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BELLSOUTH TELECOMMUNICATIONS, INC.
REBUTTAL TESTIMONY OF GREGORY R. FOLLENSBEE
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 031125-TP
AUGUST 12, 2004

**Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH
BELLSOUTH TELECOMMUNICATIONS, INC. (“BELLSOUTH”),
AND YOUR BUSINESS ADDRESS.**

A. My name is Gregory R. Follensbee. I am employed by BellSouth as Assistant Vice President – Regulatory and External Affairs. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

**Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR
BACKGROUND AND EXPERIENCE.**

A. I graduated from Florida State University in 1972, with a Bachelor of Science degree in Accounting. After graduation, I began employment with the Florida Public Service Commission in its Accounting Department. In 1983, I moved to Atlanta where I began work with AT&T Communications of the Southern States, Inc. (“AT&T”). In 2001, I left AT&T and began work with BellSouth in its Interconnection Services organization. In that role, I was responsible for

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1 all negotiations with CLECS for interconnection agreements. I assumed my
2 current responsibilities in February 2003.

3

4 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

5

6 A. The purpose of my testimony is to rebut the direct testimony of IDS witnesses
7 Elizabeth Fefer as it pertains to the Amendment to Settlement Agreement dated
8 March 25, 2002 ("Settlement Amendment"), and Jermaine Johnson as it relates
9 to Enhanced Extended Links ("EELs").

10

11 *Issue 2: Did BellSouth properly terminate IDS's access to LENS in December*
12 *2003 pursuant to the interconnection agreement?*

13

14 **Q. DO YOU AGREE WITH THE TESTIMONY OF IDS WITNESS**
15 **ELIZABETH FEFER AS IT PERTAINS TO THE SETTLEMENT**
16 **AMENDMENT?**

17

18 A. No. As an initial matter, the Commission should give little weight to Ms.
19 Fefer's testimony regarding the Settlement Amendment. I negotiated and
20 signed the Settlement Amendment on behalf of BellSouth and thus, unlike Ms.
21 Fefer, have the requisite knowledge to testify about what transpired in the
22 negotiations and the intentions of the parties regarding the Settlement
23 Amendment. In contrast, Ms. Fefer lacks this firsthand knowledge as all of my

1 discussions with IDS regarding the Settlement Amendment were with Bob
2 Hacker, IDS's CFO, and not Ms. Fefer. Thus, Ms. Fefer's testimony regarding
3 what was agreed to in the Settlement Agreement is nothing more than
4 revisionist history and does not accurately describe what took place during the
5 negotiations that led up to the Settlement Amendment or the dollars that
6 BellSouth and IDS agreed would be adjusted.

7
8 **Q. IN THE SETTLEMENT AMENDMENT, BELLSOUTH AGREED TO**
9 **ISSUE IDS A CREDIT OF \$925,000. WHAT BILLING DISPUTES DID**
10 **THIS CREDIT ADDRESS?**

11
12 A. IDS raised three separate disputes for billings up to August 17, 2001 that were
13 addressed in the Settlement Agreement and Settlement Amendment. As set
14 forth in Mr. Melton's testimony, the Settlement Agreement excluded [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED] See
20 Settlement Agreement, DM-1 at ¶ 4. [REDACTED]
21 [REDACTED] For cost reasons, the parties decided against
22 arbitrating these issues and instead attempted to negotiate resolution of the

1 above-identified disputes, which led to the execution of the Settlement
2 Amendment.

3
4 In the Settlement Amendment, the parties agreed that BellSouth would issue a
5 total credit of \$925,000 to resolve all three disputes. This agreement is
6 represented in paragraph 5 of the Settlement Amendment. In no event, did
7 BellSouth agree, either implicitly or explicitly, to provide IDS with any
8 additional credits for the pre-August 2001 disputed amounts identified in the
9 Settlement Agreement.

10
11 Effectively, Ms. Fefer is arguing that, notwithstanding the express wording of
12 the Settlement Agreement and Settlement Amendment, BellSouth agreed to
13 provide IDS with over \$1.5 million in credits for the pre-August 2001 disputes
14 carved out of the Settlement. BellSouth never agreed to this \$1.5 million
15 credit.

