

ORIGINAL

Legal Department

JAMES MEZA III
Attorney
BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0769

June 28, 2004

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

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**Re: 040488-TP – Complaint of BellSouth Telecommunications, Inc.,
Against IDS Telecom, LLC to Enforce Interconnection Agreement
Deposit Requirements**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief in Support, which we ask that you file in the captioned docket.

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

Sincerely,

James Meza III /RH
James Meza III

- CMP _____
- COM _____
- CTR _____
- ECR _____ Enclosures
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
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cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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**CERTIFICATE OF SERVICE
DOCKET NO. 040488-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and U.S. Mail this 28th day of June, 2004 to the following:

Patty Christensen
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6191
Fax. No. (850) 413-6221
pchrste@psc.state.fl.us

Norman H. Horton, Jr.
Meser, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876 (32302-1876)
Tallahassee, FL 32301-1858
Tel. No. (850) 222-0720
Fax No. (850) 224-4359
nhorton@lawfla.com
Represents IDS


James Meza III

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)	
Telecommunications, Inc., Against)	Docket No. 040488-TP
IDS Telecom, LLC to Enforce)	
Interconnection Agreement Deposit)	
<u>Requirements</u>)	Filed: June 28, 2004

BELLSOUTH'S BRIEF IN SUPPORT

BELLSOUTH TELECOMMUNICATONS, INC. ("BellSouth"), through its undersigned counsel, hereby files this Brief in Support of its Complaint against IDS Telecom, LLC ("IDS"). For the reasons set forth herein, the Florida Public Service Commission ("Commission") should order IDS to post a deposit in the amount of \$4.6 million pursuant to the terms of the parties' current Interconnection Agreement.

INTRODUCTION

This case involves a simple contract analysis. The parties' Interconnection Agreement grants BellSouth the unilateral discretion to seek and obtain a deposit from IDS. BellSouth must apply its credit standards on a nondiscriminatory basis, which it has, and the parties are required to negotiate a reasonable deposit amount. BellSouth has complied with all of the conditions precedent necessary to obtain a deposit. In contrast, IDS has done everything in its power to delay BellSouth's right to obtain a deposit, including: (1) refusing to provide financial documents for eight months, despite repeatedly promising the documents to BellSouth; (2) challenging BellSouth's right to request a deposit, notwithstanding the unambiguous contract language; (3) feigning interest in negotiating a reasonable deposit amount to delay resolution of the issue; and (4) attempting to "adopt-away" its deposit obligations in violation of Section 251 of the

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Telecommunications Act (“Act”) by seeking to adopt the “deposit provisions” of an agreement that is devoid of any deposit language. As established below, IDS has violated its deposit obligations under the Interconnection Agreement and should be required to post a deposit in the amount of \$4.6 million.

FACTS

A. The Interconnection Agreement Obligates IDS to Post a Deposit.

BellSouth and IDS are parties to an Interconnection Agreement that was approved by the Commission on or about May 14, 2003. This agreement has an effective date of February 5, 2003 and is regional in scope and nature. Pursuant to Attachment 7, Section 1.8 of the Interconnection Agreement, IDS has an obligation to “provide information regarding credit worthiness” and BellSouth, in its discretion, has the right to request and secure a deposit from IDS. See Exhibit A, Attachment 7 at Section 1.8 (“Based on the results of the credit analysis, BellSouth reserves the right to secure the account with a suitable form of security deposit.”).

Further, if in BellSouth’s “sole opinion” IDS experiences an adverse change in its creditworthiness, BellSouth can obtain additional security from IDS. Specifically, Attachment 7, Section 1.8 provides:

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. . . 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."

Id. Any security deposit requested cannot exceed two months' estimated billings. Id.

Additionally, BellSouth is obligated to provide IDS a written explanation as to why a deposit has been requested and to apply all credit standards on a non-discriminatory basis. Id. Moreover, the parties are obligated to work together to determine the amount of a reasonable deposit, and if they are unable to agree, either party may petition the Commission for resolution of the dispute. Id. If the "dispute is not resolved within 60 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 Attachment 7, and any security deposits will be applied to IDS's accounts." Id.

The deposit provisions are unambiguous. There can be no dispute that (1) BellSouth has the right to conduct a credit review of IDS; (2) IDS is obligated to provide information to allow BellSouth to conduct such a review; (3) BellSouth has the right to request and obtain a deposit from IDS; and (4) the parties have an obligation to negotiate the amount of the deposit. Accordingly, the only issue for this Commission to resolve is the amount of the deposit, not whether BellSouth is entitled to a deposit.

B. BellSouth Applies its Deposit Policies in a Non-Discriminatory Manner Based on Objective Financial Data.

Although BellSouth's deposit policies are not at issue in this proceeding, a brief description of BellSouth's policies is helpful to put IDS's arguments into context. BellSouth's Business Credit Management Department conducts a credit review on all

new wholesale customers and monitors the financial status of BellSouth's existing customers. See Affidavit of Eric Reinhold at ¶ 3, attached hereto as Exhibit B. In this regard, BellSouth conducts periodic credit reviews of all of its wholesale customers. Id. at ¶ 4. In evaluating a customer's credit worthiness, BellSouth reviews standard credit, operational, and financial indicators, including: payment manner with BellSouth; RAM (Risk Assessment Manager) Credit Score; D&B Credit Rating; D&B PAYDEX; financial condition including standard performance, liquidity and leverage ratios; the Altman Z-Score; the Moody's RiskCalc Score; background of the company's management; years in business; public filings (including suits, liens, judgments, UCC's); debt ratings; recent news articles regarding the company; and stock performance (if company is publicly traded). Id.

