation as to why a deposit has been requested. BellSouth shall apply all credit standards to IDS on a non-discriminatory basis. The parties will work together to determine the amount of a reasonable deposit."

This language has two important points. The first important point is that the credit standards applied to IDS must be non-discriminatory. In this regard, IDS would like you to provide me with BellSouth's standard credit policies reflecting when BellSouth will seek a deposit from a CLEC. Moreover, IDS would also like to know (1) what other CLECs BellSouth has obtained credit information about, (2) what type of information was obtained from the CLEC; (3) what other CLECs has BellSouth requested a deposit from; (4) how much of a deposit was provided by any such CLEC; and (5) what form of security comprised the deposit given.

The second important point is that if a deposit is requested, the agreement requires the parties to work together in good faith to determine a reasonable deposit amount. Your letter of December 9th simply demands the maximum possible deposit, i.e. two months estimated billing (see paragraph 1.8 – "Security deposits collected under this Section shall not exceed two months' estimated billing."). However, assuming that your January 5th letter is correct and that IDS does pay "Prompt to Slow 60 days" for undisputed portions of its bill, given that most BellSouth billing is done 30 days in advance, why is two months billing an appropriate deposit amount? If a deposit is truly necessary, why isn't BellSouth willing to negotiate a reasonable amount as required by the parties' Interconnection Agreement.

Finally, your letter of December 9th states that: "In order to prevent the potential for suspension or termination of services, please remit the above mentioned security deposit by January 9, 2004." However, the parties' interconnection agreement does not allow BellSouth to suspend any services to IDS if the parties are unable to agree upon a reasonable deposit amount. Rather under section 1.8 of Attachment 7, the parties' only remedy for failing to agree, is to take the matter to the Commission. Moreover, this assumes that BellSouth can legally refuse the recent requested adoption that IDS has requested regarding the deposit policy applied to another CLEC.

In summary, there are many issues to work through before the parties can agree upon an appropriate deposit, if any, which would be appropriate under these circumstances. IDS would like to work with you in good faith regarding this dispute and hope that BellSouth is likewise acting in good faith. Therefore, could you please respond to my inquiries above so that we may be able to discuss this matter further.

If you have any questions, please do not hesitate to contact me directly.

Thank you for your assistance in this regard.

Sincerely,

Angel Leiro
V-P Regulatory Affairs

Enclosure
Cc: File

D&B Business Information Report

ATTN: **Claudia**

Report Printed: AUG 28 2003
In Date

BUSINESS SUMMARY

IDS TELCOM LLC
1525 N W 167th Street Ste 200
Miami, FL 33169

Rating Change

This is a **headquarters** location.
Branch(es) or division(s) exist.

Web site:	www.idstelcom.com
Telephone:	305 913-4000
Fax:	305 628-9496
Manager:	MICHAEL NOSHAY, MANAGER/MEMBER
Year started:	1989
Employs:	280 (240 here)
Sales:	$55,000,000
History:	CLEAR
Financing:	SECURED
SIC:	4813
Line of business:	Provides local and long distance telephone services/internet services

D-U-N-S Number:	80-168-7641
D&B Rating:	**1R2** Formerly 1R3
Number of employees:	1R is **10 or more** employees.
Composite credit appraisal:	2 is **good.**

D&B PAYDEX®:

12-Month D&B PAYDEX: 78
When weighted by dollar amount, payments to suppliers average 3 days beyond terms.

Based on trade collected over last 12 months.

SUMMARY ANALYSIS

D&B Rating: **1R2**
Number of employees: 1R indicates **10 or more** employees.
Composite credit appraisal: 2 is **good.**

The Rating was changed on June 26, 2003 because of changes to D&B's file on this business. The 1R and 2R ratings categories reflect company size based on the total number of employees for the business. They are assigned to business files that do not contain a current financial statement. In 1R and 2R Ratings, the 2, 3, or 4 creditworthiness indicator is based on analysis by D&B of public filings, trade payments, business age and other important factors. 2 is the highest Composite Credit Appraisal a company not supplying D&B with current financial information can receive. For more information, see the D&B Rating Key.

Below is an overview of the company's rating history since 04/23/96

D&B Rating	Date Applied
1R2	06/26/03
1R3	12/31/02
1R4	12/04/02
--	05/22/00
CB4	12/17/99

CB3	11/10/98
--	09/24/97
1R3	03/25/97
1R4	05/16/96
1R3	04/23/96

The Summary Analysis section reflects information in D&B's file as of August 25, 2003.

CUSTOMER SERVICE

If you have questions about this report, please call our Customer Resource Center at 1.800.234.3867 from anywhere within the U.S. If you are outside the U.S. contact your local D&B office.

*** Additional Decision Support Available ***

Additional D&B products, monitoring services and specialized investigations are available to help you evaluate this company or its industry. Call Dun & Bradstreet's Customer Resource Center at 1.800.234.3867 from anywhere within the U.S. or visit our website at www.dnb.com.

HISTORY

The following information was reported **06/26/2003**

Officer(s): MICHAEL NOSHAY, MANAGER/MEMBER
JOSEPH MILLSTONE, MANAGER/MEMBER
ANTHONY PETRONE, MANAGER/MEMBER

DIRECTOR(S): THE OFFICER(S)

Originally incorporated as IDS Long Distance, Inc. On Jul 14 2000 registered with the Florida Secretary of State as a limited liability company, dba IDS Telcom LLC.

Ownership information provided verbally by Michael Noshay, Member, on Dec 04 2002.

Business started 1989 by Burris Millstone, Michael Noshay and Joe Millstone.

MICHAEL NOSHAY born 1949. 1989-present active here. 1970-present real estate investor, under own name, Miami, FL.

JOSEPH MILLSTONE. 1989-present active here.

ANTHONY PETRONE. Antecedents not available.

Affiliates:
The following are related through common principals, management and/or ownership. Noshay, Michael, Miami, FL, started 1970. Operates as real estate investor. Intercompany relations: None reported by management.

CORPORATE FAMILY

Click below to buy a Business Information Report on that family member.
For an expanded, more current corporate family view, use D&B's Global Family Linkage product.

Branches (US):

IDS Telcom Llc	Fort Lauderdale, FL	DUNS # 04-715-2413
IDS Telcom Llc	Maitland, FL	DUNS # 15-688-5324
IDS Telcom Llc	Tampa, FL	DUNS # 15-921-9273

OPERATIONS

06/26/2003

Description: Provides local/long distance telephone services, and Internet services.

Terms are Terms are net 30 days. Has 30,000 account(s). Sells to commercial concerns.

Nonseasonal.

Employees: 280 which includes partners. 240 employed here.

Facilities: Leases 30,000 sq. ft. in four story concrete block building.

Location: Central business section on main street.

Branches: Branch locations in West Palm Beach and Fort Lauderdale, FL.

SIC & NAICS

SIC:
Based on information in our file, D&B has assigned this company an extended 8-digit SIC. D&B's use of 8-digit SICs enables us to be more specific to a company's operations than if we use the standard 4-digit code.

The 4-digit SIC numbers link to the description on the Occupational Safety & Health Administration (OSHA) Web site. Links open in a new browser window.

48130102 Local telephone communications
48130103 Long distance telephone communications

NAICS:
517310 Telecommunications Resellers
517310 Telecommunications Resellers

D&B PAYDEX

The D&B PAYDEX is a unique, dollar weighted indicator of payment performance based on up to 50 payment experiences as reported to D&B by trade references.

3-Month D&B PAYDEX: 64
When weighted by dollar amount, payments to suppliers average 19 days beyond terms.

Based on trade collected over last 3 months.

12-Month D&B PAYDEX: 78
When weighted by dollar amount, payments to suppliers average 3 days beyond terms.

Based on trade collected over last 12 months.

When dollar amounts are not considered, then approximately 58% of the company's payments are within terms.

PAYMENT SUMMARY

The Payment Summary section reflects payment information in D&B's file as of the date of this report.

Below is an overview of the company's dollar-weighted payments, segmented by its suppliers' primary industries:

	Total Rcv'd (#)	Total Dollar Amts ($)	Largest High Credit ($)	Within Terms (%)	Days Slow <31 31-60 61-90 90> (%)
Top industries:					
Telephone communictns	16	4,575,400	4,000,000	97	1 2

Nonclassified	7	255,450	250,000	50	1		49	
Misc equipment rental	4	90,000	65,000	72	28		-	
Whol computers/softwr	3	76,000	45,000	30	40	-	-	30
Data processing svcs	2	8,500	7,500	88	-	6	-	6
Radiotelephone commun	2	1,750	1,000	43	-	57	-	-
Business consulting	1	250,000	250,000	100	-	-	-	-
Ret-direct selling	1	15,000	15,000	100	-	-		-
Newspaper-print/publ	1	2,500	2,500	-	-	-		100
Misc computer service	1	2,500	2,500	100	-	-	-	-
OTHER INDUSTRIES	9	3,350	750	51	4	34	11	
Other payment categories:								
Cash experiences	0	0	0					
Payment record unknown	2	7,550	50					
Unfavorable comments	0	0	0					
Placed for collections:								
With D&B	0	0						
Other	1	N/A						
Total in D&B's file	50	5,288,000	4,000,000					

The highest **Now Owes** on file is $3,000,000

The highest **Past Due** on file is $15,000

The aggregate dollar amount of the 50 payment experiences in D&B's file equals 115.4% of this company's average monthly sales. In Dun & Bradstreet's opinion, payment experiences exceeding 10% of a company's average monthly sales can be considered representative of payment performance.

PAYMENT DETAILS

Detailed payment history

Date Reported (mm/yy)	Paying Record	High Credit ($)	Now Owes ($)	Past Due ($)	Selling Terms	Last Sale Within (months)
08/03	Ppt	200,000	95,000	5,000		1 mo
	Ppt-Slow 30	90,000	40,000	0		1 mo
	Ppt-Slow 60	500	0	0	Lease Agreemnc	2-3 mos
	(004)	50	0	0		2-3 mos
07/03	Ppt				Lease Agreemnt	
	Ppt				Lease Agreemnt	
	Ppt	65,000	1,000	0		1 mo
	Ppt	15,000	10,000	0	N30	1 mo
	Ppt	2,500	50	0		1 mo
	Ppt	500	500	0		1 mo
	Ppt	250	0	0		1 mo
	Ppt	100				2-3 mos
	Ppt	100	100	0		1 mo
	Ppt	50				2-3 mos
	Ppt	50	50	0		1 mo
	Ppt	50				2-3 mos

	Ppt	0	0	0		1 mo
	Ppt	0	0	0		1 mo
	Ppt-Slow 60	200,000	15,000	2,500		1 mo
	Slow 30	25,000	1,000	0		1 mo
	Slow 60	500	0	0	Regular terms	6-12 mos
	Slow 60-90	750	750	750		
	Slow 120	7,500	0	0		6-12 mos
	Slow 120+	2,500	0	0		6-12 mos
	(025)	15,000	500	500		1 mo
	Placed for collection.					
	Ppt	500	500	0		1 mo
	Ppt-Slow 120	250	250			1 mo
	Ppt-Slow 90	250,000	50,000	0		1 mo
	Slow 25	30,000	15,000	15,000	N30	1 mo
	Ppt-Slow 30	50	0	0		6-12 mos
	Ppt-Slow 30	50	0	0		6-12 mos
	Ppt-Slow 90	0	0	0		6-12 mos
	Slow 60	500	0	0		6-12 mos
	Slow 90	750	0	0		6-12 mos
	Slow 30-90	750	0	0		6-12 mos
	Ppt	250	0	0		4-5 mos
	Slow 30-60	500	0	0		4-5 mos
	(038)			7,500		
	Account in dispute.					
01/03	Antic	250,000	100,000	0		6-12 mos
12/02	Ppt	4,000,000	3,000,000		N30	1 mo
	Ppt	75,000			Lease Agreemnt	
	Ppt	7,500			N30	1 mo
	Ppt	2,500			N30	1 mo
11/02	Slow 30	2,500	0	0		6-12 mos
10/02	Ppt-Slow 120	45,000	25,000	1,000	N30	1 mo
	Slow 60-120	1,000	1,000	1,000		6-12 mos
	Ppt	750	0	0	N30	6-12 mos
	Slow 60	1,000	0	0		6-12 mos
07/02	Ppt	250	250	0		1 mo
06/02	Slow 30-120	1,000	0	0		6-12 mos

Payments Detail Key: red = 30 or more days beyond terms
Accounts are sometimes placed for collection even though the existence or amount of the debt is disputed.

Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

Each experience shown is from a separate supplier. Updated trade experiences replace those previously reported.

FINANCE

06/03/2003

On June 3, 2003, Michael Noshay, Member, confirmed company name, address, principals, annual sales and operational information using Dun & Bradstreet's Internet-based update method (eUpdate) at www.dnb.com

BANKING

Kislak National Bank

PUBLIC FILINGS

The following Public Filing data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

UCC FILINGS

Collateral:	All Negotiable instruments and proceeds - Leased Computer equipment and proceeds - Leased Fixtures and proceeds - Leased Equipment and proceeds
Type:	Original
Sec. party:	CROWN BANK LEASING, DEERFIELD BCH, FL
Debtor:	IDS LONG DISTANCE INC
Filing number:	200000223060
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	09/28/2000
Latest Info Received:	10/19/2000

Collateral:	All Accounts receivable including proceeds and products - All Inventory including proceeds and products - All Account(s) including proceeds and products - All Contract rights including proceeds and products - and OTHERS
Type:	Original
Sec. party:	MCG FINANCE CORPORATION, ARLINGTON, VA
Debtor:	IDS LONG DISTANCE INC
Filing number:	990000221056
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	09/28/1999
Latest Info Received:	11/19/1999

Collateral:	All Accounts receivable including proceeds and products - All Inventory including proceeds and products - All Account(s) including proceeds and products - All Farm products/crops including proceeds and products - and OTHERS
Type:	Original
Sec. party:	COAST BUSINESS CREDIT, LOS ANGELES, CA SOUTHERN PACIFIC BANK, LOS ANGELES, CA
Debtor:	IDS LONG DISTANCE INC
Filing number:	990000141506
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	06/22/1999
Latest Info Received:	07/08/1999

Collateral:	All Accounts receivable
Type:	Original
Sec. party:	THE SKYLAKE STATE BANK, MIAMI LAKES, FL
Debtor:	IDS LONG DISTANCE, INC.
Filing number:	990000011481
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	01/19/1999
Latest Info Received:	04/28/1999
Collateral:	Chattel paper and proceeds - Leased Communications equipment and proceeds - Leased Computer equipment and proceeds - Leased Equipment and proceeds
Type:	Original

Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS LONG DISTANCE, INC.
Filing number:	990000009896
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	01/14/1999
Latest Info Received:	04/20/1999