16
17 **Q. ON PAGE 4, LINES 22-23 MS. FEFER CLAIMS THAT THE PARTIES**
18 **AGREED TO AN AMOUNT OF \$2,475,000, REPRESENTING**
19 **BELLSOUTH'S PAST DUE BILLINGS AS OF MARCH 25, 2002**
20 **WHICH WAS TO BE TRANSFERRED TO THE SPECIAL "Q"**
21 **ACCOUNT. IS THIS AN ACCURATE STATEMENT?**

22
23

1 A. Absolutely not. As set forth above, the Settlement Agreement [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] [REDACTED]
5 [REDACTED]. See Settlement Agreement, Exhibit DM -1 at ¶¶ 3, 4, and 5. The
6 Settlement Amendment addressed these billing disputes. As set forth in the
7 Settlement Amendment, the parties determined that the total amount due
8 (“Total Amount Due”) to BellSouth for past due billings for the time period
9 covered in the Settlement Agreement, after taking into account the resolution
10 of the carved out billing disputes for this same time period, was \$2,475,000.
11 See Settlement Amendment, DM-2, at 1.

12
13 In her testimony, Ms. Fefer argues that the \$2,475,000 identified in the
14 Settlement Amendment represented IDS’s past due billings as of March 25,
15 2002. This is not true because the parties agreed that the \$2,475,000 only
16 represented the Total Amount Due to BellSouth for the time period covered in
17 the Settlement Agreement, which was up to [REDACTED]. The
18 \$2,475,000 set forth in the Settlement Amendment never addressed post-
19 August 17, 2001 past due amounts or billing disputes and thus cannot support
20 Ms. Fefer’s argument.

21
22 Q. DO YOU AGREE WITH MS. FEFER’S ASSERTION ON PAGE 5 THAT
23 BELL SOUTH AGREED TO WAIVE ALL PRIOR INTEREST AND

1 **LATE PAYMENT CHARGES THROUGH FEBRUARY 2002 AND TO**
2 **NOT BEGIN CHARGING INTEREST ON THE SPECIAL "Q"**
3 **ACCOUNT UNTIL MARCH 2002?**

4
5 A. No. Again, as stated above, the \$2,475,000 set forth in the Settlement
6 Amendment was the negotiated amount of the Total Amount Due to BellSouth
7 for past due amounts up to August 17, 2001 billings. The \$2,475,000 included
8 a credit of \$925,000 for resolution of the three billing disputes carved out of
9 the Settlement Agreement. In her testimony, Ms. Fefer insinuates that
10 BellSouth agreed to provide IDS with additional credits for the late payment
11 and interest charge dispute | [REDACTED] for pre-
12 August 17, 2001 billings via paragraph 4 of the Settlement Amendment.
13 Indirectly, Ms. Fefer claims that, with this paragraph, BellSouth agreed to
14 provide IDS with more credits than the \$925,000 credit set forth in paragraph 5
15 of the Settlement Amendment. This is not true for the following reasons.

16
17 First, in addition to the two other disputes asserted, the \$925,000 credit
18 represented the negotiated resolution of IDS's [REDACTED]
19 [REDACTED]
20 BellSouth did not agree to provide BellSouth with any additional credits for
21 this or any other dispute.

22

1 Second, in paragraph 4 of the Settlement Amendment, BellSouth agreed to
2 waive the interest and late payment charges that would be due on the Total
3 Amount Due (the \$2,475,000) for the time period that transpired from
4 execution of the Settlement Agreement in September 2001 to the execution of
5 the Settlement Amendment in March 2002. The Settlement Amendment could
6 not be any clearer. Thus, contrary to Ms. Fefer's testimony, there is nothing in
7 Paragraph 4 of the Settlement Amendment that entitles IDS to any additional
8 credits.

9
10 **Q. IN HER DIRECT TESTIMONY ON PAGE 5, LINES 9-14, MS. FEFER**
11 **CLAIMS THAT THE AMOUNT OF \$2,475,000 REPRESENTED ALL**
12 **BELLSOUTH BILLINGS THAT BELLSOUTH CONSIDERED TO BE**
13 **PAST DUE THROUGH MARCH 2002?**

14
15 **A.** Absolutely not. The \$2,475,000 as I have stated earlier only pertained to
16 billings that were considered to be past due through August 17, 2001. Any
17 past due amounts that existed as of March 2002 that were billed after August
18 17, 2001 would have been in addition to the \$2,475,000.

19
20 **Q. DO YOU AGREE WITH MS. FEFER'S STATEMENT THAT THE**
21 **IDEA BEHIND THE "Q" ACCOUNT WAS TO "ZERO OUT" ALL IDS'**
22 **PAST DUE BALANCES ON BELLSOUTH'S BOOKS AS OF MARCH**
23 **25, 2002?**

1 A. The intent of the Settlement Amendment was to set up the Past Due Q Account
2 to address IDS's agreed upon past due balances through August 17, 2001,
3 which is represented by the \$2,475,000. As established in Mr. Melton's direct
4 testimony and the emails of Mr. Hacker attached as exhibits to Mr. Melton's
5 testimony, the parties, however, also agreed to include in the Past Due Q
6 Account disputed amounts asserted from September 2001 through March 2002
7 timeframe until those disputes could be resolved at a later date. Thus, the
8 parties used the Past Due Q Account as a means to "zero out" IDS's books as
9 of April 2002. Importantly, contrary to Ms. Fefer's assertion, by "zeroing out"
10 IDS's books the parties did not agree that IDS was entitled to receive more
11 credits than those set forth in the Settlement Agreement and Settlement
12 Amendment.