Procedurally, BellSouth utilizes D&B's credit analysis tool, RAM credit scores, Moody's RiskCalc scores, and other financial analysis tools to apply fair and consistent credit management practices. Id. at ¶ 5. These credit tools provide scores that indicate the severity of credit risk. For instance, the RAM credit score is based on a risk scale of 0 – 10, with 0 indicating the highest credit risk and 10 the lowest. Likewise, the Moody's RiskCalc Score, which is based on publicly available or company provided financial statements, is based on a risk scale of 0 – 10, with 0 indicating the lowest credit risk and 10 the highest. Use of these objective credit tools ensures that BellSouth's credit analysis is based on objective, industry-standard data.

Deposits are necessary to protect BellSouth from a CLEC defaulting on its payment obligations. Id. at ¶ 7. While not completely protecting BellSouth, a two month deposit is standard in the industry and is commercially reasonable as it will partially limit

BellSouth's exposure for unpaid debts.¹ For instance, for services billed in advance, 74 days would elapse from the time BellSouth rendered the service to the date BellSouth could disconnect service. Likewise, for services billed in arrears, 104 days would elapse from the date the bill is rendered to the date BellSouth could disconnect service. Accordingly, even with a two month deposit, BellSouth is at risk of being unpaid for a minimum of 14 days and up to 44 days. Id. at ¶ 9. Without a deposit, BellSouth would be unable to recover almost three months worth of billings. Importantly, BellSouth will not utilize any deposits to pay off disputed amounts. Rather, BellSouth will only apply a deposit to unpaid amounts in the event a customer's service is terminated. Id. at ¶ 10.

C. In Violation of the Interconnection Agreement, IDS Failed to Provide BellSouth with Information Requested to Perform its Credit Review.

On May 7, 2003, pursuant to its policy to conduct periodic credit reviews, BellSouth informed IDS that it was conducting a credit review and asked IDS for a copy of IDS's "latest audited fiscal year-end financial statements (Balance Sheet, Income Statement, and Cash Flow Statement), most current interim financial statements, and any other pertinent information that would accurately portray [IDS's] credit standing." See May 7, 2003 Letter from Eric Reinhold to Bob Hacker, attached hereto as Exhibit C.² In response, IDS stated that it disagreed with BellSouth's "interpretation of the Interconnection Agreement" in regards to BellSouth's right to request a deposit but offered to provide BellSouth with audited and unaudited financial statements for its credit review. See Letter from Bob Hacker to Eric Reinhold, attached hereto as Exhibit D. On May 15, 2003, IDS provided unaudited financial statements to BellSouth. See

¹ IDS also requires a two month deposit from its customers. See Section 2.9.1 of IDS's Florida Tariff.

² Prior to this time, BellSouth did not seek a deposit from IDS. Initially, no deposit was needed because IDS's credit history was satisfactory. As time progressed, requests for deposits or security were subsumed in litigation settlements or payment arrangements between the parties.

collection of e-mails between Eric Reinhold and Bob Hacker, collectively attached hereto as Exhibit E. IDS also advised that it would provide audited statements by June 30, 2003. See Exhibit D.

On July 9, 2003, Eric Reinhold of BellSouth contacted Bob Hacker of IDS to inquire into the status of the audited statements. At that time, IDS advised BellSouth that the statements would be ready within 30 days. See Exhibit E. Near the expiration of 30 days, BellSouth again contacted IDS to determine the status of the audited financial statements. Consistent with its delay tactics, IDS initially responded "very soon" to this inquiry and then, on August 6, 2003, stated that the audited statements would be ready in "10 days max." Id. Once again, this deadline passed and IDS still did not provide BellSouth with the information requested for BellSouth's credit analysis.

Due to IDS's refusal to provide the information as promised, on September 12, 2003, BellSouth proceeded with enforcing its security rights established in the Settlement Amendment. See Settlement Amendment, attached hereto as Exhibit F. Under this agreement, BellSouth would file and IDS would execute a UCC1 as to IDS's assets to secure the Total Amount Due set forth in the Settlement Amendment. In response, IDS stated on October 7, 2003 that BellSouth's right to file a UCC1 expired because IDS had paid off the Total Amount Due for the "Alabama Settlement Account." See Collection of e-mails attached hereto as Exhibit G.

Soon thereafter, BellSouth once again asked IDS about the status of the audited financial statements. Id. On October 14, 2003, IDS promised the statements by October 24, 2003. Id. After IDS failed to provide the statements by this date, BellSouth asked IDS for the documents at least three additional times. Id. Finally, on November

25, 2003, IDS admitted that it never provided BellSouth with the requested information and essentially stated that such information was not necessary to conduct a credit review. See e-mail of Robert Hacker to Eric Reinhold, attached hereto as Exhibit H.