Collateral:	Inventory - Equipment
Type:	Amendment
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS LONG DISTANCE INC
Filing number:	990000150838
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	07/06/1999
Latest Info Received:	08/04/1999
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Collateral:	Leased Equipment
Type:	Amendment
Sec. party:	IDS TELCOM, MIAMI, FL
Debtor:	IDS LONG DISTANCE INC
Filing number:	990000263904
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	11/22/1999
Latest Info Received:	01/27/2000
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Type:	Amendment
Sec. party:	IDS TELCOM, MIAMI, FL
Debtor:	IDS LONG DISTANCE INC
Filing number:	990000278300
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	12/10/1999
Latest Info Received:	02/15/2000
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Collateral:	Leased Computer equipment - Leased Equipment
Type:	Amendment
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS TELECOM
Filing number:	200000245265
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	10/27/2000
Latest Info Received:	11/15/2000
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Type:	Amendment
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS TELECOM LLC
Filing number:	200000276168
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	12/07/2000
Latest Info Received:	12/27/2000
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Collateral:	Chattel paper and proceeds - Leased Equipment and proceeds
Type:	Amendment
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS TELECOM LLC
Filing number:	200303223543
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	02/07/2003
Latest Info Received:	02/20/2003
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Collateral:	Leased Equipment and proceeds
Type:	Amendment
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS TELECOM LLC
Filing number:	200303223535
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	02/07/2003
Latest Info Received:	02/20/2003
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Type:	Continuation
Sec. party:	TELECOMMUNICATIONS FINANCE GROUP, LAKE MARY, FL
Debtor:	IDS TELECOM LLC
Filing number:	200304511925
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	07/21/2003
Latest Info Received:	08/06/2003
Original UCC filed date:	01/14/1999
Original filing no.:	990000009896

Collateral:	All Account(s) and proceeds - Computer equipment and proceeds
Type:	Original
Sec. party:	MARLIN LEASING CORP, MOUNT LAUREL, NJ
Debtor:	IDS TELCOM LLC
Filing number:	200201198566
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	05/21/2002
Latest Info Received:	07/01/2002

Collateral:	Account(s) and proceeds - Leased Business machinery/equipment and proceeds
Type:	Original
Sec. party:	MARLIN LEASING CORP., MOUNT LAUREL, NJ
Debtor:	IDS TELCOM LLC
Filing number:	200304381428
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	07/07/2003
Latest Info Received:	07/22/2003

Collateral:	Equipment and proceeds - Communications equipment
Type:	Original
Sec. party:	FIDELITY LEASING INC, WEST CHESTER, PA
Debtor:	IDS LONG DISTANCE
Filing number:	990000005453
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	01/08/1999
Latest Info Received:	04/07/1999

Collateral:	Communications equipment and proceeds

Type:	Original
Sec. party:	FORREST FINANCIAL CORPORATION, LISLE, IL
Debtor:	IDS LONG DISTANCE INC.
Filing number:	960000260056
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	12/12/1996
Latest Info Received:	01/27/1997

Collateral:	Business machinery/equipment
Type:	Original
Sec. party:	FLEET BUSINESS CREDIT, LLC, TROY, MI
Debtor:	IDS TELCOM LLC
Filing number:	200304462258
Filed with:	SECRETARY OF STATE/UCC DIVISION, TALLAHASSEE, FL
Date filed:	07/15/2003
Latest Info Received:	07/28/2003

There are additional UCC's in D&B's file on this company available by contacting 1-800-234-3867.

The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

GOVERNMENT ACTIVITY

Activity summary

Borrower (Dir/Guar):	NO
Administrative debt:	NO
Contractor:	NO
Grantee:	NO
Party excluded from federal program(s):	NO

Possible candidate for socio-economic program consideration

Labor surplus area:	YES (2003)
Small Business:	YES (2003)
8(A) firm:	N/A

The details provided in the Government Activity section are as reported to Dun & Bradstreet by the federal government and other sources.

EXHIBIT 7

CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

From: Reinhold, Eric [Eric.Reinhold@bellsouth.com]
Sent: Thursday, February 05, 2004 12:12 PM
To: Angel Leiro
Subject: BellSouth Deposit Request

Mr. Leiro,

I wanted to follow up on our earlier conversation concerning IDS' intentions for complying with BellSouth's request for deposit. Per the discussion, you did indicate that you would rather not comment on the specifics of the correspondence and felt that there were a lot of other issues that had to be worked through before we could determine whether a deposit was warranted or not.

Regardless, we both agreed to disagree about BellSouth's request for deposit. Considering, I would like to make you aware that it is BellSouth's intention to proceed with the process set forth in the Interconnection Agreement between our companies in order to resolve this matter.

Kind Regards,

Eric Reinhold
Credit Manager
404.986.1453

*****

From: Angel Leiro
Sent: Friday, February 06, 2004 5:05 PM
To: 'eric.reinhold@bellsouth.com'
Subject: FW: BellSouth Deposit Request

Eric:

The current Interconnection Agreement provides in Paragraph 1.8 of Attachment 7 that:

"When BellSouth requests a deposit, BellSouth is willing to provide IDS a written explanation as to why a deposit has been requested. BellSouth shall apply all credit standards to IDS on a non-discriminatory basis. The Parties will work together to determine the amount of a reasonable deposit. If the parties are unable to agree, either party may petition the Commission for resolution of the dispute."

The agreement contemplates four progressive steps in this process. First, if BellSouth requests a deposit, IDS is entitled to an explanation. This is the step where we are currently at. Our few communications to date have basically revolved around BellSouth attempting to explain its request for a deposit (albeit a someone fuzzy and changing explanation).

The second step contemplated by the agreement is that BellSouth will apply all credit standards on a non-discriminatory basis. All we have on this is your promise that BellSouth is treating all CLECs the same. With all due respect, would you accept such a weak response? Does BellSouth have written or published procedures detailing when a deposit will be requested and how much will be requested? Or is BellSouth's deposit requirement a subjective test which can be imposed simply at the whim of any BellSouth employee? Doesn't IDS have the right to know in order to properly manage its business affairs? Certianly any business would like to know the rules which will be used to judge whether or not a deposit will be requested. If BellSouth is applying the deposit requirement on a non-discriminatory basis, then you should have no problem giving IDS an opportunity to examine this for itself. Moreover, if standards do exist, IDS would like to know how you arrived at a two month deposit requirement (the maximum) and whether any existing rules which might make IDS a candidate for a lesser amount? Why is BellSouth refusing to disclose this information to IDS? Is it because this information does not currently exist?

The third step contemplated by the agreement is that after IDS has been given the relevant information regarding BellSouth's deposit request, and then BellSouth has disclosed the procedures and standards utilized in the process, that the parties will attempt to negotiate a "reasonable deposit" amount. Negotiation first contemplates full disclosure of the above so that an intellegent exchange of ideas and offers can take place. Your assertion that IDS has not attempted to negotiate a deposit amount is breath-taking considering that BellSouth has simply demanded the maximum deposit, and has itself failed to provide IDS any information needed to negotiate. How can IDS negotiate anything without first knowing the applicable BellSouth standards and comparable treatment of other CLECs? In short, your failure to provide IDS with relevant information that IDS has requested, makes it impossible to negotiate anything. If you trully want to negotiate a reasonable deposit amount, please first provide me the information requested above.

Finally, after all attempts at negotiation have failed, either party may petition the Commission for resolution. This last step assumes that the parties will make all reasonable efforts under the

EXHIBIT 9

agreement to comply with the first three steps. But as we have seen, BellSouth has not moved past the first step contemplated by the agreement, before threatening to jump into the last step (i.e. litigation). IDS is committed to complying with the parties' Interconnection Agreement, and expects BellSouth to behave in the same manner. IDS does not want to prematurely run to the Commission to resolve this matter, until both sides have made a good fatih attempt at resolution under the procedures set forth in the Agreement.

When you called yesterday, I had just seen your letter and was in no position to respond without fully considering what you had written. Moreover, I was surprised and puzzled by your request to discuss the matter, when your letter specifically advises me to contact BellSouth's attorney, Mary Jo Peed. Who should I continue to speak with, you, Mary Jo Peed, or both? Please let me know.

IDS seeks to resolves this matter fairly, without litigation, and in a non-discriminatory manner. If BellSouth wants the same, then please let me know.

If you think it is necessary for Ms. Peed to be involved, please forward this e-mail to her as I do not have her exact e-mail address.

If you have any questions or comments, please feel free to contact me.
Regards,

Angel M. Leiro
V-P Regulatory Affairs
IDS Telcom, LLC.
Tel: (305) 612-4311
Fax: (305) 612-3027
aleiro@idstelcom.com

BellSouth Interconnection Services
675 West Peachtree Street
Room 34S91
Atlanta, Georgia 30375

Martha Romano
404.927.7507
FAX: 404 529-7839

Sent Via Electronic Mail

February 11, 2004

Mr. Angel Leiro
V-P Regulatory Affairs
IDS Telcom, L.L.C.
1525 N.W. 167th Street
Miami, Florida 33169

Dear Angel:

This is in response to your electronic mail message dated December 31, 2003 to request adoption of the Supra Telecommunications & Information Systems, Inc. (Supra) dispute resolutions provisions as amended by the Parties August 20, 2002 as well as Supra's deposit requirement provisions

BellSouth declines IDS Telcom's request to adopt Supra's dispute resolution provisions and deposit requirement provisions for the following reasons:

- Supra's dispute resolution provisions were adopted from AT&T Communications of the Southern States, Inc., Florida Agreement and a Party may not amend an agreement to incorporate provisions or terms, conditions and rates that have been adopted into another agreement.

- Adoptions pursuant to 47 USC § 252(i) are limited network elements, services, and interconnection rates terms and conditions and do not apply to other aspects of the Interconnection Agreement. 47 USC § 252(i) only requires an ILEC to make available "any interconnection, service or network element" under the same terms and conditions as the original Interconnection Agreement.

- Network elements are defined in 47 USC § 3 to mean a "facility or equipment used in the provision of a telecommunications service."

- Additionally, although the term "service" is not specifically defined in 47 USC various terms have "service" included within other terms. Each of these terms, such as telecommunication service and telephone exchange service, refer to offering telecommunications directly to the public, via some sort of telecommunications equipment. This term would also include resale, collocation, number portability, access to rights of way and other obligations set forth in 47 USC § 251, as well as other services BellSouth makes available under the interconnection agreement.

Should you have any questions, I may be reached at 404-927-7507.

Sincerely,
Martha Romano
Manager, Interconnection Services

EXHIBIT 10

February 16, 2004

Via E-Mail & Federal Express
Ms. Martha Romano
Manager, Interconnection Services
BellSouth Telecommunications, Inc.
675 West Peachtree Street
Room 34S91
Atlanta, GA 30375

Re: **Interconnection Adoption Amendments**

Dear Martha:

This letter is in response to your letter of February 11, 2004 in which you state that BellSouth declines IDS' request to adopt: (a) the dispute resolution provisions given to Supra Telecom in an Amendment; and (b) the deposit requirements provided to Supra Telecom. This letter is also a formal request by IDS to adopt those provisions of the Supra Telecom agreement relating to unbundled Tandem Switching (including any melded tandem switching).

With respect to the prior adoption requests, your first concern in your letter of February 11, 2004 is that IDS is seeking dispute resolution provisions that Supra adopted from an agreement between AT&T Communications of the Southern States, Inc. and BellSouth ("AT&T/BellSouth Agreement"). You state that BellSouth will not allow the adoption of language adopted by another CLEC. Just so that we are clear, please give IDS the same amendment provided to Supra; i.e. the language originally found in the AT&T /BellSouth Agreement. If you wish, IDS will draft this proposed Amendment.

Your second, third and fourth concerns involve the definition of "interconnection, services, or network elements" which may be adopted by a CLEC. These same terms are used in both Sections 252(a)(1) and 252(i). Section 252(a)(1) of the Telecom Act states in pertinent part as follows:

> **"Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier . . . The agreement . . . shall be submitted to the State commission . . ."**

EXHIBIT 11

Using similar language, Section 252(i) deals with adoptions and states in pertinent part as follows:

> **"A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier . . ."**

In The Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), FCC Order No. 02-276 (WC Docket No. 02-89), the FCC discussed the types of provisions and agreements which fall under the definition of **"interconnection, services or network elements"** which need to be filed with state commissions. In particular, the FCC stated that provisions relating to: **"business relationships and business-to-business administrative procedures (e.g. escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards),"** are agreements for **"interconnection, services, or network elements"** which must be filed with state commissions under Section 252(a)(1).

Given that Section 252(i) requires BellSouth to make available to IDS any **"interconnection, services or network elements"** made available to other CLECs, under FCC Order No. 02-276, IDS should be allowed to adopt any provision found in another CLEC interconnection agreement which deals with: **"business relationships and business-to-business administrative procedures (e.g. escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards)."**

It is my understanding that BellSouth allowed Supra Telecom to adopt the dispute resolution provisions of the AT&T/BellSouth Agreement, under the authority of FCC Order No. 02-276. IDS wants nondiscriminatory treatment, and in particular the same treatment which BellSouth gave Supra Telecom; i.e. the ability to adopt provisions dealing with: **"business relationships and business-to-business administrative"** as discussed in FCC Order No. 02-276.

The deposit provisions found in the Supra Telecom agreement clearly deal with **"business relationships and business-to-business administrative procedures."** Therefore under FCC Order No. 02-276, IDS should be allowed to adopt such provisions.

Given the fact that deposit requirements (just like dispute resolution provisions) can be cleanly separated from the other terms and conditions, we believe any Amendment regarding the deposit issue, need only deal with the deposit. Nevertheless, if you believe that other language must follow, then advise me of what additional language may be required in the Amendment and BellSouth's reasons for including any such additional language. If you wish, I would be happy to draft the proposed Amendment.

Finally, let this letter also serve as IDS' formal request to adopt the terms and rates for the Tandem Switching UNE, which is found in Sections 6.6 and 6.7 of Attachment 2 of the Supra Telecom agreement. These sections should replace Section 4.3 of Attachment 2 of IDS' current agreement. If you wish, I would be happy to propose a draft Amendment on this issue.

If you need a copy of any of the documents referenced above, or if you have any questions, please do not hesitate to contact me directly.

Thank you for your assistance in this regard.

Sincerely,

Angel Leiro
V-P Regulatory Affairs

Cc: File

From: Reinhold, Eric [Eric.Reinhold@BellSouth.com]
Sent: Monday, February 16, 2004 2:17 PM
To: Angel Leiro
Cc: Peed, Mary Jo
Subject: RE: BellSouth Deposit Request

Angel,

I disagree that the Interconnection Agreement contemplates a four-step process. The contract requires only the following: 1) BellSouth requests a deposit from IDS; 2) The parties work together to determine the amount of a reasonable deposit; 3) If the parties are unable to agree, either party may petition the Commission.