13
14 As made clear in Mr. Melton's testimony, BellSouth subsequently upheld the
15 majority of IDS's September 2001 forward billing disputes in June in 2002 –
16 disputes that were added to the Past Due Q Account. Thus, following Ms.
17 Fefer's logic, IDS received a double credit for the same disputes – a credit
18 when BellSouth "zeroed out" IDS's books in April 2002 and again when
19 BellSouth credited IDS with certain disputes for the same time period in June
20 2002. Clearly, BellSouth never agreed to give IDS a double credit for the
21 same disputes.

22

1 **Q. MS. FEFER INTIMATES THAT BELL SOUTH FAILED TO**
2 **PROVIDED IDS WITH ALL CREDITS IT WAS DUE BECAUSE**
3 **BELL SOUTH HAS NOT IDENTIFIED WHERE IT PROVIDED**
4 **CREDITS ASSERTED IN THE SETTLEMENT AGREEMENT. DO**
5 **YOU AGREE WITH MS. FEFER’S STATEMENT?**

6
7 A. No. In her testimony, Ms. Fefer attempts to bolster her back-of-the-envelope
8 calculations to reconcile her theories as to how approximately \$3.2 million was
9 transferred to the Past Due Q Account (instead of relying on the admissions of
10 IDS’s CFO) by stating on page 10 of her testimony that “BellSouth has been
11 unable to show IDS where it provided IDS those credits identified in the
12 Settlement Agreement of \$542K, \$214K, and late payment charges (which
13 were \$819K through December 17, 2001).” Apparently, Ms. Fefer appears to
14 be arguing that, because she cannot identify where credits totaling
15 approximately \$1.5 million were applied, BellSouth failed to provide IDS with
16 the credits.

17
18 Ms. Fefer’s analysis ignores one very important point: the parties never agreed
19 to provide IDS with over \$1.5 million in credits for the disputes asserted in the
20 Settlement Agreement for pre-August 17, 2001 billings. Instead, as expressly
21 set forth in the Settlement Amendment, the parties resolved all three billing
22 disputes for a \$925,000 credit. Thus, because Ms. Fefer refuses to abide by the

1 Settlement Agreement, it is understandable why she is unable to identify
2 credits that exceed the amount the parties agreed to.

3

4 ***Issue 5(a): Did BellSouth correctly assess market-based rates for services***
5 ***provided to IDS in Florida in the applicable MSAs?***

6 **Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT MR.**
7 **JOHNSON’S TESTIMONY AND IDS’ TESTIMONY IN GENERAL ON**
8 **THIS ISSUE?**

9

10 A. Yes. All of the witnesses claim that BellSouth has an obligation to provide
11 non-discriminatory access to EELS in order to charge IDS market-based rates
12 for switching on a UNE-P line. However, only Mr. Johnson cites to a
13 provision in the Current Agreement that supports his testimony and his citation
14 (Attachment 2, Section 4.24.2) does not exist. BellSouth presumes that the
15 IDS witnesses are referring to Section 4.2.2 of Attachment 2 of the Current
16 Agreement and Section 4.1.3.3 of the Prior Agreement. If IDS is relying on
17 this provision, it is misplaced because this provision is inapplicable to the
18 services that IDS purchases from BellSouth.

19

20 Specifically, the above sections only apply to the purchase of standalone
21 switching. Attachment 2, Section 5.5.5 of the Current Agreement (and Section
22 5.6.1.2 of the Prior Agreement) addresses the application of market-based rates
23 in a UNE-P environment, which is what IDS purchases from BellSouth. This

1 fact is fatal to Mr. Johnson's argument as the provisions he is relying upon do
2 not apply to the services IDS purchases from BellSouth.

3

4 **Q. EVEN IF THE PROVISIONS FOR STANDALONE SWITCHING**
5 **APPLY, DOES BELLSOUTH COMPLY WITH THESE SECTIONS?**

6

7 A. Yes. Sections 4.2.2 and 4.2.3 of Attachment 2 of the Current Agreement and
8 Sections 4.1.3.3 and 4.1.3.4 of the Prior Agreement allow BellSouth to charge
9 IDS market-based rates in the stated MSAs when IDS serves an end user with
10 four or more voice grade lines and BellSouth provides non-discriminatory
11 cost-based access to EELs throughout Density Zone 1 as defined by the FCC.
12 As will be discussed further below, BellSouth complied with these provisions.