Consequently, to date, IDS has never provided the audited statements – information that it agreed to produce on or about June 30, 2003 and which BellSouth sought to obtain on at least nine different occasions during a six month period. Instead of producing the information, IDS simply provided unfulfilled promises meant to frustrate and delay BellSouth’s rights under the Interconnection Agreement.

D. BellSouth Completed Its Credit Review and Requested a Two Month Deposit from IDS.

On December 9, 2003, BellSouth completed its credit review of IDS and determined that, pursuant to the terms of the Interconnection Agreement and based on information provided by IDS, IDS should be required to post a deposit in the amount of \$4.6 million or two months of estimated billings. See December 9, 2003 Letter from Eric Reinhold to Angel Leiro, attached hereto as Exhibit I. BellSouth made this determination based on objective, financial data relating to IDS. And, BellSouth treated IDS in a nondiscriminatory manner regarding this deposit request. See Exhibit B at ¶ 11.

Specifically, BellSouth’s review of IDS’s financial data established that IDS’s payment history with BellSouth was “_____.” See January 5, 2004 Letter from Eric Reinhold to Angel Leiro, attached hereto as Exhibit J. Thus, on average, IDS paid BellSouth _____ days after a bill was due and primarily _____ before the unpaid accounts would be subject to disconnection of service for nonpayment. See Exhibit B at ¶ 12. Importantly, this _____

payment history does not take into account nonpayment of disputed amounts. Id. 1
Moreover, consistent with this undisputed payment history, an IDS employee advised 2
BellSouth that it is IDS's practice to not pay invoices until IDS receives the late notice 3
from BellSouth. Id. at ¶ 13. Further buttressing this admission is the fact that IDS was 4
consistently late on its payment obligations under the Settlement Agreement and 5
Settlement Amendment. Id. 6

In addition, IDS's own unaudited financial statements negatively reflected on 7
IDS's financial status. For instance, as of December 31, 2002, the unaudited financial 8
statements established that IDS's Working Capital was a _____, 9
Retained Earnings was a _____ Tangible Net Worth was a _____ 10
_____, and that it had a Debt/Tangible Net Worth Ratio of _____. These 11
figures led to an Altman Z-score of _____ and a Moody's RiskCalc score of _____. 12
See Exhibit J. The Altman Z-score is used to predict the likelihood of a company filing 13
for bankruptcy, with a score of 3 or greater meaning that the company is not likely to file 14
for bankruptcy. In addition, the Moody's RiskCalc is derived from Moody's Financial 15
Analysis, which is a financial information collection and analysis tool. See Exhibit B at ¶ 16
16. A score of 0.0 to 5.0 indicates LOW to MEDIUM financial risk while a Score of 5.1 17
to 10.00 indicates a MEDIUM to HIGH financial risk. Id. 18

Furthermore, IDS had a RAM Score of _____. This tool incorporates rule-based 19
credit scorecards that combine D&B data and internal customer information to evaluate 20
the credit risk of an entity. A score of 0 to 3.9 indicates a HIGH credit risk. Id. at ¶ 17. 21
Likewise, the D&B PAYDEX is a unique, dollar weighted indicator of a company's 22
payment performance based on the total number of payment experiences in D&B's file. 23

IDS's D&B Paydex ranged from _____ from May 2000 to December 2003. Id. at ¶ 18.
A D&B Paydex of _____ indicates that payments to suppliers average _____ days beyond
terms, and a Paydex of _____ indicates that payments average _____ days beyond terms. Id.
Based on these objective, industry standard credit analysis tools and IDS's own
financial data, there can be no question that IDS constitutes a substantial credit risk. Id.
at ¶ 21.

**E. IDS Violated the Agreement by Refusing to Negotiate the Amount of the
Deposit in Good Faith.**

After receiving BellSouth's December 9, 2003 letter requesting a deposit, IDS
responded by asking several questions and requesting certain documents. See
December 22, 2003 Letter from Angel Leiro to Eric Reinhold, attached hereto as Exhibit
K. On January 5, 2004, BellSouth responded to IDS's request and also answered
several questions IDS had regarding the deposit request. See Exhibit J. Specifically, in
this letter, BellSouth advised IDS that BellSouth's request for a deposit was based on
IDS' year-end 2002 financial statements, IDS's delinquent payment history, a
Altman-Z Score, and an unacceptable Moody's Riskcalc score. BellSouth also
explained that the \$4,600,000 deposit request was based on a six month average of
IDS's most recent monthly billings for a two month period. See Exhibit B at ¶ 25.