The contract requires BellSouth to apply all credit standards to IDS on a non-discriminatory basis and BellSouth has stated on two occasions that it has done so. The contract does not require BellSouth to prove that it is abiding by the terms of the contract prior to proceeding in working out the amount of a reasonable deposit. BellSouth has provided to you what it believes to be a reasonable deposit. IDS has not responded with a counter proposal and it appears from our correspondence that IDS does not intend to do so. Therefore, BellSouth may pursue the next step in the process as set forth in the agreement.

If you wish to engage in further discussions or wish to propose a alternative means of deposit, BellSouth will be happy to discuss an alternative. However, the correspondence between our two firms has been protracted so BellSouth requests the courtesy of a reply by Friday, February 20, 2004.

Regards,

Eric Reinhold
Credit Manager
404.986.1453

BellSouth Interconnection Services
675 W. Peachtree Street
Room 34S91
Atlanta, Georgia 30375

Martha Romano
404.927.7507
FAX: 404 529-7839

Sent Via Electronic Mail

March 11, 2004

Mr. Angel Leiro
V-P Regulatory Affairs
IDS Telcom, L.L.C.
1525 N.W. 167th Street
Miami, Florida 33169

Dear Angel:

This is in response to your letter dated February 16, 2004 regarding BellSouth's letter of February 11, 2004 responding to IDS Telecom, L.L.C.'s request to adopt the Supra Telecommunications & Information Systems, Inc. (Supra) dispute resolutions provisions as amended by the Parties August 20, 2002 as well as Supra's deposit requirement provisions

BellSouth's disagrees with IDS Telcom's interpretation of FCC Order No. 02-276, in The Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangement under Section 252(a)(1). In this Order the FCC addresses the responsibilities of an ILEC in filing an interconnection agreement and the content of said agreement with the appropriate Commission as:

> "an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocations is an interconnection agreement that must be filed pursuant to 252(a)(1)."

The Order did not address the requirements of an adoption pursuant to 252(i). Further, BellSouth has never claimed that it has allowed Supra or any other carrier to adopt any provision "under the authority of FCC Order No. 02-276," as your letter claims. Therefore, BellSouth again declines IDS Telcom's request to adopt Supra's dispute resolutions provision and deposit requirement provisions as indicated in BellSouth's letter to IDS Telcom dated February 11, 2004.

In addition, you have requested to adopt the Supra tandem switching language, including melded tandem switching rate language. As you well know, Supra's agreement does not include melded tandem switching rate language. IDS Telcom may only adopt that tandem switching language that replaces language in the IDS agreement. Thus, IDS Telcom would retain its melded tandem switching language in its current agreement. Further, BellSouth retains all rights regarding the D.C. Circuit Courts vacature of the TRO to the extent it addresses unbundled switching.

BellSouth shall make available to IDS Telcom as stated in 252(i) " the same terms and conditions as provided in the [Supra] agreement." Therefore, the absence of terms and conditions in an agreement are not available for adoption.

Should you have any questions, I may be reached at 404-927-7507.

Sincerely,
Martha Romano
Manager, Interconnection Services

EXHIBIT 13

From: Angel Leiro
Sent: Thursday, April 22, 2004 3:58 PM
To: 'Romano, Martha'
Subject: RE: Response to - Request for Amendment of ICA dated 2/5/03 btwn IDS and BellSouth

Martha:

As a follow-up and alternative to some of the prior IDS' adoption requests (as indicated below) that have been denied, and in an attempt to determine what BellSouth will allow IDS to adopt, please respond to the following inquiry. Will BellSouth allow IDS to adopt the entire billing section of the Supra Agreement? So that we are clear, I believe Attachment 6 of the Supra Agreement would replace Attachment 7 of the IDS Agreement. Please let me know BellSouth's position as soon as possible.

Thank you.

Regards,

Angel M. Leiro
V-P Regulatory Affairs
IDS Telcom, LLC.
Tel: (305) 612-4311
Fax: (305) 612-3027
aleiro@idstelcom.com

EXHIBIT 14

BellSouth Interconnection Services
675 W. Peachtree Strect
Room 34S91
Atlanta, Georgia 30375

Martha Romano
404.927.7507
FAX: 404 529-7839

Sent Via Electronic Mail

May 10, 2004

Mr. Angel Leiro
V-P Regulatory Affairs
IDS Telcom, L.L.C.
1525 N.W. 167th Street
Miami, Florida 33169

Dear Angel:

This is in response to your electronic mail dated April 22, 2004 regarding IDS Telecom's request to adopt Attachment 6 - Billing of the Supra Telecommunications & Information Systems, Inc. (Supra) Interconnection Agreement.

As indicated in previous correspondence, Section 252(i) of the Act permits CLECs to adopt "any interconnection, service, or network element" provided pursuant to a filed an approved agreement. Attachment 6 of the Supra agreement sets forth how billing processes will work. Attachment 6 does not contain any terms and conditions specific to the provision of "any interconnection, service, or network element." Thus, Attachment 6 (a billing attachment) is not available for adoption pursuant to the Act.

I trust this information satisfies your concerns regarding this matter, Should you have any questions, I may be reaced at 404-927-7507.

Sincerely,

Martha Romano
Manager, Interconnection Services

EXHIBIT 15

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Qwest Communications International Inc.	)	
Petition for Declaratory Ruling on the Scope	)	WC Docket No. 02-89
of the Duty to File and Obtain Prior Approval	)	
of Negotiated Contractual Arrangements	)	
under Section 252(a)(1)	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 2, 2002 **Released:** October 4, 2002

By the Commission:

I. INTRODUCTION

1. On April 23, 2002, Qwest Communications International Inc. (Qwest) filed a petition for a declaratory ruling on the scope of the mandatory filing requirement set forth in section 252(a)(1) of the Communications Act of 1934, as amended (the Act).[1] Specifically, Qwest seeks guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of this section.[2] For the reasons explained below, we grant in part and deny in part Qwest's petition.

---

[1] 47 U.S.C. § 252(a)(1). *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89 (filed April 23, 2002) (Qwest Petition).

[2] Qwest Petition at 3. The Commission requested and received comments on the Qwest Petition. *See* Pleading Cycle Established for Comments on Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1), WC Docket No. 02-89, *Public Notice*, DA 02-976 (rel. April 29, 2002). The following parties submitted comments: AT&T Corp. (AT&T); Office of the Attorney General of the State of New Mexico and the Iowa Office of Consumer Advocate; Focal Communications Corporation and Pac-West Telecomm, Inc.; Iowa Utilities Board; Minnesota Department of Commerce; Mpower Communications Corp. (Mpower); New Edge Network, Inc.; PageData; Sprint Corporation (Sprint); Touch America, Inc. (Touch America); and WorldCom, Inc. (WorldCom). The following parties filed reply comments: Association of Communications Enterprises; Association for Local Telecommunications Services (ALTS); PageData; Qwest; Sprint; Verizon; VoiceStream Wireless Corporation; and WorldCom.

II. BACKGROUND

2. Section 252(a)(1) of the Act states:

> Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement . . . shall be submitted to the State commission under subsection (e) of this section.[3]

Qwest argues that this section can most logically be read to mean that the mandatory filing and state commission approval process should apply only to the "rates and associated service descriptions for interconnection, services and network elements."[4] More precisely, Qwest contends that a negotiated agreement should be filed for state commission approval if it includes: (i) a description of the service or network element being offered; (ii) the various options available to the requesting carrier (*e.g.*, loop capacities) and any binding contractual commitments regarding the quality or performance of the service or network element; and (iii) the rate structures and rate levels associated with each such option (*e.g.*, recurring and non-recurring charges, volume or term commitments).[5]

3. According to Qwest, the following categories of incumbent LEC-competitive LEC arrangements should not be subject to section 252(a)(1): (i) agreements defining business relationships and business-to-business administrative procedures (*e.g.*, escalation clauses, dispute resolution provisions, arrangements regarding the mechanics of provisioning and billing, arrangements for contacts between the parties, and non-binding service quality or performance standards);[6] (ii) settlement agreements;[7] and (iii) agreements regarding matters not subject to sections 251 or 252 (*e.g.*, interstate access services, local retail services, intrastate long distance, and network elements that have been removed from the national list of elements subject to

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[3] 47 U.S.C. § 252(a)(1).

[4] Qwest Petition at 10. Qwest contends that its interpretation of section 252(a)(1) is supported by the legislative history of the Telecommunications Act of 1996. *Id.* at 13-14.

[5] Qwest Petition at 29. Qwest also indicates that a description of basic operations support systems functionalities and options to which the parties have agreed should be filed and subjected to state commission approval. *Id.* at 29-30.

[6] Qwest Petition at 31-34.

[7] Qwest Petition at 34-36.

mandatory unbundling).[8]

4. Qwest states that a Commission ruling on this issue will eliminate the prospect of multiple, inconsistent rulings by state commissions and federal courts.[9] Qwest argues that a national policy concerning what must be filed under section 252(a)(1) is necessary to promote local competition, facilitate multi-state negotiations,[10] and prevent overbroad interpretations of this filing requirement.[11] According to Qwest, an overbroad interpretation would reduce the incentives of incumbents and competitive LECs to implement bilateral arrangements that could benefit both parties. For example, Qwest states that the public disclosure of contractual provisions such as settlements of past disputes might discourage the parties from entering into such arrangements.[12] Qwest also contends that an overbroad reading of section 252(a)(1) creates legal uncertainty with respect to the validity of agreements that have not gone through the prior state commission approval process.[13]

5. Most commenters oppose Qwest's petition,[14] arguing that it is unnecessary and that Qwest's proposal interprets too narrowly which agreements must be filed under section 252(a)(1).[15] For example, several commenters argue that service quality and performance standards relate to interconnection and are therefore appropriately included in interconnection agreements.[16] Commenters also contend that competitive LECs need dispute resolution, billing and provisioning provisions in their interconnection agreements.[17] The commenters also disagree with Qwest's view that only certain portions of agreements (related to section 251(b) or (c)) need to be filed for state commission approval and argue instead that the entire agreement

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8 Qwest Petition at 36-37.

9 Qwest Petition at 5.

10 Qwest Petition at 27.

11 Qwest Petition at 22.

12 Qwest Petition at 22.

13 Qwest Petition at 17-18, 23.

14 We note that Verizon filed comments to respond to, in its view, inaccurate statements made by certain commenters. *See* Verizon Reply at 1, 2-3.

15 *See, e.g.*, AT&T Comments at 16-18; Minnesota Department of Commerce Comments at 32-34; WorldCom Comments at 7; ALTS Reply at 4.

16 WorldCom Comments at 7; ALTS Reply at 4.

17 WorldCom Comments at 7; ALTS Reply at 4. Verizon, however, argues that agreements for unregulated services such as billing and collection are not interconnection agreements that must be filed under section 252. Verizon Reply at 2.

must be filed for state commission review and approval.[18]

6. The commenters dispute Qwest's assertions concerning the burden of "overfiling" agreements for state commission approval[19] and disagree with Qwest's interpretation of the legal status of agreements not filed under section 252 or not yet approved by state commissions under the same section.[20] Specifically, these commenters contend that nothing in section 252, or any other provision of the Act, provides that the parties are prohibited from abiding by the agreement's terms until a state commission completes its review of the negotiated agreement.[21] Moreover, according to AT&T, not only does the 90-day approval process not present any legal impediment to parties that would like to begin operating under the terms of a negotiated agreement prior to state commission approval, there is no practical impediment (*e.g.*, compliance jeopardy) because interconnection agreements are rarely rejected.[22]

III. DISCUSSION

7. We grant in part and deny in part Qwest's petition for a declaratory ruling. In issuing this decision, however, we believe that the state commissions should be responsible for applying, in the first instance, the statutory interpretation we set forth today to the terms and conditions of specific agreements. Indeed, we believe this is consistent with the structure of section 252, which vests in the states the authority to conduct fact-intensive determinations relating to interconnection agreements.[23]

8. We begin our analysis with the statutory language. Section 252(a)(1) provides that the binding agreement between the incumbent LEC and the requesting competitive LEC must include a "detailed schedule of itemized charges for interconnection and each service or network element included in the agreement."[24] In addition, section 251(c)(1) requires incumbent LECs to negotiate in good faith, in accordance with section 252, the particular terms and conditions of agreements to implement their duties set forth in sections 251(b) and (c).[25] Based on these

[18] AT&T Comments at 4, 6-9; Mpower Comments at 7; Sprint Comments at 3; WorldCom Comments at 6; ALTS Reply at 2.

[19] *See, e.g.*, AT&T Comments at 13; Sprint Comments at 3.

[20] AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

[21] AT&T Comments at 12; Minnesota Department of Commerce Comments at 38.

[22] AT&T Comments at 12-13, citing Qwest Petition at 9.

[23] As an example of the substantial implementation role given to the states, throughout the arbitration provisions of section 252, Congress committed to the states the fact-intensive determinations that are necessary to implement contested interconnection agreements. *See, e.g.*, 47 U.S.C. § 252(e)(5) (directing the Commission to preempt a state commission's jurisdiction only if that state commission fails to act to carry out its responsibility under section 252).

[24] 47 U.S.C. § 252(a)(1).

[25] 47 U.S.C. § 251(c)(1).

statutory provisions, we find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).[26] This interpretation, which directly flows from the language of the Act, is consistent with the pro-competitive, deregulatory framework set forth in the Act. This standard recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs. We therefore disagree with Qwest that the content of interconnection agreements should be limited to the schedule of itemized charges and associated descriptions of the services to which the charges apply. Considering the many and complicated terms of interconnection typically established between an incumbent and competitive LEC, we do not believe that section 252(a)(1) can be given the cramped reading that Qwest proposes. Indeed, on its face, section 252(a)(1) does not further limit the types of agreements that carriers must submit to state commissions.

9. We are not persuaded by Qwest that dispute resolution and escalation provisions are *per se* outside the scope of section 252(a)(1).[27] Unless this information is generally available to carriers (*e.g.*, made available on an incumbent LEC's wholesale web site), we find that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements. The purpose of such clauses is to quickly and effectively resolve disputes regarding section 251(b) and (c) obligations. The means of doing so must be offered and provided on a nondiscriminatory basis if Congress' requirement that incumbent LECs behave in a nondiscriminatory manner is to have any meaning.[28]

10. Based on their statutory role provided by Congress and their experience to date, state commissions are well positioned to decide on a case-by-case basis whether a particular agreement is required to be filed as an "interconnection agreement" and, if so, whether it should be approved or rejected. Should competition-affecting inconsistencies in state decisions arise, those could be brought to our attention through, for example, petitions for declaratory ruling. The statute expressly contemplates that the section 252 filing process will occur with the states,

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[26] We therefore disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier. *See* Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead, we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1). Similarly, we decline Touch America's suggestion to require Qwest to file with us, under section 211, all agreements with competitive LECs entered into as "settlements of disputes" and publish those terms as "generally available" terms for all competitive LECs. Touch America Comments at 10, citing 47 U.S.C. § 211.

[27] Qwest Petition at 31-33.

