

PATRICK W. TURNER  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0761

September 14, 2001

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

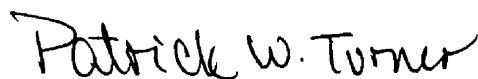
**Re: Docket No. 010740-TP (IDS)**

Dear Ms. Bayó:

Please find attached a filing we attempted to get to the Commission on Thursday, September 13, 2001. Due to evacuations around our office and extremely heavy traffic, we were unable to get to your office before 5:00 p.m. We are now asking that you file this in the captioned docket.

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

Sincerely,



Patrick W. Turner (KA)

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

DOCUMENT NUMBER-DATE

11442 SEP 14 5

FPSC-COMMISSION CLERK


**CERTIFICATE OF SERVICE**  
**Docket No. 010740-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
by Electronic Mail and Federal Express this 14th day of September, 2001 to the  
following:

Mary Anne Helton  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Te. No. (850) 413-6096  
[mhelton@psc.state.fl.us](mailto:mhelton@psc.state.fl.us)

Suzanne Fannon Summerlin (+)  
1311-B Paul Russell Road  
Suite 201  
Tallahassee, Florida 32301  
Tel. No. (850) 656-2288  
Fax No. (850) 656-5589  
[summerlin@nettally.com](mailto:summerlin@nettally.com)  
Represents IDS

Michael Noshay, President  
IDS Long Distance, Inc.  
n/k/a IDS Telcom, LLC  
1525 N.W. 167th Street  
Second Floor  
Miami, Florida 33169  
Tel. No. (305) 913-4000  
Fax No. (305) 913-4039  
[mnoshay@idstelcom.com](mailto:mnoshay@idstelcom.com)

  
\_\_\_\_\_  
Patrick Turner (UA)

**(+) Signed Protective Agreement**

PATRICK W. TURNER  
General Attorney

BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0761

September 13, 2001

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

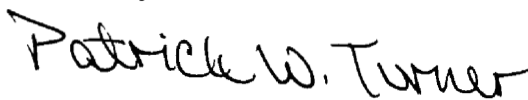
**Re: Docket No. 010740-TP (IDS)**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Quash Subpoena Duces Tecum for Deposition or in the Alternative, Motion for Protective order, which we ask you to file in the captioned docket.

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

Sincerely,

  
Patrick W. Turner (KA)

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


**CERTIFICATE OF SERVICE**  
**Docket No. 010740-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
by Hand Delivery (\*), Electronic Mail and Federal Express this 13th day of September,  
2001 to the following:

Mary Anne Helton (\*)  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
Te. No. (850) 413-6096  
[mhelton@psc.state.fl.us](mailto:mhelton@psc.state.fl.us)

Suzanne Fannon Summerlin (+) (\*)  
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Represents IDS

Michael Noshay, President  
IDS Long Distance, Inc.  
n/k/a IDS Telcom, LLC  
1525 N.W. 167th Street  
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Miami, Florida 33169  
Tel. No. (305) 913-4000  
Fax No. (305) 913-4039  
[mnoshay@idstelcom.com](mailto:mnoshay@idstelcom.com)

  
\_\_\_\_\_  
Patrick Turner (KA)

(+) Signed Protective Agreement

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Complaint of IDS Long Distance, Inc., ) Docket No. 010740-TP  
n/k/a IDS Telecom, L.L.C., Against )  
BellSouth Telecommunications, Inc., and )  
Request for Emergency Relief )  
\_\_\_\_\_ ) Dated: September 13, 2001

**MOTION BY BELLSOUTH TELECOMMUNICATIONS, INC  
TO QUASH SUBPOENA DUCES TECUM FOR DEPOSITION OR  
IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

BellSouth Telecommunications, Inc. has received a copy of a "Subpoena Duces Tecum for Deposition" ("Subpoena"), which is attached hereto as Exhibit A.<sup>1</sup> This Subpoena indicates on its face that it was filed with the Florida Public Service Commission today, September 13, 2001, and it purports command Mary K. Batcher<sup>2</sup> of 1225 Connecticut Avenue, N.W., Washington, D.C. to appear in Miami Florida tomorrow, September 14, 2001, at 1:00 p.m. for a deposition and to bring some fifteen (15) categories of documents with her to the deposition. For the reasons set forth below, the Commission should quash the Subpoena or, in the alternative, the Commission should enter a protective order relieving Ms. Batcher of any duty she purportedly has to comply with the subpoena.