The parties subsequently exchanged several additional communications
regarding this issue until it became clear that a negotiated resolution was not
achievable. See January 12, 2004 Letter from Angel Leiro to Eric Reinhold, attached
hereto as Exhibit L; February 3, 2004 Letter from Eric Reinhold to Angel Leiro, attached
hereto as Exhibit M. In fact, notwithstanding BellSouth's invitation to negotiate the
deposit amount and alternative means of security, IDS has failed to substantively

negotiate and has instead challenged BellSouth's right to even request a deposit. See 1
e.g., Collection of emails exchanged between Eric Reinhold and Angel Leiro, attached 2
hereto as Exhibit N. 3

ARGUMENT

A. BellSouth Complied with All Requirements Under the Interconnection Agreement to Obtain a Deposit. 4

The parties' respective obligations regarding a deposit under Attachment 7, 5
Section 1.8 is as follows: (1) IDS must complete a credit profile and provide information 6
regarding credit worthiness; (2) BellSouth has the right to conduct a credit analysis; (3) 7
based on the results of a credit analysis, BellSouth has the "right to secure the account 8
with a suitable form of security deposit"; (4) if in the sole opinion of BellSouth, IDS 9
"experiences an adverse change in its credit worthiness in comparison to the level 10
initially used," BellSouth has the right to request additional security; (5) when requesting 11
a deposit, BellSouth must be willing to provide a written explanation as to why a deposit 12
has been requested; (6) BellSouth must apply all credit standards on a 13
nondiscriminatory basis; and (7) the parties must work together to determine the 14
reasonable amount of any such deposit, but in no event, can the deposit exceed two 15
months' estimated billings. See Exhibit A at Att. 7, Section 1.8. BellSouth has complied 16
with all conditions precedent necessary to seek and obtain a deposit from IDS. 17

First, BellSouth provided numerous written explanations to IDS as to why 18
BellSouth requested a deposit. As stated by Eric Reinhold in his January 5, 2004 Letter 19
to Angel Leiro of IDS (Exhibit I), IDS's payment history with BellSouth was " 20
" for undisputed amounts. Exhibit B at ¶ 12. In addition, based on IDS's 21
own unaudited financial statements for 2002, which is the latest and only statements 22

IDS provided, IDS's Working Capital was a _____, Retained Earnings
was a _____, Tangible Net Worth was a _____, and it
had a Debt/Tangible Net Worth Ratio of _____. Id. at ¶ 14. In addition,
BellSouth's credit review revealed that IDS had an Altman Z-score of _____, a
Moody's RiskCalc score of _____, and a RAM Score of _____ Id. at ¶¶ 15, 16, and 17. All
of these independent, objective credit analysis tools established that IDS was a HIGH
credit risk and was likely to file for bankruptcy. Id. at ¶ 23.³

BellSouth provided further information and responded to additional questions on
February 3, 2004 (Exhibit M), February 24, 2004 (Exhibit N), and on March 2, 2004
(Exhibit N). The simple fact of the matter is that the objective, financial tools that
BellSouth uses to evaluate the credit risk of all CLECs established that IDS was a high
credit risk and was likely to seek bankruptcy protection, thereby requiring BellSouth to
seek a deposit to protect its interest.

Second, BellSouth applied its credit standards on a nondiscriminatory basis and
treated IDS fairly and no differently than any other CLEC. Id. at ¶ 11. Without
identifying the specific CLECs, BellSouth has sought deposits from other CLECs who
have a similar payment history (or nonpayment) with BellSouth and similar financial
scores and ratings using the credit analysis tools employed by BellSouth. In fact, by
using these tools, BellSouth ensures that its credit analysis and requests for deposits
are applied on a consistent, nondiscriminatory basis. Id. at ¶ 22. Simply put, BellSouth
would and has sought a deposit from any CLEC whose own data established that they

³ It should be noted that IDS has refused to provide BellSouth with any other financial information other than the 2002 unaudited financial statements, despite repeated requests by BellSouth. Accordingly, IDS has no argument that BellSouth's analysis is flawed, outdated, or based on incorrect information.

were operating with a major deficit and who constituted a HIGH credit risk and likely
bankruptcy candidate based on objective financial analysis tools. Id. at ¶ 23.

IDS may argue that BellSouth disregarded its D&B rating and PAYDEX scores in
performing its analysis, which, according to IDS establish a 12 month PAYDEX score of

After further review of this data, BellSouth determined that IDS's PAYDEX Score
was inflated due to a single large payment of \$4 million in December 2002. Id. at ¶ 19.
Because the PAYDEX is a dollar-weighted average score, the \$4 million payment,
which dwarfs other trade references, significantly weighted the score and was not a true
reflection of IDS's overall payment manner. Id. In any event, BellSouth does not rely
on any particular tool to determine credit worthiness and IDS's other scores, including
the Altman-Z, RAM, and Moody's RiskCalc, and IDS's own financial data all
convincingly established that IDS is a credit risk.

Further, any argument that BellSouth based its deposit request solely on the fact
that IDS filed an informal or formal complaint against BellSouth is without merit. As
stated above, BellSouth started its credit review of IDS in May of 2003 as part of its
annual credit review of its CLEC customers. Based on continual, unfulfilled promises
from IDS that it would provide BellSouth with audited financial statements for 2002,
BellSouth waited to complete its review until after receipt of those promised documents.
It was not until IDS finally refused to provide the audited statements on November 25,
2003 did BellSouth finalize its review on or about December 9, 2003 based on available
information. Thus, the fact that BellSouth requested the deposit after IDS filed an
informal complaint against BellSouth is mere coincidence that resulted from IDS's delay
and ultimate refusal to provide financial information. And, BellSouth can affirmatively

state that it did not seek the deposit from IDS as a result of IDS filing either an informal or formal complaint against BellSouth. See Exhibit B at ¶ 24.