[28] We note that Qwest has filed for state commission approval agreements containing both dispute resolution provisions and escalation clauses. *See, e.g.,* Qwest Supplemental Reply, WC Docket No. 02-148, at 26-27 (filed Aug. 30, 2002). We incorporate by reference this document into the record in the instant proceeding.

and we are reluctant to interfere with their processes in this area. Therefore, we decline to establish an exhaustive, all-encompassing "interconnection agreement" standard. The guidance we articulate today flows directly from the statute and serves to define the basic class of agreements that should be filed. We encourage state commissions to take action to provide further clarity to incumbent LECs and requesting carriers concerning which agreements should be filed for their approval. At the same time, nothing in this declaratory ruling precludes state enforcement action relating to these issues.[29]

11. Consistent with our view that the states should determine in the first instance which sorts of agreements fall within the scope of the statutory standard, we decline to address all the possible hypothetical situations presented in the record before us. We are aware, however, of some disagreement concerning interconnection agreement issues raised recently in another proceeding previously before the Commission.[30] Consequently, we determine that additional, specific guidance on these issues would be helpful.

12. The first matter concerns which settlement agreements, if any, must be filed under section 252(a)(1). We disagree with the blanket statement made by Qwest in its petition that "[s]ettlement agreements that resolve disputes between ILECs and CLECs over billing or other matters are not interconnection agreements under Section 252."[31] Instead, and consistent with the guidance provided above, we find that a settlement agreement that contains an ongoing obligation relating to section 251(b) or (c) must be filed under section 252(a)(1). Merely inserting the term "settlement agreement" in a document does not excuse carriers of their filing obligation under section 252(a) or prevent a state commission from approving or rejecting the agreement as an interconnection agreement under section 252(e). However, we also agree with Qwest that those settlement agreements that simply provide for "backward-looking consideration" (*e.g.*, the settlement of a dispute in consideration for a cash payment or the cancellation of an unpaid bill) need not be filed.[32] That is, settlement contracts that do not affect

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[29] This statement also applies to any state enforcement action involving previously unfiled interconnection agreements including those that are no longer in effect.

[30] *Application by Qwest Communications International Inc., Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC 02-148 (filed June 13, 2002). *See also* Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed Sept. 10, 2002) (withdrawing Qwest's joint applications filed in both dockets); *Application by Qwest Communications International Inc., Consolidated Application for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska and North Dakota*, WC Docket No. 02-148, *Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington and Wyoming*, WC Docket No. 02-189, Order, DA 02-2230 (rel. Sept. 10, 2002) (terminating both Qwest section 271 dockets).

[31] Qwest Petition at 34.

[32] Qwest Reply at 25-26. *See also* Minnesota Department of Commerce Comments at 6-7 (stating that it did not include in its complaint against Qwest filed with the Minnesota Public Utilities Commission "settlement agreements of what appear to be legitimate billing disputes").

an incumbent LEC's ongoing obligations relating to section 251 need not be filed.

13. Qwest has also argued, in another proceeding, that order and contract forms used by competitive LECs to request service do not need to be filed for state commission approval because such forms only memorialize the order of a specific service, the terms and conditions of which are set forth in a filed interconnection agreement.[33] We agree with Qwest that forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement do not constitute either an amendment to that interconnection agreement or a new interconnection agreement that must be filed under section 252(a)(1).

14. Further, we agree with Qwest that agreements with bankrupt competitors that are entered into at the direction of a bankruptcy court or trustee and do not otherwise change the terms and conditions of the underlying interconnection agreement are not interconnection agreements or amendments to interconnection agreements that must be filed under section 252(a)(1) for state commission approval.[34] We are unaware of any carrier submitting such agreements for state commission approval under section 252. Directing carriers to do so has the potential to raise difficult jurisdictional issues between the bankruptcy court and regulators and could entangle carriers in inconsistent and, possibly, conflicting requirements imposed by state commissions, bankruptcy courts, and this Commission.

IV. ORDERING CLAUSE

15. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251, 252 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251, 252, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Qwest's Petition for Declaratory Ruling IS GRANTED IN PART and IS DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[33] Letter from Peter A. Rohrbach, Counsel for Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189, at 2-3 (filed Sept. 5, 2002). We incorporate by reference this letter into the record in the instant proceeding. *See also* Minnesota Department of Commerce Comments at 7 (stating that it also did not include in its complaint "day-to-day operational agreements that implement specific provisions of interconnection agreements" such as collocation agreements and applications for access to poles, ducts, conduits, and rights of way).

[34] Qwest Supplemental Reply, WC Docket No. 02-148, at 19-20 n.29 (filed Aug. 30, 2002).

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 23, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (TEITZMAN) MKT BLC
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (SIMMONS) SAS

RE: DOCKET NO. 021069-TP - REQUEST FOR APPROVAL OF ADOPTION OF LANGUAGE IN EXISTING INTERCONNECTION AGREEMENT BETWEEN NUVOX COMMUNICATIONS, INC. (F/K/A TRIVERGENT COMMUNICATIONS, INC.) AND BELLSOUTH TELECOMMUNICATIONS, INC., TO SERVE AS AMENDMENT TO EXISTING INTERCONNECTION AGREEMENT BETWEEN SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AND BELLSOUTH.

AGENDA: 02/04/03 - REGULAR AGENDA - FINAL AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021069.RCM

CASE BACKGROUND

On October 22, 2002, Supra Telecommunications & Information Systems, Inc. (Supra) filed a request for approval of an Adoption of Language to Serve as Amendment to its interconnection agreement[1] (existing agreement) with BellSouth Telecommunications, Inc. (BellSouth) pursuant to Sections 252(i) and 252(e)(1) of the Telecommunications Act of 1996 (Act). Specifically, Supra requested Commission approval to adopt Section 15 of Attachment 6 of the BellSouth and NuVox Communications, Inc. (f/k/a Trivergent

[1]The parties' existing agreement was approved by this Commission by Order No. PSC-02-1140-FOF-TP, issued August 22, 2002, in Docket 001305-TP.

EXHIBIT 17

Communications Inc.) (NuVox) interconnection agreement for the State of Florida, dated June 30, 2000. Section 15 covers billing dispute resolution and is attached to this recommendation.

On October 25, 2002, BellSouth filed a letter opposing Supra's request for approval of the adoption. Although adoptions of agreements under Section 252(i) are usually handled administratively, staff brings this matter to the Commission's attention to resolve BellSouth's opposition.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve Supra Telecommunications and Information Systems, Inc.'s request to adopt Section 15 of Attachment 6 of the interconnection agreement entered into by BellSouth Telecommunications, Inc. and NuVox Communications, Inc. (f/k/a Trivergent Communications Inc.)? **(TEITZMAN)**

RECOMMENDATION: Yes. Consistent with Sections 252(e)(1) and 252(i) of the Telecommunications Act of 1996, the Commission should approve Supra's request to adopt Section 15 of Attachment 6 of the interconnection agreement entered into by BellSouth and NuVox.

STAFF ANALYSIS: BellSouth asserts three objections in its letter of opposition to Supra's request for approval. First, BellSouth states it has not agreed to execute the adoption agreement. BellSouth asserts Supra has attempted to unilaterally amend the interconnection agreement by "forging" BellSouth's signature in violation of Sections 24.7.1 and 5.2 of the interconnection agreement, and therefore, the proposed agreement has no force and effect. Second, BellSouth states pursuant to Section 5.2 of the General Terms and Conditions of the parties' interconnection agreement and Section 252(i) of the Act, BellSouth is under no obligation to make available for adoption the identified billing dispute resolution language. Third, BellSouth states that Supra's request is an attempt to "use this inapplicable contract language in order to continue its pattern of nonpayment" and to "circumvent

the Commission's decision in the Final Order" in Docket 001305-TP which set forth the requirements for resolving billing disputes. BellSouth states further that such piecemeal adoption strategy is not authorized by the Act, and is contrary to the public interest.

Section 24.7.1 of the parties' existing agreement covers "Amendments or Waivers" and provides the following:

> Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. By entering into this Agreement, neither Party waives any rights granted to them pursuant to the Act.

Pursuant to the parties' existing agreement, no amendment is effective unless signed by an officer of the party against whom such amendment is claimed. However, this same provision provides that neither party waives any rights granted to them pursuant to the Act.

Section 252(i) of the Act states:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Pursuant to this section, BellSouth is required to make available to Supra the same terms and conditions set forth in its interconnection agreement with NuVox. Furthermore, staff believes pursuant to Section 24.7.1 of the parties' existing agreement, BellSouth's refusal to sign Supra's proposed amendment does not

strip Supra of its right to seek adoption of the Nuvox/BellSouth language under the Act.

Section 5.2 of the parties' existing agreement requires that in the event of a dispute regarding a requested adoption, the parties shall follow the dispute resolution process set forth in Section 16.1 of the existing agreement. Section 16.1 of the existing agreement states that the appropriate forum for resolution of disputes arising out of the agreement is this Commission.

Staff notes Supra's signing of the proposed adoption agreement on behalf of BellSouth was unnecessary; however, Supra did note on the proposed agreement that the signature was on behalf of BellSouth and not actually provided by BellSouth. Accordingly, staff does not believe Supra's actions rise to the level of forgery, and further, should be considered a non-issue by the Commission in resolving this dispute.

BellSouth's primary objection to Supra's proposed amendment is that the billing dispute resolution language Supra seeks to adopt does not come under the umbrella of "any interconnection, service, or network element" a local exchange carrier is required to make available under Section 252(i) of the Act. Accordingly, BellSouth contends it is not required to make available this specific portion of the NuVox agreement.

In FCC 02-276[2], the Federal Communications Commission found that "agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in Sections 251(b) and (c) of the Act are appropriately deemed interconnection agreements." Sections 251(b) and (c) provide the obligations of LECs and competitive LECs under the Act. Accordingly, staff believes this finding by the FCC provides significant guidance in interpreting the requirements set forth in Section 252(i) of the Act.

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[2]In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the duty to File and Obtain Prior Approval of Negotiated Contractual Arrangement under Section 252(a)(1)., WC Docket No. 02-89, Memorandum and Order, FCC 02-276 (rel. October 4, 2002)(Qwest sought guidance about the types of negotiated contractual arrangements between incumbent local exchange carriers (LECs) and competitive LECs that should be subject to the filing requirements of §252(a)(1) of the Act.)

Pursuant to the FCC's findings in FCC 02-276, staff believes the language of Section 252(i) which requires a local exchange carrier to make available "any interconnection, service, or network element" would include the billing dispute resolution language Supra seeks to adopt in this docket. Furthermore, staff notes that there is no limiting or prohibitory language regarding "piecemeal" adoption of approved agreement provisions in the Act.[3] Accordingly, staff believes the Commission should approve Supra's request to adopt Section 15 of Attachment 6 of the BellSouth and NuVox interconnection agreement. Upon approval, Section 15 shall serve as an amendment to the parties' existing agreement with BellSouth.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. Whether the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed. (**TEITZMAN**)

STAFF ANALYSIS: Yes. Whether the Commission approves or denies staff's recommendation in Issue 1, this docket should be closed.

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[3] See also 47 C.F.R. §51.809(a) requiring provision of any approved individual interconnection, service or network element arrangement contained in any approved agreement to any requesting carrier. Often referred to as the "pick and choose" rule. (emphasis added)

ADOPTION AGREEMENT BETWEEN SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC.

This Adoption Agreement ("Adoption Agreement"), which became effective, pursuant to Section 5 of the General Terms and Conditions of the Supra/BellSouth interconnection agreement ("Interconnection Agreement"), as of October 11, 2002 (the "Effective Date"), is entered into by and between Supra Telecommunications and Information Systems, Inc. ("Supra"), a Florida corporation, having an office at 2620 SW 27th Avenue, Miami, Florida 33133, on behalf of itself and its successors and assigns, and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, having an office at 675 Peachtree Street, Atlanta, Georgia 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "1996 Act") was signed into law on February 8, 1996; and

WHEREAS, Section 252(i) of the 1996 Act requires that a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this Section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement; and

WHEREAS, Section 51.809 of Title 47 of the Code of Federal Regulations sets forth the Federal Communications Commission's ("FCC") rule governing the availability of provisions of agreements to other telecommunications carriers under Section 252(i) of the 1996 Act; and

WHEREAS, the U.S. Supreme Court, in *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 395 (1999), upheld the validity of the FCC's requirement that an incumbent LEC can require a requesting carrier to accept all terms that it can prove are "legitimately related" to the desired term; and

WHEREAS, Supra has requested, pursuant to Section 252(i) of the 1996 Act and Section 51.809 of Title 47 of the Code of Federal Regulations, that BellSouth make available certain provisions, as identified herein, from approved agreements;

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Adoption Agreement, Supra and BellSouth hereby agree as follows:

1. The term of this Adoption Agreement shall be from the Effective Date as set forth herein and shall expire as set forth in the General Terms and Conditions of the Interconnection Agreement as approved pursuant to 252(e) of the 1996 Act.

2. Supra and BellSouth shall strike Section 15 of Attachment 6 of the Interconnection Agreement in its entirety and replace it with the following language:

15. Billing Disputes

15.1 Each Party agrees to notify the other Party upon the discovery of a billing dispute. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) calendar days of the Bill Date on which such disputed charges appear, provided however that failure to raise a billing dispute within 60 days of the bill date shall not operate to waive such dispute. Resolution of the dispute is expected to occur at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the issues are not resolved within the allotted time frame, the following resolution procedure will begin:

15.1.2 If the dispute is not resolved within sixty (60) days of the Bill Date, the dispute will be escalated to the second level of management for each of the respective Parties for resolution.

15.1.3 If the dispute is not resolved within ninety (90) days of the Bill Date, the dispute will be escalated to the third level of management for each of the respective Parties for resolution.

15.1.4 If the dispute is not resolved within one hundred and twenty (120) days of the Bill Date, or within such other time as the parties may agree, either Party may file a complaint with the Commission or with a court of competent jurisdiction. The parties will comply with decisions of the court of Commission, subject to the appropriate rights to appeal.

15.2 If a Party disputes a charge and does not pay such charge by the payment due date, such charges shall be subject to late payment charges as set forth in the Late Payment Charges provision of this Attachment. If a Party disputes a charge and does pay such charge by the payment due date, that Party will be entitled to a credit with interest if the dispute is resolved in favor of that Party. If a Party disputes charges and the dispute is resolved in favor of such Party, the other Party shall credit the bill of the disputing Party for the amount of the disputed charges along with any late payment charges assessed no later than the second Bill Date after the resolution of the dispute. Accordingly, if a Party disputes charges and the dispute is resolved in favor of the other Party, the disputing Party shall pay the other Party the amount of the disputed charges and any associated late payment charges assessed no later than the second bill payment due date after the resolution of the dispute. BellSouth shall only assess interest on previously assessed late payment charges in a state where it has authority pursuant to its tariffs.

IN WITNESS WHEREOF, the Parties hereto have caused this Adoption Agreement to be executed by their respective duly authorized representatives on the date indicated below.