**I. The Subpoena is unreasonable, oppressive, and unduly burdensome.**

Since July 18, 2001, IDS has known that "all discovery [in this docket] shall be completed by September 14, 2001." See Order Establishing Procedure at 2 (entered

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<sup>1</sup> Although the Subpoena does not name the party on behalf it was issued, BellSouth is informed and believes that IDS Telcom, LLC ("IDS") filed the Subpoena.

<sup>2</sup> Ms. Batcher is an employee of Ernst & Young LLP, and she has pre-filed testimony on behalf of BellSouth in this docket.

July 18, 2001). Since Ms. Batcher's testimony was filed on August 27, 2001, IDS has prepared and filed rebuttal testimony that addresses Ms. Batcher's testimony, see Rebuttal Testimony of Angel Leiro, Filed September 5, 2001, and IDS and BellSouth have arranged for the depositions of several IDS witnesses to take place in Miami during the week of September 10, 2001.<sup>3</sup> At no time prior to yesterday (September 12, 2001), however, did IDS even remotely suggest that it wanted to depose Ms. Batcher.<sup>4</sup> It is simply unreasonable, oppressive, and unduly burdensome for IDS to have waited until two days before discovery is to be completed to even suggest that it wanted to depose Ms. Batcher. IDS has had the opportunity to conduct discovery (including depositions) in this docket. Having spend portions of two separate weeks deposing every BellSouth witness it has sought to depose, IDS cannot now attempt to disrupt BellSouth's opportunity to depose IDS' witnesses by insisting, at the last minute, on deposing yet another BellSouth witness that IDS has known about for at least two weeks.

Furthermore, the Subpoena purports to give Ms. Batcher less than 48 hours to gather 15 categories of documents, make the necessary arrangements, and travel from Washington, D.C. to Miami, Florida for a deposition. Even under the best of circumstances, such a subpoena would be unreasonable, oppressive, and unduly burdensome. Given the circumstances that currently exist, however, this Subpoena is nothing short of egregious.

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<sup>3</sup> IDS has already taken the depositions of several BellSouth witnesses in both Birmingham and Atlanta.

<sup>4</sup> During the depositions of IDS witnesses yesterday, counsel for IDS informed BellSouth, for the first time, that IDS wanted to depose Ms. Batcher, and late in the day IDS' counsel gave BellSouth's counsel a copy of a subpoena for Ms. Batcher's deposition.

The Subpoena was filed two days after the September 11, 2001 terrorist attacks on the United States. Upon information and belief, as of this morning (the day the Subpoena was filed), neither the airports in the Washington, D.C. area nor the airport in Atlanta were open, and the airport in Miami was open only for very limited traffic. Even if these airports had been open, it would be nearly impossible, given the number of planes and travelers who are currently stranded throughout the country, to actually get a ticket for a flight from Washington to Miami on such short notice. Given that IDS was well aware of these events when it filed the Subpoena, it seems that IDS is suggesting that Ms. Batcher should gather documents and drive from Washington to Miami between this morning and 1:00 tomorrow afternoon. Such a suggestion can only be viewed, at best, as unreasonable, oppressive, and unduly burdensome.

**II. The Subpoena Does Not Comply with the Requirements of Rule 1.410 of the Florida Rules of Civil Procedure.**

Rule 1.410(d) of the Florida Rules of Civil Procedure provides that “[s]ervice of a subpoena upon a person named therein shall be made as provided by law.” Nothing in the Subpoena, however, suggests that it has been served upon Ms. Batcher, and BellSouth is informed and believes that Ms. Batcher has not been served with the subpoena. Ms. Batcher, therefore, is not bound by the subpoena.

Additionally, Rule 1.410(e) provides that “[a] person may be required to attend an examination only in the county wherein the person resides or is employed or transacts business in person or at such other convenient place as may be fixed by an order of the court.” As suggested by the address set forth in the subpoena, Ms. Batcher lives and works in the Washington, D.C. area. The Subpoena, therefore, is invalid because it

purports to require Ms. Batcher to traverse several states to attend a deposition in Florida.