Third, BellSouth attempted to negotiate a reasonable deposit amount with IDS on numerous occasions. For instance, in its February 3, 2004 letter (Exhibit M), BellSouth advised IDS that "BellSouth is willing, ready and able to negotiate." Again, on February 16, 2004 (Exhibit N), BellSouth advised IDS that it would engage in negotiations over the deposit and the form of the deposit. In response, IDS asked for more information, failed to engage in substantive negotiations over the deposit, feigned interest in negotiating, and ultimately never responded back to BellSouth. See Exhibit N at February 23, 2004 e-mail; February 24, 2004 email; February 26, 2004 e-mail, and March 2, 2004 e-mails.

Based on the above, there can be no question that BellSouth complied with all conditions precedent under the Interconnection Agreement to seek and obtain a deposit from IDS. IDS has done everything in its power to prevent BellSouth from enforcing its contractual rights and has refused to honor its obligations under the Interconnection Agreement.

B. BellSouth Based the Deposit Amount on Two Months' Estimated Billings.

BellSouth based the requested deposit amount of \$4.6 million on a six-month average of IDS's most recent monthly billings at the time of the request for a two-month period. See Exhibit B at ¶ 25. These billings consisted of \$361,179 for Access; \$144,842 for Local; \$1,814,337 for UNE billings for a total of \$2,320,358 per month. Id. at ¶ 26. Further, because this is a regional agreement, the deposit provisions of the Interconnection Agreement apply to IDS's billings throughout BellSouth's region.

Indeed, the Interconnection Agreement does not require BellSouth to make nine different deposit requests, receive nine different deposits, or require that the parties seek resolution of a deposit dispute with nine different commissions. Accordingly, BellSouth's request for a single, \$4.6 million deposit is entirely appropriate under the Interconnection Agreement.⁴

C. IDS's ATTEMPT TO ADOPT AWAY ITS DEPOSIT OBLIGATIONS IS IMPROPER.

When faced with the reality that BellSouth had properly exercised its right to request a deposit pursuant to the terms of the interconnection agreement, IDS made a desperate, last ditch effort to avoid having to comply with the contract provision that IDS specifically negotiated. IDS has attempted to avoid its own negotiated contract language by asserting that it is entitled, pursuant to 47 U.S.C. § 252(i), to substitute the deposit language it negotiated with BellSouth for the language of another agreement.⁵ BellSouth has no obligation to offer such language to IDS and IDS should be required to abide by the language it specifically negotiated with BellSouth.

47 U.S.C. § 252(i) requires the Incumbent Local Exchange Carrier to "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

⁴ Even if the amount of the deposit was limited to IDS's billings in Florida, which it is not, a two months deposit would amount to \$3,470,000.

⁵ On June 25, 2004, IDS filed with the Commission an "amendment" to the parties' Agreement and represented to the Commission that IDS was signing the "amendment" on behalf of BellSouth. IDS' representations are pure fabrication designed solely to mislead the Commission into believing that the parties had reached an accord regarding the deposit issue. Indeed, the BellSouth person on whose behalf IDS was allegedly signing is not currently authorized to sign interconnection agreements on behalf of BellSouth. Further, IDS is attempting to take the BellSouth/Supra Interconnection Agreement, which does not have deposit language, and adopt, pursuant to the Act, the "absence" of language in substitution for the existing language in the BellSouth/IDS Agreement. Aside from being a patently ridiculous application of the opt-in provisions of §252(i) of the Act, IDS' conduct is so reprehensible as to warrant sanctions from this Commission.

telecommunications carrier upon the same terms and conditions as those provide in the agreement.” [emphasis added] Network elements are defined in 47 U.S.C. § 3 to mean a “facility or equipment used in the provision of a telecommunications service.” Although the term “service” is not specifically defined in the Telecommunications Act, various terms have “service” included within other terms. Each of these terms, such as “telecommunications service” and “telephone exchange service” refer to offering telecommunications directly to the public, via some sort of telecommunications equipment. The term “service” would also include resale of telecommunications services, collocation, number portability, access to rights of way and other such obligations set forth in 47 U.S.C § 251, as well as other services BellSouth makes available under the interconnection agreement (e.g. the DUF services; provisioning and repair). While the Act does require BellSouth to offer to other requesting carriers the deals it makes with requesting carriers, the obligation is limited to the words of the statute: “interconnection, service, or network element.”

IDS will argue that the FCC has provided direction to the parties through its Order 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). IDS’ reliance on this Order is misguided as the FCC addressed the responsibilities of an ILEC in regards to when the content of a contract between an ILEC and a requesting carrier requires that contract to be filed with the state commission for approval. The FCC stated that “an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights of way,

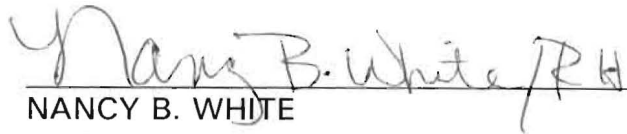
reciprocal compensation, interconnection, unbundled network elements, or collocations is an interconnection agreement that must be filed pursuant to 252(a)(1).” The Qwest order did not address the requirements of an adoption pursuant to 47 U.S.C. §252(i).