ATTACHMENT

Supra Telecommunications and Information Systems, Inc.	BellSouth Telecommunications, Inc.
By: [signature]	By: Greg Follensbee * (By Supra Telecom)
Name: DAVID A. NILSON	Name:
Title: VP-TECHNOLOGY	Title: Senior Director Interconnection Services
Date: 10/21/2002	Date: 10/21/2002

* This adoption is being executed by Supra Telecom on behalf of BellSouth Telecommunications, Inc. under the authority of Section 5.2 of the General Terms & Conditions. In particular BellSouth has failed to respond within 30 days of the initial request or otherwise object to the amendment

IDS TELCOM **Headquarters** 1525 N.W. 167th Street, Suite 200, Miami, Florida 33169 U.S.A.
T+ 305 913 4000 F+ 305 612 3025 **TOLL FREE**+ 800 335 4437

June 25, 2004

Via E-Mail
Ms. Blanca S. Bayo
Director
Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: **NEW DOCKET** - Approval of Amendment to the Interconnection, Unbundling, Resale, and Collocation Agreement between IDS Telcom, LLC and BellSouth Telecommunications, Inc.

Dear Ms. Bayo:

Please find enclosed for filing and approval, an Amendment to the Agreement Between IDS Telcom, LLC and BellSouth Telecommunications, Inc., Dated February 5, 2003.

If you have any questions, please do not hesitate to call me at (305) 612-4311.

Sincerely,

Angel Leiro
V-P Regulatory Affairs

Cc: BellSouth Telecommunications, Inc.

EXHIBIT 18

Amendment to the Agreement
Between
IDS Telcom, LLC and
BellSouth Telecommunications, Inc.
Dated February 5, 2003

PURSUANT to this Amendment, (the "Amendment"), IDS Telcom, LLC ("IDS Telcom"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," hereby agree to amend that certain Interconnection Agreement between the Parties dated February 5, 2003 ("Agreement").

WHEREAS, BellSouth and IDS Telcom entered into the Agreement on February 5, 2003; and

WHEREAS, Paragraph 13 of the General Terms and Conditions of the Agreement states in pertinent part that: "BellSouth shall make available, pursuant to 47 USC Section 252 and the FCC rules and regulations regarding such availability, to IDS Telcom any interconnection, service, or network element provided under any other agreement filed and approved pursuant to 47 USC Section 252."

WHEREAS, BellSouth has entered into an interconnection agreement for the State of Florida with Supra Telecommunications and Information Systems, Inc., that has an effective date of July 15, 2002 with a term of three (3) years, and that has been filed with and approved by the Florida Public Service Commission pursuant to 47 USC Section 252 ("BellSouth/Supra Agreement"). The BellSouth/Supra Agreement expires on or about July 14, 2005.

WHEREAS, for the State of Florida, IDS seeks to adopt the deposit provisions/requirements of the BellSouth/Supra Agreement; and

NOW THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby covenant and agree as follows:

1. For the State of Florida, and until July 14, 2005, the Parties agree to delete the following portions of the Agreement: (a) Section 2.3 of Attachment 1; (b) Section 1.8 of Attachment 7; and (c) the words "security deposits," found in the first sentence of Section 1.9 of Attachment 7.

2. The above deleted provisions of the Agreement for the State of Florida, shall be reinstated on July 15, 2005.

3. This Amendment only applies to the State of Florida, and only through July 14, 2005.

4. All other provisions of the Agreement (together with amendments previously approved), dated February 5, 2003, shall remain in full force and effect.

5. Either or both the Parties are authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

BellSouth Telecommunications, Inc.	**IDS Telcom, L.L.C.**
By: /s/ **	By:
Name: Elizabeth R. A. Shiroishi	Name: Angel Leiro
Title: Director	Title: V-P Regulatory Affairs
Date: 6/25/04	Date: 6/25/04

** Signed by IDS Telcom, LLC on behalf of BellSouth Telecommunications, Inc. in accordance with the Agreement and 47 USC Section 252.

BEFORE THE
GEORGIA PUBLIC SERVICE COMMISSION

In re:	)	
	)	
Rejection of Interconnection Agreement	)	
Between BellSouth Telecommunications, Inc.,	)	Docket No.: 16197
and Supra Telecommunications and Information	)	
Systems, Inc.	)	Filed: December 4, 2002
	)	
	)	

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC.'S MOTION TO DISMISS AND MOTION TO STRIKE BELLSOUTH'S MOTION TO REJECT INTERCONNECTION AGREEMENT OR IN THE ALTERNATIVE A RESPONSE TO BELLSOUTH'S MOTION TO REJECT INTERCONNECTION AGREEMENT

SUPRA TELECOMMUNICATIONS & INFORMATION SYSTEMS, INC. ("Supra"), by and through its undersigned counsel, hereby respectfully files this MOTION TO DISMISS BellSouth Telecommunications, Inc.'s ("BellSouth") Motion to Reject Interconnection Agreement ("Motion") because it fails to state a cause of action upon which relief can be granted; and respectfully files this MOTION TO STRIKE BellSouth's Motion, in its entirety, which relies upon immaterial, impertinent and scandalous matters that have no relevance to any legitimate legal objections available to BellSouth; or IN THE ALTERNATIVE Supra respectfully files a RESPONSE TO BELLSOUTH'S Motion, in the above referenced matter and states the following in support thereof:

Supra's MOTION TO DISMISS must granted as BellSouth is obligated pursuant to 47 USC § 252(i) to make the BellSouth Telecommunications, Inc./MCImetro Access Transmission

Most importantly is the Tribunal's explanation that it did not make its finding of "tortious interference" lightly. The Tribunal found that BellSouth routinely abused its market position in the State of Florida. As has been noted earlier herein, an abuse of market position in Georgia is also a violation of the law. *See* O.C.G.A. § 46-5-163(d) (making it unlawful for a telecommunications carrier to engage in unfair competition or abuse its market position). Unfortunately, because of BellSouth's repeated willful and intentional refusal to comply with the parties' interconnection agreement, Supra has been forced to seek relief from the Tribunal for virtually every item BellSouth promised to provide under the agreement: whether it be branding, UNE combos, meet-point billing, collocation, and most importantly providing a true and accurate bill.

Monthly wholesale bill averages 600,000 pages

One of the most effective tools in BellSouth's arsenal to impede competition is its wholesale bill. The average monthly wholesale bill for Supra is composed of approximately 600,000 pages.[24] BellSouth expects payments on these bills usually within 30 days of being rendered.

Throughout the time that Supra has obtained wholesale services from BellSouth, Supra has been plagued by BellSouth's repeated and systematic billing errors that erroneously and materially inflate the amount of BellSouth's bills to Supra. These billing errors have included, but are not limited to, incorrect rates for unbundled network elements, usage and facilities, inapplicable taxes, double billing, as well as, bills for services that have been disconnected or never received. BellSouth has a contractual obligation to provide Supra with a true and accurate bill, yet there is apparently no significant incentive for BellSouth to do so. These pervasive problems have made it impossible for Supra to rely upon BellSouth's invoices.

[24] BellSouth testimony before Federal Bankruptcy Judge Robert Mark, October 31, 2002.

As of this writing, Supra is paying all of its BellSouth invoices that are rendered in compliance with the Federal Court's ruling on a going forward basis and is once again submitting new orders. Supra believes that this entire episode is not a relevant consideration for the GPSC in determining whether Supra, or any CLEC, should be entitled to exercise its rights under § 252(i). In the event, however, that this Commission does believe that this is a relevant consideration, Supra submits that even if the facts as alleged by BellSouth were true, they fail to state a cause of action upon which the requested relief can be granted because all of the extra-record matters BellSouth relies upon have no legal relevance to any legitimate legal objections available to BellSouth under § 252(i). More importantly, Supra submits that the evidence demonstrates that it is BellSouth that has been shown to have repeatedly breached the parties' interconnection agreements, as well as Federal Law, with the "intent to harm Supra." Accordingly, BellSouth should be the party that is penalized and not Supra.

Final consideration

BellSouth has told Supra that even if it receives approval of this present adoption request, BellSouth will refuse to process any order until and unless Supra provides a security deposit in the amount of $38,600,000.00. BellSouth claims this amount equals two months of average billing in the State of Florida (e.g. $19.3 million). As has been demonstrated herein, the monthly billing based on 308,964 access lines in Florida is $7.5 million.

Pursuant to the MCI Agreement (Section 1.7.4) BellSouth is entitled to a security deposit under certain circumstances; however, any such deposit shall not exceed the **actual or estimated** charges for services for a two (2) month period in the State of Georgia. As BellSouth has requested a deposit prior to Supra's ability to provide services in the State of Georgia, the deposit **must** be limited to "**estimated**" charges.

It is fair to suggest that BellSouth's 11th hour demand for a $38 million dollar security deposit is just another attempt to prolong, if not halt, Supra's entry into the Georgia market. It could, and should, be characterized as anti-competitive conduct. The GPSC and all CLECs should expect an incumbent to exercise its market power fairly and not abuse its position. This demand, under any standards, is an abuse of BellSouth's market position.

Supra will spend the first three to four months engaged in testing activities necessary to identify the areas of Georgia in which Supra will market its services as well as in implementing various types of test orders to ensure that BellSouth's CLEC OSS will run smoothly. If BellSouth wishes to request a deposit based upon those customers, then, and only then, would such be appropriate. If BellSouth insists on demanding a deposit *prior* to placing orders, Supra submits that such should be based on the few customers Supra expects to serve.

If BellSouth insists on extracting such a large deposit before accepting any orders, the GPSC can expect Supra to file an emergency petition seeking relief before this Commission.

C. **Conclusion.**

The documents submitted within Supra's December 1998 filing were not fraudulent. With respect to the other reasons BellSouth asserts to substantiate the claim that Supra is full of "bad people," Supra submits that it has demonstrated that employment related litigation, much less any other, that contain unproven allegations should never be considered an appropriate yard stick in examining whether an interconnection agreement should be approved or rejected.

Supra has at all times acted consistently with its rights under its interconnection agreement. BellSouth, on the other hand, has been found to have repeatedly breached the parties' interconnection agreement with the "intent to harm Supra." Moreover, BellSouth has been found

January 23, 2003

DELIVERED BY HAND

Mr. Reece McAlister
Executive Secretary
Georgia Public Service Commission
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

Re: *In Re: Interconnection Agreement between BellSouth Telecommunications, Inc. and Supra Telecommunications and Information Systems, Inc.*; Docket No. 16197-U

Dear Mr. McAlister:

Supra Telecom ("Supra") filed a letter with the Georgia Public Service Commission ("Commission") dated January 3, 2003, in which Supra claims that it should not be required to provide a deposit to BellSouth Telecommunications, Inc. ("BellSouth") before offering local exchange service in Georgia. Although the deposit issue is not presently before the Commission, BellSouth respectfully submits this response to make the Commission aware of several developments related to this issue that have occurred since the filing of Supra's letter and to correct various statements in Supra's letter that BellSouth does not believe are accurate.

Section 1.7.4 of Attachment 8 of the Interconnection Agreement ("Agreement") between BellSouth and Supra, which the Commission approved on January 7, 2003, provides that "BellSouth, to safeguard its interests, may require a security deposit prior to or any time after the provision of a Service to be held as a guarantee of the payment of rates and charges …." The Agreement specifies that the amount of such deposit "shall not exceed the actual or estimated rates and charges the Services for a two (2) month period." Prior to approval of the Agreement, Supra and BellSouth had exchanged several letters concerning the amount of the deposit BellSouth would require as a guarantee of payment for services purchased in Georgia. This exchange was predicated on the assumption that Supra would be entering the Georgia local exchange market on a commercial basis as Supra had done in Florida.

EXHIBIT 20

However, as a result of the Commission's January 7, 2003 decision, Supra is prohibited from purchasing services under the Agreement to provide local exchange service to Georgia customers, except for the purposes of conducting testing, until the Commission staff completes its investigation into Supra's certificate of authority. Consistent with the Commission's decision, BellSouth has requested that Supra provide detailed information about its testing plans so that a reasonable deposit can be established to guarantee payment for any services Supra may purchase in connection with its testing activities. BellSouth also notified Supra that it could conduct testing without providing a deposit by utilizing the CLEC Application Verification Environment ("CAVE"), which is a test environment created by BellSouth to facilitate CLEC testing of BellSouth's systems. Supra has yet to advise BellSouth which testing option it will pursue.

Assuming that Supra elects not to pursue testing in CAVE, BellSouth is hopeful that any deposit in connection with Supra's testing activities in Georgia can be established expeditiously and without the involvement of the Commission. As to the deposit amount necessary to guarantee payment for services that Supra may purchase in Georgia on a commercial scale, BellSouth has advised Supra that any deposit provided during the testing period would be considered interim and that the parties would revisit the deposit issue if and when Supra is permitted to offer local exchange service to the general public in Georgia. This may not be for some time, particularly given the representation by Supra's counsel on January 2, 2003 that Supra did not intend to enter the Georgia market for at least one year.

Nevertheless, BellSouth disagrees with Supra's claim that "the policy reason underling [sic] the need for any security deposit" has been obviated by the bankruptcy court's requirement that Supra pay a specified amount each week as "adequate assurance" for the payment of services purchased from BellSouth in Florida. The deposit language in the Agreement requires that Supra guarantee payment of services purchased from BellSouth prior to Supra entering the Georgia market. By contrast, 11 U.S.C. § 366(b), which is referenced in Supra's letter, provides that a utility may "alter, refuse, or discontinue service if neither the trustee nor the debtor ... furnishes adequate assurance of payment, in the form of a deposit or other security, for service after [the petition] date." Section 366(b) addresses continuation of utility service existing on the date a debtor files for bankruptcy and does not apply to deposits or other legal requirements governing a debtor's post-petition expansion of its operations.

The inapplicability of Section 366(b) is demonstrated by the fact that, contrary to Supra's claims, the deposit requirement in the Agreement and the "adequate assurance" requirement of the bankruptcy laws are different. As the Agreement expressly states, the purpose of a deposit is to "guarantee" the payment of services purchased by Supra from BellSouth. This guarantee of payment is required before BellSouth begins providing service under the Agreement in Georgia. By contrast, in accordance with Section 366(b), Judge Robert Mark, the Chief Judge of the United States Bankruptcy Court for the Southern District of Florida, entered an order on November 13, 2002, requiring Supra to pay BellSouth on a prospective, weekly basis for

BellSouth's services used to provide local exchange service to Supra's end users in Florida. In so ruling, Judge Mark noted that adequate assurance is not the equivalent of a guarantee of payment. Thus, the fact that Supra is providing "adequate assurance" under the bankruptcy laws in Florida, which is not a guarantee of payment, does not obviate the need for Supra to provide a deposit in Georgia so as to guarantee payment for services purchased in connection with Supra's expansion after the commencement of its bankruptcy case.