13

14 **Q. WHAT IS MR. JOHNSON CLAIMING THAT BELLSOUTH DOES**
15 **NOT PROVIDE AS AN EEL?**

16

17 A. Although not entirely clear, it appears that Mr. Johnson is stating that
18 BellSouth does not provide to IDS unbundled loop concentration combined
19 with interoffice transport. Mr. Johnson claims that this combination
20 constitutes an EEL and that, because BellSouth does not provide this "EEL" on
21 a nondiscriminatory cost-based basis, BellSouth cannot charge IDS market
22 based rates. The fallacy with Mr. Johnson's argument is that the service IDS

1 wants, unbundled loop concentration combined with interoffice transport, is
2 not an EEL.

3

4 Attachment 2, Section 5.2.1 of the Current Agreement defines an EEL as a
5 “combination of unbundled loop as defined in Section 2 and transport, as
6 defined in Section 6.” Section 2.1.1 of Attachment 2 of the Current
7 Agreement defines a loop as a “transmission facility between a distribution
8 from (or its equivalent) in BellSouth’s central office and the loop demarcation
9 point at an end-user premises, including inside wire owned by BellSouth.”

10 Nowhere in the definition of a loop does it describe, mention, or even refer to
11 unbundled loop concentration as a loop. Therefore, the service Mr. Johnson is
12 complaining about is not a loop and thus is not an EEL.

13

14 **Q. IS UNBUNDLED CONCENTRATION LOOP COMBINED WITH DS1**
15 **INTEROFFICE TRANSPORT CONSIDERED AN EEL IN THE**
16 **CONTRACT?**

17

18 A. No. Section 5.4.1 of Attachment 2 of the Current Agreement identifies the
19 EELs that BellSouth is required to provide. The combination sought by IDS is
20 not on this list.

21

22 **Q. DOES BELLSOUTH CONCENTRATE DS0 LOOPS AS STATED BY**
23 **MR. JOHNSON ON PAGE 6 OF HIS TESTIMONY?**

1 A. No. BellSouth does not combine concentrated loops with interoffice transport
2 to provide service in a central office other than where the loops are
3 provisioned, which is exactly what IDS is requesting.

4
5 **Q. DO YOU HAVE ANY COMMENTS ABOUT MR. JOHNSON'S**
6 **EXHIBITS RELATING TO IDS'S REQUEST FOR A COMBINATION**
7 **OF UNBUNDLED LOOP CONCENTRATION AT A DIFFERENT**
8 **CONCENTRATION RATIO AND TRANSPORT?**

9
10 A. Yes. As evidenced by Mr. Johnson's exhibits, IDS realized that unbundled
11 loop concentration combined with interoffice transport was not currently
12 available and provided by BellSouth because he requested it through the BFR
13 process. It is now disingenuous to argue otherwise in his testimony. What is
14 also apparent with Mr. Johnson's Exhibit JJ-6 is that IDS understands that
15 what it was requesting is not an EEL because it stated in its request "...I give
16 you two UNE products EELs, and Unbundled Loop Concentrators. If you
17 combine these two you attain our desired affect. If due to the new Market
18 Based Rates we are to fully optimize EEL's then concentration *with* EEL's
19 must be included for ordering." (Emphasis added). It is clear that IDS knew it
20 was not asking for an EEL, but was asking BellSouth to combine another
21 unbundled network element – Unbundled Loop Concentration – with an EEL.
22 Thus, IDS's own request proves that what is it seeking from BellSouth is not
23 an EEL.

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Q. DOES BELLSOUTH PROVIDE NON-DISCRIMINATORY COST-BASED ACCESS TO EELS, AS IS REQUIRED IN SECTIONS 4.2.2 AND 4.2.3 OF ATTACHMENT 2 OF THE CURRENT AGREEMENT AND SECTIONS 4.1.3.3 AND 4.1.3.4 OF THE PRIOR AGREEMENT?

A. Yes.

Q. IF IDS'S COMBINATION IS NOT AN EEL, OR IF BELLSOUTH IS NOT REQUIRED TO PROVIDE NON-DISCRIMINATORY TO EELS IN ORDER TO CHARGE MARKET BASED RATES FOR CERTAIN UNE-P LINES, THEN IS THIS AN ISSUE THAT PERTAINS TO WHETHER BELLSOUTH HAS CORRECTLY BILLED THE MARKET RATES PER THE CONTRACT?

A. No. IDS witness Jermaine Johnson is testifying to an issue that has no bearing on whether BellSouth correctly billed market rates, as provided for in the contract. Therefore, the Commission should ignore the testimony of Mr. Johnson in its entirety.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.