CONCLUSION

For the foregoing reasons, BellSouth requests that the Commission order IDS to post a deposit in the amount of \$4.6 million.

Respectfully submitted this 28th day of June, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



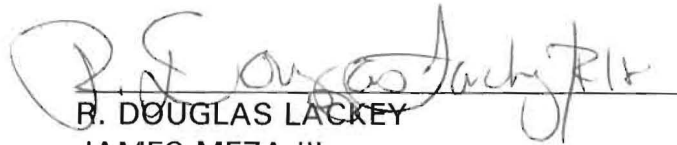
NANCY B. WHITE

c/o Nancy H. Sims

150 So. Monroe Street, Suite 400

Tallahassee, FL 32301

(305) 347-5558



R. DOUGLAS LACKEY

JAMES MEZA III

Suite 4300

675 W. Peachtree St., NE

Atlanta, GA 30375

(404) 335-0769



By and Between

BellSouth Telecommunications, Inc.

And

IDS Telcom, L.L.C.

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

EXHIBIT
B

ENTIRE EXHIBIT PROPRIETARY

May 7, 2003



Mr. Robert Hacker
IDS Telecom, LLC
1525 NW 167th Street., Ste 200
Miami, FL 33169

Dear Mr. Hacker,

BellSouth performs periodic credit reviews of its existing customers. The results of our review will determine whether IDS Telecom, LLC will be required to secure its accounts with a deposit and if so, how much of a deposit will be required.

We value our relationship with IDS Telecom, LLC and want to properly assess your company and its credit worthiness. In order to fully understand your financial condition, we are requesting a copy of the company's latest audited fiscal year-end financial statements (Balance Sheet, Income State, and Cash Flow Statement), most current interim financial statements, and any other pertinent information that would accurately portray your company's credit standing. Such pertinent information may include bank covenant agreements, financing agreements, etc...

In addition to the requested financial data, please provide BellSouth with the appropriate contact for any additional questions we may have concerning the credit worthiness of your company.

Please submit the requested information by May 17, 2003:

**Attn: Eric Reinhold
BellSouth Telecommunications, Inc.
1025 Lenox Park Blvd.
Room 9B28
Atlanta, GA 30319**

I look forward to your prompt response.

Sincerely,

Eric Reinhold
Credit Manager
404.986.1453
eric.reinhold@bellsouth.com



IDS TELECOM Headquarters 1425 N.W. 167th Street, Suite 200 Miami, Florida 33169 U.S.A
T- 305-913-4000 F- 305-512-4011 TOLL FREE - 800-335-4437



Via Overnight Mail

May 12, 2003

Eric Reinhold
Bellsouth Telecommunications, Inc.
1025 Lenox Park Road
Room 9B28
Atlanta, GA. 30319

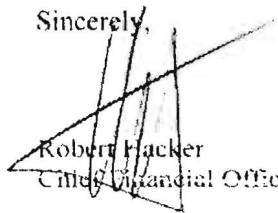
Dear Mr. Reinhold:

IDS disagrees with Bellsouth's interpretation of the Interconnection Agreement, as stated in paragraph 1 of your letter of May 7. However, we are prepared to provide financial information including interim and audited statements.

The audited results for 2002 should be available by June 30, 2003. Please advise if you would prefer to wait for the audited results or pursue the analysis based on unaudited figures. If you opt to begin with unaudited results, please provide your email address.

If you have any questions, please contact me at 305-913-4000.

Sincerely,


Robert Hacker
Chief Financial Officer

Cc: Martha Romano, BellSouth

RII/kh

Reinhold, Eric

From: Reinhold, Eric
Sent: Wednesday, August 20, 2003 8:23 AM
To: 'Robert Hacker'
Subject: RE: IDS



Mr. Hacker,

Please let me know if the financials are available yet.

Thanks,
Eric

-----Original Message-----
From: Robert Hacker [mailto:rhacker@IDSTELECOM.com]
Sent: Wednesday, August 06, 2003 10:20 AM
To: Reinhold, Eric
Subject: RE: IDS

10 days max

Robert H. Hacker
Chief Financial Officer
IDS Telecom LLC
305-612-4204
rhacker@idstelcom.com

-----Original Message-----
From: Reinhold, Eric [mailto:Eric.Reinhold@BellSouth.com]
Sent: Wednesday, August 06, 2003 10:12 AM
To: Robert Hacker
Subject: RE: IDS

When should I check back with you?

-----Original Message-----
From: Robert Hacker [mailto:rhacker@IDSTELECOM.com]
Sent: Wednesday, August 06, 2003 10:09 AM
To: Reinhold, Eric
Subject: RE: IDS

Very soon.

Robert H. Hacker
Chief Financial Officer
IDS Telecom LLC
305-612-4204
rhacker@idstelcom.com

-----Original Message-----
From: Reinhold, Eric [mailto:Eric.Reinhold@BellSouth.com]
Sent: Wednesday, August 06, 2003 10:00 AM
To: Robert Hacker
Subject: RE: IDS

Mr. Hacker,

Just checking on the availability of the statements. Please let me know.

Thank you,
Eric

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELCOM.com]
Sent: Wednesday, July 09, 2003 9:35 AM
To: Reinhold, Eric
Subject: RE: IDS

We are still working on them. Probably less than 30 days more.