There is no merit to Supra's suggestion that the adequate assurance amount established by Judge Mark adequately protects BellSouth for the services purchased by Supra to serve its end users, "wherever situated," including Georgia. The evidence presented to Judge Mark, and Judge Mark's subsequent adequate assurance order, relate only to Supra's current operations in Florida. The bankruptcy court did not address and its adequate assurance order did not contemplate Supra's expansion of operations into Georgia, or any other state.

Equally without merit is Supra's suggestion that the bankruptcy proceedings have divested the Commission of jurisdiction over the deposit issue. Under the bankruptcy laws, "...a trustee, receiver, or manager appointed in any cause pending in any court of the United States, including a debtor-in-possession, shall manage and operate the property in his possession as trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof." 28 U.S.C. § 959(b). Pursuant to Section 959(b), Supra is subject to the laws and regulations of the State of Georgia, including the jurisdictional and regulatory powers of this Commission in interpreting and enforcing the Agreement, notwithstanding the pendency of Supra's Chapter 11 bankruptcy case and its status as a debtor-in-possession. Accordingly, Supra is fully subject to this Commission's jurisdiction as it relates to Supra's attempt to operate in Georgia and to enforce an interconnection agreement that expressly permits BellSouth to require a deposit from Supra as a guarantee of payment prior to providing any services to Supra under that Agreement.

Finally, BellSouth takes issue with Supra's assertion that it must obtain "the bankruptcy court's prior approval of the capital expenditures required to expand outside of [Supra's] current footprint...." There is no such requirement under the bankruptcy laws, and Judge Mark has not entered any order that would require Supra to obtain court approval prior to offering local exchange service in Georgia.

Enclosed for filing please find an original and eighteen (18) copies, as well as an electronic version, of this letter. I would appreciate your returning the three (3) extra copies stamped "filed" in the enclosed self-addressed and stamped envelopes.

Thank you for your assistance in this regard.

Yours very truly,

Bennett L. Ross

BLR:nvd
Enclosures

cc: Jorge L. Cruz-Bustillo, Esquire
Brian Chaiken, Esquire
Michael K. Stewart, Esquire
Daniel S. Walsh, Esquire
Ms. Kristy R. Holley

476907

EXHIBIT 21

CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Digital Network, Inc. Against BellSouth Telecommunications, Inc. and Request For Emergency Relief	)))	Docket No. 020252-TP

COMPLAINT OF FLORIDA DIGITAL NETWORK, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. AND REQUEST FOR EMERGENCY RELIEF REQUIRING BELLSOUTH TELECOMMUNICATIONS, INC. TO PROCESS SERVICE ORDERS PENDING RESOLUTION OF DISPUTES

Pursuant to Florida Statutes ("F.S.") §§ 364.162(1)[1] and 364.058,[2] and Rule 25-22.036(2) of the Florida Administrative Code,[3] Florida Digital Network, Inc. ("FDN") files this Complaint and Request for Emergency Relief ("Complaint") against Bell South Telecommunications, Inc. ("BST"). Emergency relief is required to compel BST to perform its obligations under its Interconnection Agreement with FDN ("ICA").[4]

Since approximately March 1, 2002, BST has refused to process pending and new service orders for many classes of telecommunications service and has threatened to disconnect FDN's

[1] F.S. § 364.162(1) provides, *inter alia*: "The commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions."

[2] F.S. § 364.058 provides: "(1) Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction."

[3] Florida Administrative Code Rule 25-22-036(b) provides: "A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or any Commission rule or order."

[4] Relevant excerpts of Part A to the ICA are attached as Exhibit A, and relevant excerpts of Attachment VIII to the ICA are attached as Exhibit B.

EXHIBIT

services in the State of Florida, unless FDN submits immediate payment for charges that FDN has properly disputed in accordance with the parties' ICA. Further, BST has indicated that it will not lift this "embargo" on orders until FDN provides an unsubstantiated security deposit and meets other demands not permitted or required under the ICA.

BST's threats and demands violate the dispute resolution and other specific provisions of the parties' ICA. Under the ICA, BST may not disconnect FDN's services for non-payment of disputed amounts, nor impose an embargo on orders for any reason. BST's actions also violate various state and federal laws. Accordingly, FDN respectfully requests that the Florida Public Service Commission ("Commission") grant this emergency relief in order to: (i) enforce the terms of the parties' ICA; (ii) halt BST's anti-competitive behavior; and (iii) protect the health, safety and welfare of FDN's customers who rely on FDN's services and are being adversely affected by BST's embargo. In support of the relief sought herein, FDN states as follows:

I. JURISDICTION

1. The Commission has jurisdiction over this Complaint pursuant to its broad authority to regulate telecommunications companies under F.S. § 364.01 et seq. Specifically, the Commission has jurisdiction in order to: (i) "protect the health, safety and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices;"[5] (ii) "protect the health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate and service regulation;"[6] and (iii) "ensure that all providers of telecommunications services are treated fairly, by preventing anti-competitive behavior and

[5] F.S. § 364.01(4)(a).

[6] F.S. § 364.01(4)(c).

Matthew Feil, General Counsel
Florida Digital Network, Inc
390 North Orange Ave.
Suite 2000
Orlando, FL 32801
407-835-0460

Eric J. Branfman
Michael C. Sloan
Jonathan S. Frankel
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: 202-424-7500
Fax: 202-424-7643

5. BST is a corporation organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia, 30375. BST provides local exchange and other services within its legacy franchised areas in Florida. BST is a "Bell Operating Company" and an "incumbent local exchange carrier" ("ILEC") as those terms are defined by the Act and is certificated as a Florida ILEC.

6. The ICA at issue in this matter was approved by the Commission on September 22, 1998 in Docket No. 980908-TP, Order No. PSC-98-1327-FOF-TP. Various amendments to the ICA have been filed with and approved by the Commission. FDN and BST currently are arbitrating the terms of a new Interconnection Agreement before the Commission.[12]

7. Throughout the time that FDN has obtained services from BST under the ICA, FDN has been plagued by BST's repeated and systemic billing errors that erroneously and materially inflate the amount of BST's bills to FDN. These billing errors have included, but are

[12] *See Petition By Florida Digital Network, Inc., for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with Bell South Telecommunications, Inc. Under the Telecommunications Act of 1996*, Docket No. 010098-TP.

not limited to, incorrect rates for unbundled network elements, usage and facilities, as well as, bills for services that have been disconnected or never received by FDN.

8. The foregoing problems are exacerbated by the disorganized and voluminous format of BST's massive invoices.[13] These pervasive problems make it impossible for FDN to rely upon BST's invoices. Accordingly, FDN has been forced to undertake extremely expensive and time-consuming audits of each and every invoice it receives from BST. These audits consume substantial resources and, because each bill is so rife with errors, delay by weeks the date on which FDN or any prudent businessperson would agree to make payments.

9. The ICA contains specific provisions governing how the parties shall reconcile any billing disputes. Specifically, Attachment VIII, § 3.1.18 requires each party to provide a "Notice of Discrepancy" upon the discovery of a potential billing error. Further, in the event of such Notice of Discrepancy, the parties shall endeavor to resolve the discrepancy within sixty (60) calendar days notification using normal business procedures. *Id.* If the discrepancy is disputed, resolution of such dispute is expected to occur "at the first level of management resulting in a recommendation for settlement of the dispute and closure of a specific billing period."[14]

10. In order for a billing dispute to be closed, both parties must agree that the dispute has been closed.[15] If the dispute remains unresolved, it is "escalated to the second level of

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[13] Each month FDN receives numerous invoices from BST for various services. These invoices are extensive – often more than 15,000 pages – and in light of the pervasive errors, FDN is required to review these invoices comprehensively to ensure they are correct.

[14] *See* Exhibit B, § 3.1.18.2.

[15] *See* Exhibit B, § 3.1.18.3, which provides: "Closure of a specific billing period shall occur by joint Agreement of the parties whereby the parties agree that such billing period is closed to any further analysis and financial transactions, except those resulting from an Audit. Closure shall take place within nine (9) months of the Bill Date. The month being closed

Legal Department

James Meza III
Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

April 3, 2002

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. 020252-TP**
Florida Digital Network's Complaint and Request for Emergency Relief

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Answer and Counterclaim to Florida Digital Network's Complaint and Request for Emergency Relief, 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 a copy to me. Copies have been served to the parties shown on the attached certificate of service.

Sincerely,

James Meza III (LA)

James Meza III

Enclosures

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

EXHIBIT 23

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Digital Network, Inc. Against BellSouth Telecommunications, Inc. and Request for Emergency Relief	)	Docket No. 020252-TP
	)	Filed: April 3, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.'S ANSWER AND COUNTERCLAIM TO FLORIDA DIGITAL NETWORK'S COMPLAINT AND REQUEST FOR EMERGENCY RELIEF

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Answer and Counterclaim to Florida Digital Network's ("FDN") Complaint and Request for Emergency Relief Requiring BellSouth to Process Service Orders Pending Resolution of Disputes ("Complaint"). The Florida Public Service Commission ("Commission") should summarily deny and/or dismiss FDN's requests for relief and should grant BellSouth's Counterclaim.

INTRODUCTION

BellSouth and FDN are before this Commission because of one simple reason: FDN is not and has not paid its bills on time. As of March 29, 2002, FDN owes BellSouth in CRIS (UNE and resale) and CABS (access) charges. Of this amount, is for current charges while (for CRIS; for CABS) is past due and undisputed.[1]

Despite not paying its bills, FDN has allegedly experienced a 25 percent growth in access lines since August 2001. See Docket 990649A-TP, Tr. Vol. V. p. 649, ln. 16 – p. 650, ln. 16, attached hereto as Exhibit A. (On cross-examination, Mr. Gallagher, FDN's CEO, represented that FDN gained 20,000

access lines since August 2001). Thus, it is clear that, unless FDN is giving service away, it is receiving increased revenue and purchasing additional services from BellSouth but, in turn, not paying BellSouth for those services.[2]

In addition, FDN is incurring, on average, monthly billings totaling

As a result, because FDN is not paying its current charges, the total amount that FDN owes BellSouth for past due amounts increases every month.[3] At the same time, independent evidence suggests that FDN appears to be experiencing a period of financial distress. This evidence includes (1) FDN's Dunn and Bradstreet's rating, which is 4A3 (with a scale of 1-4, 1 being the best and 4 being the worst); and (2) FDN's Dunn and Bradstreet's PAYDEX score, which is 53 (payments to vendors average 22 days beyond terms). See March 21, 2002 Letter of Sandra Cetti, attached hereto as Exhibit B. Thus, FDN continues to incur additional charges without any visible signs that it can pay its current charges, let alone the growing past due amount.

Unfortunately, in today's economic times, FDN's recent payment history and apparent financial distress is not something new for BellSouth.[4] From January 2001 to the present, 68 carriers who purchased services from BellSouth have gone bankrupt or out of business, representing approximately $103 million in uncollectible charges. In fact, with one recent bankruptcy filing, BellSouth was unable to recover over $20 million in undisputed, legitimately owed charges.

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[1] This figure does not include the in CABS billings that FDN has disputed. FDN has not disputed any CRIS billings.

[2] Even if FDN was giving telecommunications service away, FDN would still not be excused from paying its bills.

[3] For instance, since January 2002, FDN's past due billings have increased approximately /a month.

[4] The recent downturn in the economy has effected both ALECs and ILECs.

BellSouth, like any other business, expects and requires payment for services received on a timely basis in order to survive. There is no doubt that FDN expects the same from its customers.

With this Answer and Counterclaim, BellSouth, among other things, is respectfully requesting that the Commission (1) recognize that FDN owes BellSouth in undisputed CABS and CRIS billings; (2) require FDN to pay all past due and undisputed amounts to BellSouth immediately; and (3) require FDN to place all disputed amounts in escrow.

ANSWER

Turning to the Complaint, BellSouth now answers the enumerated paragraphs, on a paragraph-by-paragraph basis, of the Complaint.

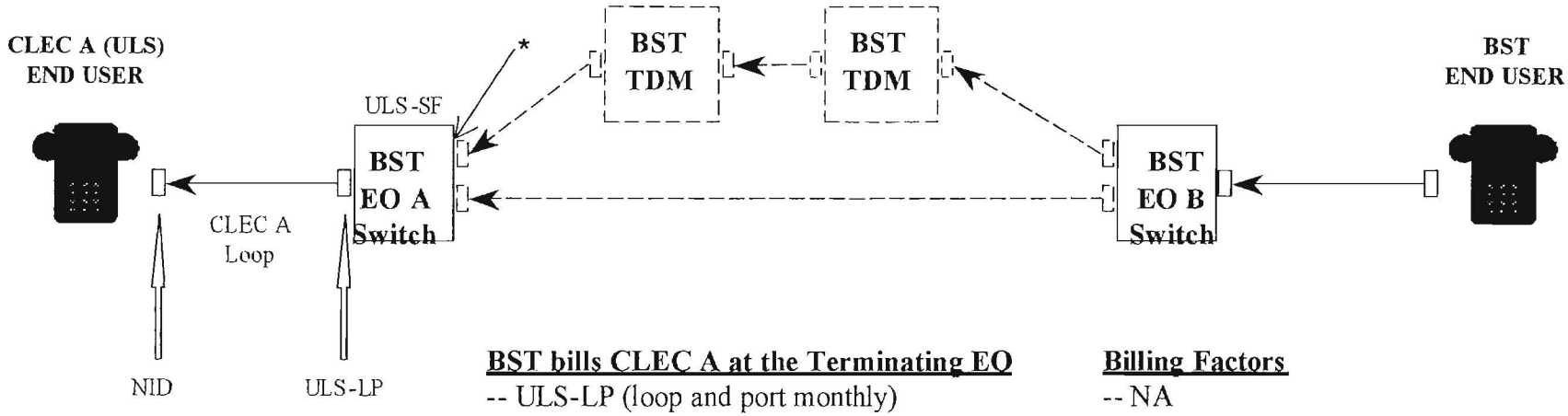
1. BellSouth admits that this Commission has the authority under Florida statutes and the Interconnection Agreement to resolve billing disputes arising out of FDN's purchase of services from BellSouth under the Interconnection Agreement and BellSouth's Florida intrastate tariffs. BellSouth denies that this Commission has jurisdiction over billing disputes arising out of FDN's purchase of interstate services from BellSouth's FCC Tariff No. 1.

2. BellSouth denies the allegations sets forth in Paragraph 2 of the Complaint.

3. BellSouth admits that FDN is certificated as an Alternative Local Exchange Company ("ALEC") in the State of Florida. BellSouth denies the remaining allegations in Paragraph 3 of the Complaint for lack of knowledge.

UNE PORT/LOOP SWITCHED COMBINATION BILLING ARRANGEMENTS

12. BST Network - Call terminating outside of the originating 7 & 10 digit dialing arrangement but within the lata (i.e. 1+ call) - Interoffice



Billing Concept
-- Unbundled Network Elements

Usage Recordings
-- Call Code 006/072 is made at the End Office B. No tandem indicator, no access time, no attempts. No term recording.
-- Normal EO recordings appropriate to the type of service will be made.
NOTE: Call code 006 records are related to ELCA plans.