**III. The Commission Should Quash the Subpoena or Issue a Protective Order Relieving Ms. Batcher of any Duty she Purportedly has to Comply with the Subpoena.**

Rule 1.410(c) of the Florida Rules of Civil Procedure provides that a subpoena may be quashed “if it is unreasonable and oppressive.” Rule 1.280 of the Florida Rules of Civil Procedure provides for orders protecting a person from whom discovery is sought from “oppression or undue burden . . . .” As explained above, the Subpoena is unreasonable, oppressive, and unduly burdensome. The Commission, therefore, should quash the subpoena. Alternatively, the Commission should enter a protective order relieving Ms. Batcher of any duty she purportedly has to comply with the subpoena.



Respectfully submitted this 13<sup>th</sup> day of September 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

*Nancy B. White*

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

*Patrick W. Turner*

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R. DOUGLAS LACKEY (KA)  
PATRICK W. TURNER  
Suite 4300  
675 W. Peachtree Street, NE  
Atlanta, GA 30375  
(404) 335-0761

410813



Akerman, Senterfitt & Eidson, P.A.
301 South Bronough, Suite 200
(P. O. Box 10555, 32302-2555)
Tallahassee, Florida 32301
Tel: (850) 222-3471
Fax: (850) 222-8628

MULTIPLE FACSIMILE TRANSMISSION SHEET

Form with fields for MESSAGE FROM, DATE OF THIS TRANSMITTAL, and COMMENTS FROM SENDER. Includes recipient information for Nancy White, Patrick Turner, Mary Anne Helton, and Suzanne Summerlin.

Original will follow options: Regular Mail, Registered or Certified Mail, Overnight Delivery, Hand Delivery, Other.

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning  
Complaint of IDS Long Distance, Inc. n/k/a  
IDS Telecom, L.L.C., Against BellSouth  
Telecommunications, Inc., and  
Request for Emergency Relief

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DOCKET NO. 010740-TP

FILED: SEPTEMBER 13, 2001

**SUBPOENA DUCES TECUM FOR DEPOSITION**

TO: MARY K. BATCHER  
1225 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at the offices of Akerman, Senterfitt & Eidson, P.A., Suite 2800, One Southeast Third Avenue in Miami, Florida on September 14, 2001 at 1:00 p.m., for the taking of your deposition in this action and to have with you at that time and place all documents requested on the attached schedule "A."

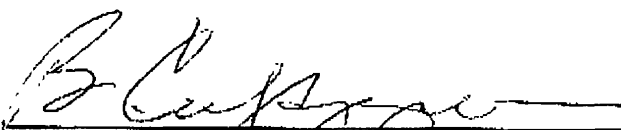
The requested documents will be inspected and may be copied at that time. You have the right to object to the production of any document(s) pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to:

- (1) appear as specified;
- (1) produce responsive documents in your possession, custody or control; or
- (3) object to this subpoena,

you may be in contempt. You are subpoenaed to appear by the undersigned attorneys, and unless excused from this subpoena by these attorneys or the Florida Public Service Commission, you shall respond to this subpoena as directed.

Respectfully submitted this 13<sup>th</sup> day of September, 2001.



Bruce Culpepper, Esq.  
**AKERMAN, SENTERFITT & EIDSON, P.A.**  
301 S. Bronough Street, Suite 200  
Post Office Box 10555  
Tallahassee, FL 32302-2555  
Phone: (850) 222-3471  
Fax: (850) 222-8628

John F. O'Sullivan, Esq.  
Scott B. Cosgrove, Esq.  
**AKERMAN, SENTERFITT & EIDSON, P.A.**  
SunTrust International Center, 28th Floor  
One Southeast Third Avenue  
Miami, FL 33131-1704  
Phone: (305) 374-5600  
Fax: (305) 374-5095

Schedule "A"  
**DOCUMENTS REQUESTED**

1. All documents relating to the rebuttal testimony you filed on August 27, 2001 in the above referenced action.
2. All documents relating to communications between you and BellSouth that relates to BellSouth's request that you conduct a study to determine why local telephone customers left IDS to go to BellSouth for local telephone service.
3. All documents on which you base any opinion, or which are grounds for the preliminary or final results of the telephone survey referenced in your rebuttal testimony.
4. All documents reviewed by you in connection with your opinion, rebuttal testimony or the telephone survey referenced in your rebuttal testimony.
5. One copy of your resume or curriculum vitae.
6. All documents which summarize, contain, reference or relate to your opinions, rebuttal testimony or the preliminary or final results of the telephone survey referenced in your rebuttal testimony.
7. All documents relating to any communication between you and BellSouth or its counsel or representatives in connection with the subject matter of this case.
8. All documents relating to the "preliminary results" of the telephone survey referenced in your rebuttal testimony.
9. All documents relating to the "script" or questions used by the surveyors to conduct the telephone survey referenced in your rebuttal testimony.
10. All documents relating to the telephone survey referenced in your rebuttal testimony.
11. All documents relating to the final result of the telephone survey referenced in your rebuttal testimony.
12. All documents that relate to communications between you and BellSouth that relates to the results, preliminary or otherwise, of the telephone survey referenced in your rebuttal testimony.
13. All documents relating to any other surveys, studies, tests, or pre-tests covering in any way the same or similar subjects.