Robert H. Hacker
Chief Financial Officer
IDS Telcom LLC
305-612-4204
rhacker@idstelcom.com

-----Original Message-----

From: Reinhold, Eric [mailto:Eric.Reinhold@BellSouth.com]
Sent: Wednesday, July 09, 2003 9:34 AM
To: Robert Hacker
Subject: RE: IDS

Mr. Hacker,

In our previous conversation you indicated that the audited 2002 statements would be available after June 30th. If available, please forward to my attention. If not, please let me know when they will be ready.

Thanks in advance,
Eric

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELCOM.com]
Sent: Thursday, May 15, 2003 4:00 PM
To: eric.reinhold@bellsouth.com
Subject: IDS

Attached are the unaudited statements. <<YE 2002 P&L.xls>> <<YE 02 12-02.xls>>

Robert H. Hacker
Chief Financial Officer
IDS Telcom LLC
305-612-4204
rhacker@idstelcom.com

05/23/2002 21:32

NO. 480 002



AMENDMENT TO SETTLEMENT AGREEMENT

THIS AMENDMENT TO SETTLEMENT AGREEMENT ("Amendment") is entered into this 25th day of March, 2002, by BellSouth Telecommunications, Inc. ("BST") and IDS Long Distance, Inc. n/k/a IDS Telcom, L.L.C. ("IDS") (collectively referred to as the "Parties").

RECITALS

WHEREAS, on or about September 27, 2001, BST and IDS entered into a settlement agreement resolving certain disputed issues between the Parties (the "Settlement Agreement");

WHEREAS, BellSouth Intellectual Property Corporation ("BIPCO") was also a party to the Settlement Agreement but does not have an interest in this Amendment;

WHEREAS, the Settlement Agreement contained provisions calling for the future resolution of disputed sums owed to BST by IDS;

WHEREAS, the Parties agreed to implement the Settlement Agreement by determining a Total Amount Due to BST by IDS and then reducing that Total Amount Due by the amount resolving the disputed issues set forth in Paragraph 4 of the Settlement Agreement; and

WHEREAS, the Parties have determined the Total Amount Due and have resolved the pending disputes set forth in Paragraph 4 of the Settlement Agreement and hereby wish to memorialize such agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, BST and IDS, intending to be bound by this Amendment, hereby agree as follows:

1. The Total Amount Due to BST by IDS is \$2,475,000.
2. IDS shall continue to pay BST the sum of \$200,000 per month by the close of business on the last day each month until March 31, 2003, which shall fully satisfy the Total Amount Due.
3. BST will bill the Total Amount Due to IDS under a new and separate Q account which will be designated as the Past Due Q Account.
4. BST will waive all prior interest or late payment charges on the Total Amount Due. However, interest and late payment charges will accrue on the Total Amount Due under the Past Due Q Account beginning in March, 2002. Interest will accrue at 1.5%.

2 21:32

NO. 490 P23

5. BellSouth shall issue IDS a credit in the amount of \$925,000. BellSouth allowed IDS to withhold this amount from its payment due to BellSouth in February 2002.
6. BST shall file and IDS shall execute a UCC-1 against IDS' assets to secure an interest in the Total Amount Due.
7. IDS shall keep all bills, billed under CRIS or CABS, current and shall not allow any undisputed current charges to become past due.
8. Should IDS fail to make a payment of \$200,000 to BST in any given month pursuant to this Amendment for the Past Due Q Account or fail to keep its billing current for all other accounts, IDS will be in breach of this Amendment. IDS shall have fourteen (14) days to cure such breach. If the breach is not cured within fourteen (14) days, the remaining balance of the Total Amount Due in the Past Due Q Account will immediately become due and owing and IDS shall pay to BST the full amount.
9. Except as specifically set forth herein, all of the provisions of the Settlement Agreement remain in full force and effect.
10. The Parties after executing this Amendment will be bound by the terms and conditions contained herein.
11. The Effective Date of this Amendment is March 25, 2002. The undersigned Parties hereby execute this Agreement.

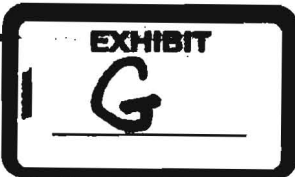
IDS TELCOM, INC.

BELLSOUTH
TELECOMMUNICATIONS, INC.

By: [Signature]
 Name: HACKER
 Title: CFO

By: [Signature]
 Name: Gregory R. Follenber
 Title: Senior Director

Reinhold, Eric



From: Reinhold, Eric
Sent: Tuesday, November 25, 2003 12:41 PM
To: 'Robert Hacker'
Subject: RE: Request for Financials

Mr. Hacker,

I plan on wrapping up our credit analysis of IDS by Monday. If you have audited or unaudited financials that you would like for us to consider, please submit them by Monday. Otherwise, we will complete our review based on your payment manner and on information obtained from third-party sources.