* indicates demarcation between UNE Network and other Networks

BST bills CLEC A at the Terminating EO
-- ULS-LP (loop and port monthly)
-- ULS-SF (unbundled switching - terminating)

Billing Factors
-- NA

Record Exchange
BellSouth sends CLEC A ADUF 11-01-01, so the CLEC may be able to quantify end office usage. Terminating switched access charges shall not apply.

Reciprocal Compensation:
Currently, for this call flow CLEC A may bill BellSouth ULS-SF for end office switching at EO A. This is due to the fact that BellSouth's billing system currently bills ULS-SF to CLEC A at EO A. Because these rates are the same and the charges net to zero, BellSouth would normally not charge, but until BellSouth modifies its billing system to not charge CLEC A for ULS-SF, CLEC A may bill the equivalent charges back to BellSouth.

A terminating access (ADUF) record is provided as this is the only means available to provide CLEC A a way to quantify the terminating usage. However, access charges shall not be billed to BellSouth as BellSouth treats such calls that it terminates as Local calls and bills the originating ULS CLEC Unbundled Local Switching at the UNE rates and not terminating access.

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

FLORIDA SECURED TRANSACTION REGISTRY

FILED
2003 Sep 11 AM 12:00
****** 20030492636X ******

A. NAME & PHONE OF CONTACT AT FILER [optional]
Eunice S. Smith; (404) 815-6089

B. SEND ACKNOWLEDGMENT TO: (Name and Address)
Eunice S. Smith
Kilpatrick Stockton LLP
1100 Peachtree Street
Atlanta, Georgia 30309-4530

1a. ORGANIZATION'S NAME
SATURN TELECOMMUNICATION SERVICES INC.

OR 1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
12233 SW 55th Street, Suite 811	Cooper City	FL	33330	USA

1d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
65-0545624		Corporation	Florida	P94000055120 ☐ NONE

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3a. ORGANIZATION'S NAME
BELLSOUTH TELECOMMUNICATIONS, INC.

OR 3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
675 West Peachtree Street	Atlanta	GA	30375	USA

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

FLORIDA DOCUMENTARY STAMP TAX IS NOT REQUIRED.

File With: Florida Secretary of State

EXHIBIT 25

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA
Saturn Telecommunication / BellSouth

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)
NATUCC1 - 5/4/01 C T System Online

EXHIBIT A TO UCC-1 FINANCING STATEMENT
BETWEEN
SATURN TELECOMMUNICATION SERVICES INC., AS DEBTOR
AND
BELLSOUTH TELECOMMUNICATIONS, INC., AS SECURED PARTY

This financing statement covers all of the Debtor's right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of Debtor (including under any trade names, styles or derivations thereof), and whether owned or consigned by or to, or leased from or to, Debtor, and regardless of where located (all of which being hereinafter collectively referred to as the "Collateral"), including:

(1) all Accounts;
(2) all Chattel Paper;
(3) all Documents;
(4) all General Intangibles (including payment intangibles and Software);
(5) all Goods (including Inventory, Equipment and Fixtures);
(6) all Instruments;
(7) all Investment Property;
(8) all Deposit Accounts of Debtor, including all collection accounts, disbursement accounts, and all other bank accounts and all deposits therein;
(9) all money, cash or cash equivalents of Debtor;
(10) all Supporting Obligations and Letter-of-Credit Rights of Debtor;
(11) all commercial tort claims; and
(12) to the extent not otherwise included, all Proceeds, tort claims, insurance claims and other rights to payments not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

In addition, to secure the prompt and complete payment, performance and observance of all account(s) of Debtor representing amounts owed to Secured Party, including, without limitation, (x) all obligations owed by Debtor to Secured Party with respect to that certain Interconnection Agreement dated May 30, 2003, between Debtor and Secured Party and (y) all other obligations of the Debtor to the Secured Party, direct or indirect, absolute or contingent, due or to become due, whether now existing or hereafter arising (the "Obligations") and in order to induce Secured Party as aforesaid, Debtor hereby grants to Secured Party, a right of setoff against the property of Debtor held by Secured Party, consisting of property described above in paragraphs 1 –12 now or hereafter in the possession or custody of or in transit to Secured Party, for any purpose, including safekeeping, collection or pledge, for the account of Debtor, or as to which Debtor may have any right or power.

All capitalized terms used herein and not otherwise defined herein shall have the meanings given to such terms in the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of Georgia.

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND
FOR BROWARD, COUNTY, FLORIDA
CASE NO.: 04-07761 (09)

STS TELECOM, LLC,
A FLORIDA LIMITED LIABILITY COMPANY,

ORIGINAL

Plaintiff,

VS.

BRADFORD HAMILTON AND HAMILTON TELECOM CORP, A FLORIDA CORPORATION,

Defendant.
/

Excerpt of proceedings taken on June 15, 2004 before at or about 10:00 a.m. at 3440 Hollywood Boulevard, Hollywood, Florida Taken before Marla Schreiber, Shorthand Reporter and Notary Public in and for the State of Florida at Large, pursuant to a Notice of Taking Deposition filed in the above-filed cause.

EXHIBIT 26

Employee leasing doesn't mean we don't have the employees. It is just a different way to have the employees. If you lease a car it doesn't mean you don't have the car, you still have it.

Q But you don't own it?

A But it is still your car, you are still responsible for it. Same difference. No difference at all.

Q Does the word ownership and lease connote two different terms?

A Yes. And nowhere does it say in here that we own 45 employees. It says we have 45 employees.

Q On Page 5?

A Okay.

Q Public files, the first one is a --

A Where it says -- okay, public files, okay.

Q Collateral by BellSouth Telecommunications, you see that?

A Yes. It is the UCC for BellSouth.

Q What is that for?

A To ensure payment to them.

Q Is that a deposit?

A Yes.

Q NationsBank, let me ask you, did BellSouth originally request for a deposit of you?

A Yes, but they returned it to us.
Q And they allowed you to post the UCC?
A Yes.
Q NationsBank, that is a loan by NationsBank to Saturn Telecommunications Services, Inc.?
A Okay.
Q Is that?
A It was.
Q It was.
It is paid off already?
A Yes.
Q Wells Fargo, is that paid off or is it still outstanding?
A No, it is a current lease.
Q Dell Financial, is that paid off?
A Current.
Q The rest of these on Page 6, are they paid off or are they current?
A They are all current.
Q Do these entities in your mind have a right to know who it is actually they are doing business with?
A Of course.
Q And so in their mind they are doing business with a company that has both local and long

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

Current Report

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): April 26, 2004

MCG CAPITAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**0-33377**	**54-1889518**
(State or other jurisdiction of incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

1100 Wilson Boulevard, Suite 3000

Arlington, VA 22209

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (703) 247-7500

EXHIBIT 27

Item7. Financial Statements and Exhibits

(a) Not applicable.

(b) Not applicable.

(c) Exhibits.

ExhibitNo.	Description
99.1	Press release dated April 26, 2004

Item12. Results of Operations and Financial Condition.

On April 26, 2004, the Company issued a press release announcing its dividend for the quarter ending June 30, 2004 and its financial results for the three months ended March 31, 2004. The text of the press release is included as an exhibit to this Form 8-K. Pursuant to the rules and regulations of the Securities and Exchange Commission, such exhibit and the information set forth therein and herein is deemed to be furnished and shall not be deemed to be filed.

The attached press release contains information calculated and presented on the basis of methodologies other than in accordance with generally accepted accounting principles, or GAAP, such as distributable net operating income. The Company has included a reconciliation of distributable net operating income to net operating income before investment gains and losses, the most comparable GAAP measure, in the press release.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: April 27, 2004

MCG CAPITAL CORPORATION

By: /s/Bryan J. Mitchell

Bryan J. Mitchell

Chief Executive Officer

EXHIBIT INDEX

ExhibitNo.	Description
99.1	Press release dated April 26, 2004

MCG Capital Corporation **PRESS RELEASE**

1100 Wilson Boulevard
Suite 3000
Arlington, VA 22209
(703) 247-7502
(703) 247-7505 (FAX)
MCGCapital.com

Contact: Sherry Edwards Dopp
(703) 247-7502
SDopp@MCGCapital.com

FOR IMMEDIATE RELEASE

MCG Capital Corporation Declares Second Quarter Dividend of $0.42 Per Share

and Reports Q1 2004 Results

ARLINGTON, VA – April 26, 2004 – MCG Capital Corporation (Nasdaq: MCGC) today announced that on April 22, 2004 its Board of Directors declared a dividend of $0.42 per share for the second quarter of 2004. The actual tax characteristics of this dividend will be reported to each shareholder on a Form 1099.

The dividend is payable as follows:

Record date: May 7, 2004

Payable date: July 29, 2004

In addition, MCG announced today its results for the quarter ended March 31, 2004.

Highlights:

- **Q1 2004 operating income of $22.2 million, up 20% from $18.5 million for Q1 2003**
- **Q1 2004 net operating income of $9.8 million, down 10% from $10.9 million for Q1 2003**
- **Q1 2004 net income of $2.1 million, down from $8.9 million for Q1 2003**
- **Q1 2004 total new investment activity of $65.2 million**

We invite interested parties to join our analyst call today at 11:00 a.m. ET for a further discussion of our first quarter 2004 financial results. The dial-in number for the call is **(877) 847-5345** . International callers should dial **(719) 867-0700** . Please dial-in at least five minutes prior to the call to register. The call may also be accessed via an audio webcast available on the MCG website at http://investor.mcgcapital.com. Click on the April 27, 2004, Conference Call to access the call. A recording of the call will be available through May 3, 2004. The replay dial-in number is **(888) 203-1112** . International callers should call **(719) 457-0820** . The replay pass code is **412841** . The replay will also be available via MCG's website. Financial information provided in the analyst call will be available on our website at mcgcapital.com prior to the call.

SELECTED OPERATING DATA

The following table shows our selected consolidated operating data for the three months ended March 31, 2004 and 2003:

(dollars in thousands)	Three Months Ended March 31, 2004	2003
Operating income		
Interest and dividend income	$ **18,489**	$ 17,828
Advisory fees and other income	**3,716**	711
Total operating income	**22,205**	18,539
Operating expenses		
Interest expense	**2,103**	2,447
Employee compensation:		
Salaries and benefits	**2,885**	1,884
Long-term incentive compensation (a)	**5,551**	1,526
Total employee compensation	**8,436**	3,410
General and administrative expense	**1,825**	1,736
Total operating expenses	**12,364**	7,593
Net operating income (b)	$ **9,841**	$ 10,946
Net operating income per share	$ **0.26**	$ 0.36
Following is a reconciliation of net operating income to distributable net operating income (c):		
Net operating income (b)	$ **9,841**	$ 10,946
Long-term incentive compensation (a)	**5,551**	1,526
Distributable net operating income (c)	$ **15,392**	$ 12,472
Distributable net operating income per share (d)	$ **0.40**	$ 0.40

(a) Includes non-cash amortization expense, including the first quarter 2004 expense associated with the modification of the forfeiture restrictions on certain restricted shares, and the expenses associated with the classification of dividends on performance based restricted shares and shares securing employee loans as compensation expense for GAAP purposes.

(b) These amounts represent net operating income before investment gains and losses in the Consolidated Statements of Operations.

(c) Distributable net operating income is a non-GAAP financial measure most comparable to net operating income before investment gains and losses as shown in the Consolidated Statements of Operations. Management believes that distributable net operating income provides a guide to amounts from operations that may be distributable to shareholders. However, actual distributions may vary and such amounts identified in this table are not intended to represent amounts we will actually distribute in future periods. Distributable net operating income may not be comparable to similarly titled measures reported by other companies. Distributable net operating income does not represent net income or net cash provided by operating activities in accordance with GAAP and should not be considered an alternative to such items as an indication of our performance. Distributable net operating income should not be considered an alternative to cash flows as a measure of liquidity or ability to make distributions.

(d) This amount is computed based on weighted average common shares outstanding subject to dividends which is the weighted average common shares outstanding as disclosed in the Consolidated Statements of Operations together with the weighted average of shares in the restricted stock awards for which forfeiture provisions have not lapsed which total 910 and 1,192 for the three months ended March 31, 2004 and 2003, respectively. These shares are excluded from average shares outstanding as disclosed in the Consolidated Statements of Operations but are issued, outstanding and subject to dividend.

DETAILED FINANCIAL RESULTS

Q1 total operating income increased 20% from $18.5 million for the first quarter of 2003 to $22.2 million for the first quarter of 2004. The change in operating income was made up of:

- Increase in advisory fees and other income – $3.0 million
- Decrease due to a decline in assets – ($1.8 million)
- Increase due to expanded spread over LIBOR – $1.0 million
- Decrease due to lower LIBOR income – ($0.3 million)
- Net increase in loan fee and dividend income – $1.8 million

Q1 total operating expenses increased 63% from $7.6 million for the first quarter of 2003 to $12.4 million for the first quarter of 2004. The increase in operating expenses was primarily due to:

- Increase in total employee costs in the form of long-term incentive compensation of $4.1 million and variable annual incentive compensation $0.7 million (increase in long-term incentive compensation relates to non-cash amortization expense resulting from the modification of the forfeiture restrictions on certain restricted shares)
- Decrease in interest expense of ($0.3 million)

NOI for the quarter ended March 31, 2004 totaled $9.8 million, a decrease of $1.1 million or 10% from the prior year comparative quarter as a result of the factors described above.

Distributable NOI (NOI excluding long-term incentive compensation) for the quarter ended March 31, 2004 totaled $15.4 million, an increase of $2.9 million or 23% from the prior year comparative quarter. Following is a comparison of quarterly dividend and DNOI for the first quarter of 2004 and the four quarters of 2003 given the actual share count on the record date for the dividend: (See Selected Historical Operating Data – Quarterly under Additional Financial Details)

	2004	2003			
	Q1	Q4	Q3	Q2	Q1
DNOI	$ 0.40	$ 0.38	$ 0.43	$ 0.42	$ 0.40

Dividend	$ 0.42	$ 0.42	$ 0.42	$ 0.41	$ 0.40

Net investment losses totaled $7.7 million for the first quarter of 2004 compared to $2.0 million for the first quarter of 2003.

Net income amounted to $2.1 million for the quarter ended March 31, 2004 compared to $8.9 million for the first quarter of 2003. Earnings per share decreased to $0.06 from $0.30 primarily due to the increase in long-term and variable annual incentive compensation and net unrealized depreciation on investments.

Credit quality At March 31, 2004 there were $0.1 million of loans, or 0.01% of the investment portfolio, greater than 60 days past due compared to $4.2 million of loans, or 0.6%, at December 31, 2003. At March 31, 2004, $9.8 million of loans, including all of the loans greater than 60 days past due, were on non-accrual status representing 1.4% of the investment portfolio. At December 31, 2003, $14.6 million of loans, including $0.1 million of the loans greater than 60 days past due, were on non-accrual status representing 2.1% of the investment portfolio.