14. All documents provided to you by BellSouth or any BellSouth agent or representative that in any way relates to the subject matter of this litigation.
15. All documents relating to fees paid to you by BellSouth during the years 2000 and 2001.

### INSTRUCTIONS AND DEFINITIONS

As used herein, the singular of any word or phrase includes the plural and the plural includes the singular.

1. Documents produced in response to this Request shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories of this Request.
2. If any documents covered by this Request are withheld under a claim of privilege, state the basis on which the privilege is claimed, together with the following information as to each such document: the name and job title of the author(s); the name and job title of each recipient and person to whom the document or a copy thereof was furnished; the date of the document; the subject matter of the document; and the paragraph of this Request to which the document is responsive.
3. "Communication" or "communications" means negotiations, to confer, conferences and conversations whether oral or written.
4. "Person" includes natural persons, corporations and all other forms of organization or association as well as any government or governmental body, commission, board, agency, partnership, joint venture, trust or other form of entity.
5. "Document" means any written, printed, typed or photographed material, or other demonstrative material however produced or reproduced, of any kind or description, whether or not sent or received, including originals, copies and drafts and both sides thereof in your possession, custody or control, or of which you have knowledge. The term includes, but is not limited to originals where available or otherwise a carbon copy, photocopy or other copy, including each non-identical copy (whether different from the original because of marginal notes, or other material inserted therein or attached thereto, or otherwise) of each item of papers, books, letters, correspondence, telegrams, computer programs, source codes, object codes, specifications, computer print-outs, data processing outputs, flow charts, program structure charts, bulletins, reports, notices, announcements, instructions, orders, confirmations, charts, manuals, photographs, sketches, plans,

periodicals, publications, brochures, pamphlets, schedules, cables, telex messages, memoranda, notes, notations, accountants' working papers, financial statements, invoices, returns, account, ledgers, checks, check stubs, drafts, indexes, data sheets, commercial paper, wires, transcripts, minutes, agendas, affidavits, statements, summaries, opinions, reports, surveys, studies, work papers, analyses, evaluations, printings, graphs, charts, tables, prospectuses, tabulations, compilations, lists, diagrams, contracts, offers, agreements, journals, statistical records, desk calendars, appointment books, diaries, studies, sound recordings, recording disks or other records of oral communications, file, microfilms, micro fiche, slides, other records kept by electronic, photographic or mechanical means, and things similar to any of the foregoing however and any other materials discoverable under Rule 1.350 of the Florida Rules of Civil Procedure. Moreover, the term "document" includes reports and records of telephone or other conversations or messages, or interviews, conferences or other meetings.

6. "You" and "your" refers to "Mary K. Batcher" and includes Ernest & Young, LLP, and any of its employees, agents, independent contractors, servants, associates, attorneys, investigators, representatives and all others who have obtained information for or on behalf of you.
7. "IDS" refers to "IDS Telcom, LLC" and includes any of their employees, agents, independent contractors, servants, associates, attorneys, investigators, and representatives.
8. "And" or "Or" shall include the conjunctive as well as the disjunctive.
9. As employed herein, the term "relating to," in addition to its customary and usual meanings, shall mean constituting, describing, mentioning, commenting about, referring to, reflecting, pertaining to, assessing, recording, concerning, touching upon, summarizing or in any way relevant.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of the foregoing were served via U.S.

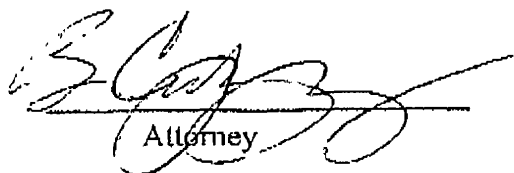
mail and facsimile this 13th day of September, 2001 to:

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

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Patrick W. Turner, Esq.  
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\_\_\_\_\_  
Attorney