Thank you,

Eric Reinhold
Credit Manager
404.986.1453

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELCOM.com]
Sent: Thursday, November 13, 2003 9:00 AM
To: Reinhold, Eric
Subject: RE: Request for Financials

I think I am a week away from printed financials. I would prefer to wait. I know the deadline has moved but I think we will be better off waiting a little longer and not providing a draft

Robert H. Hacker
Chief Financial Officer
IDS Telcom LLC
305-612-4204
rhacker@idstelcom.com

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-----Original Message-----

From: Reinhold, Eric [mailto:Eric.Reinhold@bellsouth.com]
Sent: Thursday, November 13, 2003 8:14 AM
To: Robert Hacker
Subject: Request for Financials

Mr. Hacker,

Just following up on the financial statements. If the audited figures are not yet available, please submit the unaudited statements and note any possible changes that may occur in the audited figures. Considering the year is almost over, current year financials would be helpful as well.

Waiting your reply,

Eric

-----Original Message-----

From: Reinhold, Eric
Sent: Thursday, November 06, 2003 2:37 PM
To: 'Robert Hacker'
Subject: RE: UCC1 Agreement

Are they available yet? If not, go ahead and send me the unaudited statements. Thanks.

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELCOM.com]
Sent: Monday, October 27, 2003 4:20 PM
To: Reinhold, Eric
Subject: RE: UCC1 Agreement

hoping for early next week

Robert H. Hacker
Chief Financial Officer
TDS Telecom LLC
305-612-4204
rhacker@idstelcom.com

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-----Original Message-----

From: Reinhold, Eric [mailto:Eric.Reinhold@BELLSONTH.COM]
Sent: Monday, October 27, 2003 3:20 PM
To: Robert Hacker
Subject: RE: UCC1 Agreement

Just checking on the status of the financials....

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELCOM.com]
Sent: Tuesday, October 14, 2003 10:22 AM
To: Reinhold, Eric
Subject: RE: UCC1 Agreement

sorry-should be ready next Friday

Robert H. Hacker
Chief Financial Officer
TDS Telecom LLC
305-612-4204
rhacker@idstelcom.com

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-----Original Message-----

From: Reinhold, Eric [mailto:Eric.Reinhold@BellSouth.com]
Sent: Tuesday, October 14, 2003 10:14 AM
To: Robert Hacker
Subject: RE: UCC1 Agreement

Have not received a response yet. Just checking again...

-----Original Message-----

From: Reinhold, Eric
Sent: Wednesday, October 08, 2003 10:51 AM
To: 'Robert Hacker'
Subject: RE: UCC1 Agreement

Thanks for the info. I'm glad to hear that there's no more balances on the settlement account. How about the audited financials? Are they available yet?

-----Original Message-----

From: Robert Hacker [mailto:rhacker@IDSTELECOM.com]
Sent: Tuesday, October 07, 2003 7:29 PM
To: Reinhold, Eric
Subject: RE: UCC1 Agreement

I believe that today I confirmed with Maxine Alegal that there is no balance owing on the Alabama Settlement Account. With no balance owing I believe your right to a UCC filing has expired.

Issue may arise again, of course, but for now I believe it has expired.

Robert E. Hacker
Chief Financial Officer
IDS Telcom LLC
305-612-4204
rhacker@idstelcom.com

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-----Original Message-----

From: Reinhold, Eric [mailto:Eric.Reinhold@BellSouth.com]
Sent: Friday, September 12, 2003 10:16 AM
To: Robert Hacker
Subject: UCC1 Agreement

Mr. Hacker,

Per our conversation, please find attached a copy of the JCCI documents (Security Agreement and Officer's Certificate). Once completed and signed, please mail original copies to:

Attn: Eric Reinhold
BellSouth Telecommunications, Inc
Business Credit Management
1025 Lenox Park Blvd
RM: 9324
Atlanta, GA 30319

I understand you need to review and obtain approval from your bank prior to executing. I request that you please keep me informed as to the status as you move forward. Preferably, I would like to have this completed within the next 30 days. Please let me know if you have any questions or concerns.

Thank you,

Eric Reinhold
Credit Manager
404.986.1453

<<Security Agreement.doc>> <<Officer's Certificate.doc>>

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Reinhold, Eric

From: Robert Hacker [rhacker@IDSTELCOM.com]
Sent: Tuesday, November 25, 2003 3:27 PM
To: Reinhold, Eric
Subject: IDS

While we have not provided audited statements our creditworthiness is substantiated by the most recent D&B, which I have attached. As the report shows we have a D&B score which is better than most CLECs and our D&B rating has been upgraded to 1R2 from 1R3. On both these indices and many others we have significantly improved our creditworthiness from the time we commenced our relationship with BellSouth.

I am confident that on the basis of an objective analysis you will find no need to increase the current deposit amount.

Robert H. Hacker
Chief Financial Officer
IDS Telcom LLC
305-612-4204
rhacker@idstelcom.com

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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:

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

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

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



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

ENTIRE EXHIBIT PROPRIETARY



IDS TELCOM Headquarters 1525 NW 167th Street Suite 200 Miami, Florida 33169 U.S.A.
T: 305 913 4000 F: 305 913 1029 TOLL FREE: 600 335 8431

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?

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

EXHIBIT
L

ENTIRE EXHIBIT PROPRIETARY

EXHIBIT
M

ENTIRE EXHIBIT PROPRIETARY

EXHIBIT
N

ENTIRE EXHIBIT PROPRIETARY