Business activity for the first quarter of 2004 included investments in nine new portfolio companies totaling $44.4 million and several follow on investments in existing customers totaling $20.8 million.

Recent developments In the first quarter of 2004, we retained the services of a national executive recruiting firm to assist us with our search for a new Chief Financial Officer. Our current Chief Financial Officer, Janet Perlowski, has indicated her intent to step down as Chief Financial Officer in order to focus on her family. She will continue to serve as our Chief Financial Officer until a replacement is hired.

FINANCIAL STATEMENTS AND RELATED TABLES

MCG Capital Corporation

Consolidated Balance Sheets (unaudited)

(in thousands, except per share amounts)

	March31, 2004	December31, 2003
Assets		
Cash and cash equivalents	**$ 37,862**	$ 60,072
Cash, securitization accounts	**24,757**	33,434
Investments at fair value		
Commercial loans (cost of $618,059 and $615,253, respectively)	**605,046**	605,551
Investments in equity securities (cost of $120,313 and $112,850, respectively)	**94,517**	93,391
Unearned income on commercial loans	**(14,990)**	(16,416)
Total investments	**684,573**	682,526
Interest receivable	**6,168**	5,717
Other assets	**14,139**	9,166
Total assets	**$ 767,499**	$ 790,915
Liabilities		
Borrowings	**$ 289,235**	$ 304,131
Interest payable	**887**	1,185
Dividends payable	**16,268**	16,267
Other liabilities	**5,612**	5,382
Total liabilities	**312,002**	326,965
Commitments and contingencies		
Stockholders' Equity		
Preferred stock, par value $.01, authorized 1 share, none issued and outstanding	—	—
Common stock, par value $.01, authorized 100,000 shares, 38,733 issued and outstanding on March 31, 2004 and 38,732 issued and outstanding on December 31, 2003	**387**	387
Paid-in capital	**540,766**	529,168
Stockholder loans	**(5,153)**	(5,293)
Unearned compensation – restricted stock	**(11,504)**	(4,911)
Distributions in excess of earnings	**(30,190)**	(26,240)
Net unrealized depreciation on investments	**(38,809)**	(29,161)
Total stockholders' equity	**455,497**	463,950
Total liabilities and stockholders' equity	**$ 767,499**	$ 790,915

MCG Capital Corporation

Consolidated Statements of Operations (unaudited)

(in thousands, except per share amounts)

	Three Months Ended March 31,	
	2004	2003
Operating income		
Interest and dividend income		
Non-affiliate investments (less than 5% owned)	$ 12,320	$ 16,325
Affiliate investments (5% to 25% owned)	885	955
Control investments (more than 25% owned)	5,284	548
Total interest and dividend income	18,489	17,828
Advisory fees and other income		
Non-affiliate investments (less than 5% owned) and other income	1,619	711
Control investments (more than 25% owned)	2,097	—
Total advisory fees and other income	3,716	711
Total operating income	22,205	18,539
Operating expenses		
Interest expense	2,103	2,447
Employee compensation:		
Salaries and benefits	2,885	1,884
Long-term incentive compensation	5,551	1,526
Total employee compensation	8,436	3,410
General and administrative expense	1,825	1,736
Total operating expenses	12,364	7,593
Net operating income before investment gains and losses	9,841	10,946
Net realized gains (losses) on investments		
Non-affiliate investments (less than 5% owned)	1,904	(8,299)
Control investments (more than 25% owned)	—	(11,397)
Total net realized gains (losses) on investments	1,904	(19,696)
Net change in unrealized appreciation (depreciation) on investments		
Non-affiliate investments (less than 5% owned)	(3,493)	15,079
Affiliate investments (5% to 25% owned)	(1,420)	174
Control investments (more than 25% owned)	(4,735)	2,394
Total net change in unrealized appreciation (depreciation) on investments	(9,648)	17,647
Net investment losses	(7,744)	(2,049)
Net income/Net increase in stockholders' equity resulting from earnings	$ 2,097	$ 8,897
Earnings per common share basic and diluted	$ 0.06	$ 0.30
Cash dividends declared	$ 0.42	$ 0.40
Weighted average common shares outstanding	37,823	30,067
Weighted average common shares outstanding and dilutive common stock equivalents	37,928	30,067

See notes to consolidated financial statements.

ADDITIONAL FINANCIAL DETAILS

Selected Historical Operating Data – Quarterly

(dollars and shares in thousands)	2004 Qtr1	2003 Qtr4	Qtr3	Qtr2	Qtr1
Net operating income (a)	**$ 9,841**	$ 13,225	$ 11,740	$ 11,684	$ 10,946
Net operating income per share	**$ 0.26**	$ 0.35	$ 0.36	$ 0.39	$ 0.36
Net operating income (a)	**$ 9,841**	$ 13,225	$ 11,740	$ 11,684	$ 10,946
Long-term incentive compensation (b)	**5,551**	1,561	1,759	1,501	1,526
Distributable net operating income (DNOI) (c)	**$ 15,392**	$ 14,786	$ 13,499	$ 13,185	$ 12,472
DNOI per share – period end shares (d)	**$ 0.40**	$ 0.38	$ 0.35	$ 0.42	$ 0.40
DNOI per share – average shares (e)	**$ 0.40**	$ 0.38	$ 0.40	$ 0.42	$ 0.40
DNOI per share – record date shares (f)	**$ 0.40**	$ 0.38	$ 0.43	$ 0.42	$ 0.40
Dividends per share	**$ 0.42**	$ 0.42	$ 0.42	$ 0.41	$ 0.40

(a) These amounts represent net operating income before investment gains and losses in the Consolidated Statements of Operations.

(b) Includes non-cash amortization expense, including the first quarter 2004 expense associated with the modification of the forefeiture restrictions on certain restricted shares, and the expenses associated with the classification of dividends on performance based restricted shares and shares securing employee loans as compensation expense for GAAP purposes.

(c) Distributable net operating income is a non-GAAP financial measure most comparable to net operating income before investment gains and losses as shown in the Consolidated Statements of Operations. Management believes that distributable net operating income provides a guide to amounts from operations that may be distributable to shareholders. However, actual distributions may vary and such amounts identified in this table are not intended to represent amounts we will actually distribute in future periods. Distributable net operating income may not be comparable to similarly titled measures reported by other companies.

Distributable net operating income does not represent net income or net cash provided by operating activities in accordance with GAAP and should not be considered an alternative to such items as an indication of our performance. Distributable net operating income should not be considered an alternative to cash flows as a measure of liquidity or ability to make distributions.

(d) This amount is based on end of period total shares outstanding

(e) This amount is computed based on weighted average common shares outstanding subject to dividends which is the weighted average common shares outstanding as disclosed in the Consolidated Statements of Operations together with the weighted average of shares in the restricted stock awards for which forfeiture provisions have not lapsed which total 910, 1,024, 1,078, 1,137, and 1,192 for the three months ended March 31, 2004, and December 31, September 30, June 30, and March 31, 2003, respectively. These shares are excluded from average shares outstanding as disclosed in the Consolidated Statements of Operations but are issued, outstanding and subject to dividend.

(f) This amount is based on total shares outstanding at the record date for each respective quarterly dividend.

Discussion of Operations

Total operating income for the first quarter of 2004 was $22.2 million, an increase of $3.7 million or 20% compared to the first quarter of 2003. Total operating income is primarily comprised of interest and fees on commercial loans. Loan interest declined $1.2 million from the first quarter of 2003 to the first quarter of 2004. The benefit of an increase in interest spread was more than offset by a decrease in average loans and LIBOR. The majority of the loans are priced as a variable spread to LIBOR and this spread increased by 58 basis points in the first quarter of 2004 compared to the first quarter of 2003, resulting in an addition to income of $1.0 million. The majority of our loan portfolio has floors between 1.25% and 3% on the LIBOR base index. The LIBOR floors have had the effect of increasing our spread because such floors have generally been above current LIBOR rates. For these periods, average loans declined 12%, contributing a $1.8 million decrease in operating income. Average three month LIBOR decreased 21 basis points over these periods from 1.33% to 1.12%, decreasing income by $0.3 million. Loan fees and dividend income increased by $1.8 million from the first quarter of 2003 to the first quarter of 2004 due primarily to dividend income of $1.4 million from Bridgecom Holdings, Inc. Advisory fees and other income increased $3.0 million from the first quarter of 2003 to the first quarter of 2004 due to an increase in advisory services provided to new and existing customers compared to the prior year's quarter, research revenues from our newly acquired subsidiary Kagan Research, LLC and management fees from one of our control investments, Bridgecom Holdings, Inc.

Total operating expenses for the first quarter of 2004 were $12.4 million, an increase of $4.8 million or 63% compared to the first quarter of 2003. Interest expense declined by 14% to $2.1 million in the first quarter of 2004 compared to $2.4 million in the first quarter of 2003. The decline in LIBOR, debt amortization costs and average borrowings decreased interest expense by $0.6 million. These decreases were partially offset by the increase in spreads. The increase in spreads increased interest expense by $0.3 million.

Other operating costs are comprised of two main components. The first component includes salaries and benefits and general and administrative expenses. These expenses increased 30% from $3.6 million in the first quarter of 2003 to $4.7 million in the first quarter of 2004 primarily due to higher variable annual incentive compensation expense. The second operating expense component is long-term incentive compensation for MCG's employees. During the first quarter, our compensation committee waived the performance-based forfeiture restrictions and modified the time-based forfeiture provisions associated with the Tier III shares of certain of our executive officers through their respective amended and restated restricted stock agreements. As a result, long-term incentive compensation, which is made up of non-cash amortization of restricted stock awards and the treatment of dividends on all shares securing employee loans as compensation, totaled $5.6 million for the first quarter of 2004 compared to $1.5 million for the first quarter of 2003. The increase of $4.1 million is primarily due to these modifications.

In addition, our compensation committee agreed to allow the restrictions on certain shares of restricted stock to lapse. As a result, the Tier I and Tier II shares held by certain of our executive officers will vest immediately upon full repayment of the loans that are secured by the restricted stock.

Net operating income before investment gains and losses (NOI) for the quarter ended March 31, 2004 totaled $9.8 million, a decrease of 10% from the same quarter of 2003. Distributable NOI, which is NOI excluding the long-term incentive compensation expense, totaled $15.4 million for the first quarter of 2004 up from $12.5 million for the first quarter of 2003. Net investment losses primarily related to net depreciation in the technology, security alarm, and publishing sectors totaled $7.7 million for the first quarter of 2004 compared to $2.0 million for the first quarter of 2003. See the section on Asset Quality below for more detail on net investment gains and losses. Net income totaled $2.1 million for the quarter ended March 31, 2004 compared to $8.9 million for the quarter ended March 31, 2003.

Asset Quality

The following table summarizes our realized gains and losses and unrealized appreciation and depreciation for the three months ended March 31, 2004 and 2003:

Summary of Realized Gains (Losses) and Unrealized

Appreciation (Depreciation) on Investments

(dollars in thousands)	Three Months Ended March 31 2004	2003
Realized gains (losses) on loans	**$ (254)**	$ (19,696)
Realized gains (losses) on equity investments	**2,158**	—
Net realized gains (losses) on investments	**1,904**	(19,696)
Unrealized appreciation on loans	**2,028**	46
Unrealized appreciation on equity investments	**2,570**	2,520
Unrealized depreciation on loans	**(5,997)**	(574)
Unrealized depreciation on equity investments	**(6,665)**	(3,239)
Reversal of unrealized depreciation (appreciation)*	**(1,584)**	18,894
Net change in unrealized appreciation (depreciation) on investments	**(9,648)**	17,647
Net investment gains (losses)	**$ (7,744)**	$ (2,049)

* When a gain or loss becomes realized, the prior unrealized appreciation or depreciation is reversed.

In addition to various risk management and monitoring tools, MCG also uses an investment rating system to characterize and monitor our expected level of returns on each investment in our portfolio. The following table shows the fair value of our investments on the 1 to 5 investment rating scale, as of March 31, 2004 and December 31, 2003 (excluding unearned income):

Distribution of Portfolio by Investment Rating

(in thousands)

Investment Rating	March 31, 2004 Investmentsat Fair Value	Percentageof TotalPortfolio	December 31, 2003 Investmentsat Fair Value	Percentageof TotalPortfolio
1	**$238,102**	**34.0%**	$234,491	33.5%
2	**248,851**	**35.6%**	255,429	36.5%
3	**145,538**	**20.8%**	161,894	23.2%
4	**61,322**	**8.8%**	38,813	5.6%
5	**5,750**	**0.8%**	8,315	1.2%
	$699,563	**100.0%**	$698,942	100.0%

1 Capital gain expected or realized

2 Full return of principal and interest or dividend expected with customer performing in accordance with plan

3 Full return of principal and interest or dividend expected but customer requires closer monitoring

4 Some loss of interest or dividend expected but still expecting an overall positive internal rate of return on the investment

5 Loss of interest or dividend and some loss of principal investment expected which would result in an overall negative internal rate of return on the investment

About MCG Capital Corporation

MCG Capital is a solutions-focused financial services company providing financing and advisory services to a variety of small- and medium-sized companies throughout the United States with a focus on growth oriented companies. Currently, our portfolio consists primarily of companies in the communications, information services, media and technology, including software and technology-enabled business services, industry sectors. Our capital is generally used by our portfolio companies to finance acquisitions, recapitalizations, management buyouts, organic growth and working capital.

Forward-looking Statements:

This press release contains forward-looking statements (i.e., statements that are not historical fact) describing the Company's future plans and objectives, such as our expectation to re-deploy cash balances into new investments, or the expected value resulting from a portfolio company's acquisition. These forward-looking statements are not guarantees of future performance and are subject to risks, uncertainties, and other factors, some of which are beyond our control and difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements including without limitation (1) economic downturns or recessions may impair our customers' ability to repay our loans and increase our non-performing assets, (2) economic downturns or recessions may disproportionately impact the industry sectors in which we concentrate, causing us to suffer losses in our portfolio and experience diminished demand for capital in these industry sectors, (3) a contraction of available credit and/or an inability to access the equity markets could impair our lending and investment activities, (4) interest rate volatility could adversely affect our results, (5) the risks associated with the possible disruption in the Company's operations due to terrorism and (6) the risks, uncertainties and other factors we identify from time to time in our filings with the Securities and Exchange Commission, including our Form 10-Ks, Form 10-Qs and Form 8-Ks. Although we believe that the assumptions on which these forward-looking statements are based are reasonable, any of those assumptions could prove to be inaccurate, and as a result, the forward-looking statements based on those assumptions also could be incorrect. In light of these and other uncertainties, the inclusion of a projection or forward-looking statement in this press release should not be regarded as a representation by us that our plans and objectives will be achieved. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this press release. We undertake no obligation to update such statements to reflect subsequent events.

End of Filing